S. HRG. 111–403

NOMINATION OF ERIC H. HOLDER, JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JANUARY 15 & 16, 2009

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CONFIRMATION HEARING OF ERIC H. HOLDER JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES

THURSDAY, JANUARY 15, 2009

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

The Committee met, pursuant to notice, at 9:30 a.m., in room SR–325, Russell Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Feinstein, Feingold, Schumer, Durbin, Cardin, Whitehouse, Specter, Hatch, Grassley, Kyl, Sessions, Graham, Cornyn, Brownback, and Coburn.

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

Chairman LEAHY. Good morning. Before we start, just so that everybody understands, we are in the historic Senate Caucus Room. Normally, we would have been in a different room, but there are a number of these hearings going on, and there are certainly more people than we normally see in the hearings.

Lately, there seem to be a number of demonstrations in hearings. I just want everybody to understand the ground rules. I want everybody to be able to watch this hearing. I want them to be able to watch it comfortably. If people stand up and block the view of those behind them, I will direct the officers to remove the people who are blocking the view.

Now, I take this position whether people are standing up in demonstration of a position for or against what I might hold or for or against what Senator Specter might hold or any other Senator. I am sure that is not going to be necessary. I am sure everybody is going to show the appropriate amount of decorum. But that is what we expect, and that is what we will have. So, with that, I welcome everybody here.

The election of Barack Obama and Joe Biden and the President-elect's selection of Eric Holder Jr. to be Attorney General of the United States provide a historic opportunity for the country to move past the partisanship of the past decades. We can make a real difference if we come together to solve the Nation's problems and protect against serious threats and meet the challenges of our times.

Let us honor the wishes of the American people who in November broke through debilitating divisions to join together in record

numbers. Let us acknowledge that our inspirational new President-elect has moved forward promptly to assemble an extraordinarily well-qualified and diverse group of Cabinet officers and advisers. And let us move away from any kind of partisanship to serve the common good.

It was seven score and four years ago that this Nation answered the fundamental question President Lincoln posed in his Gettysburg Address and the world learned that liberty, equality, and democracy could serve as the foundation for this great and united Nation.

We Americans have cause and occasion to reflect during the next several days about our great country. The inauguration of our new President is Tuesday; Monday is the holiday the country has set aside to celebrate and rededicate ourselves to the cause of freedom and equality. Today is the anniversary of the birthday of the extraordinary man for whom that holiday is named. With this hearing, we take another step up the path toward the time Dr. King foresaw: when people are judged by the content of their character. Eric Holder has the character to serve as the Attorney General of the United States of America. He passes any fair confirmation standard. His record of public service has earned him strong support from law enforcement organizations, civil rights groups, victims' rights advocates, former members of the administration of President Reagan, the President who first nominated him as a judge, and from those of President Bush, and many others.

This week, the Justice Department's Inspector General released a report about the shameful political interference in the Civil Rights Division of the Justice Department during the past few years. America's diversity when drawn together is a source of our Nation's strength and resilience. Americans have to be able to trust their Justice Department. That trust can never be squandered or taken for granted. We need leaders who are prepared to take up the oars of a Justice Department whose dedicated law enforcement professionals have been misused and demoralized. Eric Holder is just such a leader.

Before the November election, I co-authored an article with my friend, the Ranking Member in which we wrote: "The Attorney General's duty is to uphold the Constitution and the rule of law, not to circumvent them. The President and the American people are best served by an Attorney General who gives sound advice and takes responsible action, rather than one who develops legalistic loopholes to serve the partisan ends of a particular administration." We wrote that article addressed to both John McCain and Barack Obama. We wrote it before we knew who was going to be President. We wrote it so that the next President might adhere to our advice, and I have every confidence that Eric Holder is the person we described.

The career professionals and those of us who have worked for years with the career professionals at the Justice Department, most of them we have no idea what their political background is. We just know how good they are. But they reacted with delight when Eric Holder was designated by President-elect Obama because they, too, know him well. They know him from his 12 years as an anti-corruption prosecutor at the Public Integrity Section,

from his time as the U.S. Attorney for the District of Columbia, from his tenure as a judge, and from his service as the Deputy Attorney General. And I would hope that we would have a prompt confirmation so he can restore morale and purpose throughout the Justice Department.

It is important that the Justice Department have its senior leadership in place without delay. The Attorney General is the top law enforcement officer in the country; he is a key member of the national security team. We have seen billions of dollars devoted to bailouts in the last few months. We need to ensure that those resources are not diverted by fraud or deceit. We need the Justice Department to be at its best.

I have been encouraged by the initial reaction of many Republicans, including some serving on this Committee, when Mr. Holder's name was reported as the likely nominee and when he was designated by the President-elect. I commended their bipartisanship, as I do one of the best friends I have ever had in the Senate, Senator John Warner, who will introduce Mr. Holder to the Committee.

The responsibilities of the Attorney General of the United States are too important to have this appointment delayed by partisan bickering. We have known and worked with Mr. Holder for more than 20 years. We knew him when he was nominated by President Reagan and we confirmed him; we knew him when he was nominated by President Clinton and we confirmed him—three times confirmed by the Senate to important positions. His record of public service, his integrity, his experience, and his commitment to the rule of law merit our respect.

We need an Attorney General, as Robert Jackson said 68 years ago, "who serves the law and not factional purposes, and who approaches his task with humility." That is the kind of man Eric Holder is, the kind of prosecutor Eric Holder always was, and the kind of Attorney General he will be. The next Attorney General will understand our moral and legal obligation to protect the fundamental rights of all Americans and to respect the human rights of all people.

This is part of the change we need and the change the American people voted for. When he designated Mr. Holder, President-elect Obama said: "Let me be clear. The Attorney General serves the American people. And I have every expectation that Eric will protect our people, uphold the public trust, and adhere to our Constitution." The next President understands the role of the Attorney General of the United States. And I have no doubt that Mr. Holder understands what is required of the Attorney General. His experience and the lessons he has learned will serve him and the American people well.

Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A UNITED STATES SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

Next to the President of the United States, there is no Federal officer more important than the Attorney General. The Attorney General is different from any other Cabinet officer because Cabinet

officers ordinarily carry out the policies of the President. But the Attorney General has an independent duty to the people and to uphold the rule of law.

The Constitution calls for the United States Senate to advise and consent, and I agree with the Chairman about the necessity to help President-elect Obama tackle the problems of enormous difficulties which this Nation faces. There is provided in the Constitution separation of power and checks nd balances, so that it is the duty of the United States Senate to exercise its responsibilities and to make an appropriate inquiry.

Independence is a very important item. Harry Daugherty was Attorney General during the Teapot Dome scandal, so I mention Attorney General Daugherty because, in coming in, I took a look at the long list of hearings, proceedings which have been held in this room. One of them was Teapot Dome. Another was the sinking of the Lusitania, the McClellan Committee, Iran-contra, many, many hearings.

There has been a question raised as to whether the issues which I have posed for Mr. Holder are political in nature. I have not hesitated to oppose prominent members of my own party, asking pointed questions, which is the constitutional responsibility of a Senator in making an independent judgment and voting against them when I thought it was warranted. And one of those hearings was held right here in this room.

Almost every major newspaper in the country has commented about the importance of questioning Mr. Holder. And as I said on the floor, I have an open mind. But I think there are important questions to be asked and important questions to be answered.

The editorials have commented about the need for the questioning of Mr. Holder based upon some of the factors in his background. There is no doubt he comes with an excellent resume, but there are questions nonetheless. So say the New York Times, the Washington Post, the Wall Street Journal, the Philadelphia Inquirer, the Rocky Mountain News, and many other newspapers across the country.

The basic issue of national security is perhaps the Attorney General's most important responsibility: to protect the American people. And I think we need to know how Mr. Holder is going to approach that job. What does he think about the PATRIOT Act? What does he think about the interrogation techniques?

There is a big difference between what is faced by those who are following the Army Field Manual compared to what the FBI does compared to what the CIA does. There are very different lines of questioning. And I saw that in the 104th Congress when I chaired the Intelligence Committee. I voted against waterboarding. It is torture. And I took the lead on the Senate floor in fighting for habeas corpus. And I opposed President Bush's signing statements. So I have no hesitancy to stand up on those issues.

But there is a very important question of balance, and we want to find out how Mr. Holder is going to approach those issues. We have major issues of violent crime in this country. Career criminals have to be treated one way. I want to know what he has in mind about realistic rehabilitation to try to take first offenders, and especially juveniles, out of the recidivist crime cycle. We have to know

where he stands on antitrust. We need to know what he will do on the prosecution of white-collar crime.

There has been a spate of fines which look heavy on their surface—a million dollars—but contrasted with the billions involved in the fraud, it is insufficient. I want to know how tough he is going to be along that line, especially with what we have seen with corporate fraud leading to the tremendous financial problems this country has today.

At the same time, there has to be a balance of right to counsel. Mr. Holder authored in 1999 the memorandum which provides that the Department of Justice will go easy on a corporation if they will cooperate where individual constitutional privileges are involved. That is a matter which has to be inquired into, where he stands under the antitrust laws. All of these matters I think are appropriate for inquiry, and I look forward to an opportunity to discuss them with the nominee.

One additional comment, and I want to read this because I want to get it right. I ordinarily do not read, but I will on this. "Aside from the substance of Mr. Holder's qualifications, there is a serious issue on Senators' minority rights and the inadequacy of our opportunity for preparation." On this I speak for the Republican Senatorial Caucus. Ordinarily, I speak only for myself, but today I speak for the caucus.

In light of Mr. Holder's extensive record—and we looked at some 86 boxes at one stage—there has been insufficient time for the examination of those records. On the Roberts and Alito confirmations, the Minority was consulted and accorded the time they requested on scheduling. That was not done here. The Chairman declined to co-sign a letter requesting records from the Clinton Library. With only my signature representing 40-plus Republican Senators, my request was treated as any other citizen's request under the Freedom of Information Act, and the records have not been obtained. Where the Minority previously had a dozen witnesses under similar circumstances, we got three. When two witnesses—Ms. Mary Jo White and Mr. Roger Adams—refused to appear, our requests for subpoenas were denied.

Realizing the public's understandable disdain for Washington's political bickering, we have sought to temper these objections, and I retain a cordial relationship with the Chairman, with whom I have worked very closely for many years, but feel constrained to recite them here briefly for the record.

I thank the Chair.

Chairman LEAHY. Well, I thank my good friend from Pennsylvania. I would note that I think the last hearing for Attorney General Mukasey was—I think we did it in 4 weeks. I do recall the Deputy Republican Leader being critical it took 4 weeks, and he said something about 3 weeks should have been enough. I believe we had a recess of some sort in between there. We did it in 4 weeks. They said that was not really fast enough. This has been—Mr. Holder was—we were told by the Obama team in November that he was going to be the nominee. We had November and December, and now we are into January. I did postpone it by an extra week from the time. I did say at the time that made it—it went

several weeks beyond what the Republican Leader had said it should take for an Attorney General.

Now, this is not a lifetime position either, unlike the lifetime positions of our Supreme Court Justices. But be that as it may, I think adequate time has been given. Certainly, questions—I understand what the distinguished Ranking Member has said about his opposition to waterboarding. As we know, Attorney General Mukasey would not declare that as being torture. Every Republican voted for him nonetheless. But that is why you ask the questions, and we will have the questions.

One of the first people to introduce is a distinguished colleague, John Warner. He is the former senior Senator from Virginia. He served here for 30 years. I consider it my privilege to have served all those 30 years with him. We have traveled together around the world. We have worked together. We have done so many significant pieces of bipartisan legislation together. He set the tone and tenor of what it should be. I have referred to him over the years as "my Senator when I am away from home" and spending time in a home in Virginia. I consider him a Senator's Senator.

Senator Warner, please go ahead.

PRESENTATION OF ERIC H. HOLDER, JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. JOHN WARNER, FORMER UNITED STATES SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman and distinguished Ranking Member, and to each of my colleagues. I am deeply humbled by this opportunity to appear this morning and participate in what I regard, and I think you regard, as one of the most solemn responsibilities of the United States Senate: fulfilling our constitutional responsibility of advise and consent.

I have been privileged through these 30 years in the United States Senate to know each of you and to work with each of you and to form my own opinion that each of you will fairly and objectively and conscientiously approach this solemn duty of advise and consent for this historic nomination of Eric Holder to be the chief law enforcement officer of our Nation, the Attorney General of the United States of America.

I have known Mr. Holder for a number of years. We both started our careers basically as prosecutors, although separated by at least 20-some-odd years, two decades. And we approached our duties in life based upon the foundations that we were taught and learned in the role as prosecutors, both here in the Nation's capital.

So I have joined this morning out of friendship, but also I weigh very heavily coming before the Senate again so soon after my retirement, but I felt that I wanted to be among those all across this Nation who are working for a bipartisan approach to support the President-elect in facing what I think each of us believes is the most complicated and challenging set of issues that ever faced a President.

Behind me sits Eric Holder, and the President-elect has exercised his judgment that this is the individual whom he deems best qualified—from the hundreds of thousands of lawyers serving in the

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United States, the best qualified to become the Attorney General of the United States.

I am also privileged to be joined this morning by a very good friend, Eleanor Holmes Norton. We have worked together on behalf of the Greater Capital Region these many years, and I am privileged to say that we have had some accomplishments through these years.

Quickly, Mr. Chairman, the public record has a complete dossier on this nominee, but given that people in every corner of the United States today are following this hearing, this very important hearing, I would like, with the permission of the Chair and Ranking Member, to briefly summarize how this distinguished American got from his home in the greater environment of New York City and a household which he proudly classifies as "middle class" to become the nominee for Attorney General of the United States. It is truly remarkable.

Fortunately, the elders in his household, parents and others, put great emphasis on education. Consequently, he excelled in public schools and then went on and had the good fortune to get his undergraduate degree and his law degree from Columbia University. And then rather than go into a top law firm and perhaps a lucrative opportunity, as we say in the trial profession, he "plunged into the cauldron of the courtroom" to start his career, arguing case after case before the juries and the judges.

Prosecution is a tough way to enter the profession, but both of us chose this course. He was a Federal prosecutor in the Public Integrity Section of the U.S. Department of Justice. There he tried many cases and prosecuted successfully widely heralded public corruption cases against officials from both—and I emphasize "both"—political parties, as recognized by the Chairman and the Ranking Member in their opening statements.

Thereafter, Eric was appointed a D.C. Superior Court judge by President Ronald Reagan, recognizing this man's impartiality and his bipartisan approach to the rule of law. We always must come back that the rule of law is the fundamental foundation of this great Nation of ours. He performed his duties on the bench with distinction, won the accolades of both the bench and the bar, and then was appointed the United States Attorney for the District of Columbia in 1993.

Having been a member of that office, as I said, two decades before, I wish to point out that the United States Attorney for the District of Columbia has a very wide range of jurisdiction, and much of it relates to common law crime, unlike other U.S. Attorneys.

He performed that subject and that responsibility from 1993 to 1997. From 1997 to 2001, he served as Deputy Attorney General of the United States, the critically important number two job at the Department of Justice, and there he gained invaluable experience for his current nomination and developed a bipartisan reputation in making difficult and tough decisions.

And on that point, I have had an opportunity in preparing for this hearing to visit with the nominee, and many, many colleagues who have known him and came up through the similar chairs of responsibility in the Department of Justice.

Mr. Chairman, Eric Holder would be the first to say that his career was marked by certain misjudgments. He freely acknowledges that. I doubt if there is one of us in this room, particularly those of us who have been prosecutors, who have not looked back on our careers and recognized that we have made misjudgments. But the key to this man is that he learned from those experiences and learned in such a way that those misjudgments will not be repeated.

From 2001 to the present, he practiced law as a partner in the prestigious firm here in Washington, D.C., the firm of Covington & Burling, for experience in our criminal justice system on the other side, namely that of counsel to those who had the misfortune to fall afoul of the law. He also represented major companies' executives in a wide variety of complex litigation. That is experience that he will find invaluable if confirmed by the Senate in this new position.

We both readily acknowledge, Eric Holder and I, that we achieved our goals in life largely by learning from career public servants with whom we had the privilege to serve—the clerks, the judges, the Justices at all levels of our courts, our fellow prosecutors, and the vast system of careerists that serve America to provide for the rule of law and the respect we have for the Constitution.

I humbly acknowledge my gratitude for having received that same benefit that he did, because the Department of Justice is known perhaps more so than any other Department, save the Department of Defense, for a cadre of careerists who put the rule of law and their oath to the Constitution foremost in discharging their responsibilities.

I mentioned that having had that same experience, I had the opportunity in later life when I was privileged to be here in the Senate working in association with my good colleague here, to recognize a judge, a Federal circuit judge in the Nation's capital for whom I served as a law clerk, Judge E. Barrett Prettyman, and naming the courthouse for him, and later joining again with my colleague to my left to name the next addition to the Federal courthouse for a man named William Bryant.

Now, William Bryant was a prosecutor, in a sense a career one, a defense counsel, and as a young man in the prosecutor's office, I learned more from William Bryant as to how to try a case and the vagaries of appearing before the jury and the trial judges than from any law professor in my career.

So that was the way I have acknowledged the careerists. Our distinguished nominee in his opening statement will do likewise. But it is essential—and this nominee will do that. It is essential to protect those careerists in the operations and functions they have in the Department of Justice from the always present political pressures that exist in every single corner of the Nation's capital and the Government. He will protect them so that they can perform their duties.

He will be the principal adviser to the President, and much has been said in the opening statements by both of my distinguished colleagues, the Chairman and Ranking Member, about the importance of the rule of law and independence. And I went back and read the Congressional Record, Senator Specter, where you deliv-

ered quite an oration here on the 6th of January this year. And in it you said the following: "The Attorney General is unlike any other Cabinet officer whose duty is to carry out the President's policies. The Attorney General has the corollary, independent responsibility"—I repeat, "independent responsibility to the people to uphold the rule of law."

Then joining the distinguished Chairman, you wrote the following, the two of you: "The Attorney General's duty is to uphold the Constitution and the rule of law, not to circumvent them. The President and the American people are best served by an Attorney General who gives sound advice and takes responsible action." That is the nominee, in my judgment.

I was so privileged to join so many distinguished lawyers whom I have known and served with who have come forth unsolicited, largely Republican in background, who have served as Deputy Attorney General, as prosecutors from all over the country, to lend our support to this important hearing. I would hope and ask if I might put in as a part of the record some of those exceptional letters.

Chairman LEAHY. Without objection, they will be part of the record.

Senator WARNER. But I would point out, again, my pride to have joined with them, most of them having far more distinguished legal careers than I have. But it is interesting, Mr. Chairman, as I read those letters. They had a common theme in describing this nominee. It was in several of the letters. It was very simple, but very profound, and it stated as follows, and I quote them: "Eric Holder is a good man." And that says a lot.

I would further note that our 41st President, George Herbert Walker Bush, in a public appearance on television, when asked about the President, he said, "I wish the new President well." And then his son, our current President, likewise has wished this President well. This President has made a choice. This President has chosen the individual that is going to come before you momentarily in advise and consent.

It is the gravity of the times that gives rise to the unprecedented level of bipartisanship that accompanies all stages of the formation of this new administration and this historic inauguration to be held next week.

I thank the Chair.

Chairman LEAHY. Thank you. Thank you, Senator Warner. You and I have sat on the inaugural stand for inaugurations of both Democrats and Republicans as President, and I think we have both wished whoever, whichever party they were from, wished them well.

Congresswoman Norton, I want to recognize you. You were recently elected by the people of the District of Columbia to your 11th consecutive term in the House of Representatives, and please, Congresswoman Norton, go ahead.

PRESENTATION OF ERIC H. HOLDER JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you very much, Mr. Chairman.

Unrelated to my own testimony, I have been asked by the Chair of the Congressional Black Caucus to request that her letter for the caucus in support of Mr. Holder be admitted into the record.

Chairman LEAHY. Thank you. It will be. Senator Feinstein had already sent that letter and asked that it be part of the record. I read the letter. It definitely will be part of the record.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Chairman, it is a particular pleasure to appear before you this morning with my good friend whom I miss already. The fact that John Warner, who enjoys such a sterling reputation in this body, has stood for Eric Holder I think speaks volumes about Mr. Holder's experience and character.

Considering your time restraints, I am going to read my thoughts this morning, Mr. Chairman and Ranking Member Specter. I am pleased to introduce Eric Holder, a long-time resident of the District of Columbia, but my few words this morning have little in common with the predictable introductions by home-State Senators and others. I did not know Eric Holder until he competed for the post of United States Attorney for the District of Columbia. I came to know him in much the same way that you will know him after today's hearing.

Because the District has the same Federal officials as the States, but no Senators, President Bill Clinton granted me the courtesy to recommend the U.S. Attorney, District Court judges, and the U.S. Marshal. In the District's two centuries as the Nation's capital, residents had had to live with the decisions of these important Federal officials while having no way to effect their appointments. I was determined to vindicate the President's courtesy by the transparency and the competitiveness of the process and the excellence of the candidates recommended. I appointed a commission of distinguished lawyers and other private citizens, named as Chair Pauline Schneider, a past president of the District of Columbia Bar Association, and charged the commission to search widely for candidates and to thoroughly investigate and interview them and send me three candidates for each post. I then made my recommendations to the President for each post after doing my own due diligence and interviewing the three candidates. Some may think that Washington has more lawyers than people with good sense, but lawyers in this town are among the most able in the United States. The commission soon heard from some of the best of the lot.

Eric Holder's distinguished biography is before you. Without reiterating the many features of the academic and legal background that recommend his appointment, what particularly stood out for us were the uniformly excellent reports concerning his work in the Justice Department's first Public Integrity Section, his nomination by President Ronald Reagan to the D.C. Superior Court, whose appointments, as Article I judges, are made by the President, and the high praise for his service there, the outstanding evaluations of his extensive and varied criminal and civil trial experience, and his un-

impeachable character and collegiality, as reported by all who had worked with Eric Holder. Perhaps the best indication of Eric's excellence, however, is that in a very competitive pool of the best and the brightest, he rose to the top like cream in rich milk.

Besides demonstrating his own excellence, however, Eric carried an unusual burden, of which he was unaware. More than usual, the quality of the commission's recommendations for U.S. Attorney and for judges were of path-breaking importance. We knew that these appointments were without precedent in the city's history. Even small differences in quality mattered, if the point was not only to get the best candidates but to demonstrate that this city could do so.

Eric Holder created a new gold standard for the position of United States Attorney for the District of Columbia. The Republican U.S. Attorneys who followed him adopted his innovations, localizing the District part of his jurisdiction by, for example, placing Assistant U.S. Attorneys in communities for the very first time while simultaneously carrying forward significant Federal prosecutions. Eric wore two very different, high-profile hats at the same time with remarkable skill. He more than vindicated the challenge he was given and our confidence in him. Eric Holder may be the first person to work his way up from career trial attorney in the Department of Justice to become the United States Attorney General. Imagine the effect his appointment will have on the demoralized Department of Justice staff. If experience at every level of the Department and a record of excelling in everything you have ever done matters to this Committee, Eric Holder is unusually well qualified to become our Attorney General. I am pleased and proud to recommend him to you without reservation.

Chairman LEAHY. Well, Congresswoman, you and I have served together for over 20 years, and I worked closely with you on a number of things, and that is high praise indeed, and I appreciate it.

Senator WARNER. I know you and the Congresswoman have many other places to go. Thank you for taking the time here. We will rearrange the dais a little bit and give Mr. Holder a chance.

Chairman LEAHY. Mr. Holder, will you please stand and raise your right hand? Do you affirm or swear that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOLDER. I do.

Chairman LEAHY. Thank you. Please be seated.

I am never sure whether to address you as Mr. Holder, Judge Holder, Deputy Attorney General Holder, but, Mr. Holder, please go ahead and give your opening statement.

First, before you do, though, would you introduce the members—before we start the clock, would you introduce the members of your family? I have already met them, but so all the members of the Committee can see them here.

Mr. HOLDER. Thank you, Mr. Chairman. Seated behind me, right behind me, is my wife, Dr. Sharon Malone. The beautiful woman to her left is my mother, Miriam Holder. A series of beautiful young women here is my daughter, Maya Holder, Brook Holder. My little guy there, that is Eric Holder III, born on the same day as my father. He was going to have a different name, but we de-

cided since he was born on my Dad's birthday, his last birthday, that that had to be his name. So he is not named after me. He is named after my Dad.

That is my brother, William Holder; his wife, Debra Holder; my niece, Amanda Holder.

Chairman LEAHY. I thank you all, and I know you have many, many friends. I see former FBI Director Louis Freeh, and I see so many others. But please, Mr. Holder, go ahead.

STATEMENT OF ERIC H. HOLDER JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES

Mr. HOLDER. Thank you. Mr. Chairman, Senator Specter, and members of the Senate Judiciary Committee: I am deeply honored to appear before you today. In 5 days, just a short distance from this historic room, the next President of the United States will take the oath of office. He will swear to preserve, protect, and defend the Constitution of the United States. I have been asked by him to serve as Attorney General, the Cabinet officer who is the guardian of that revered document.

I feel the full weight of this responsibility. If confirmed by the Senate, I pledge to you and to my fellow citizens that I will faithfully execute my duties as Attorney General of the United States of America. I will do so by adhering to the precepts and the principles of the Constitution, and I will do so in a fair, just, and independent manner.

This is the fourth time I have come before the Senate for confirmation to a position in law enforcement. I served almost 30 years as a prosecutor, judge, and senior official within the Department of Justice. President-elect Obama and Vice President-elect Biden asked me to assume this responsibility because they know I will fight terrorism with every available tool at my disposal and reinvigorate the Department's traditional missions of protecting public safety and safeguarding our precious civil rights.

I accept their trust in me, and with your support I intend to lead an agency that is strong, independent, and worthy of the name "the Department of Justice."

Now, I could not have arrived at this moment without the sacrifice and example of so many others. I begin, of course, by recognizing the support of my family, whom you have just met. My wife, Sharon, a respected professional in her own right, has put up with a lot over the years because of my demanding work, and she has done so with the love and grace that characterizes all that she does. Thank you, sweetheart.

My wife is a tremendously talented physician. But the best examples of her skills and qualities as a person are on display not in her doctor's office but in our home in the form of our three children. They make our lives infinitely richer, and I thank them for their love and patience.

It wasn't until I was a parent myself that I truly appreciated all that my parents did for me. My father, only 12 years old when he came to this country from Barbados, worked hard throughout his life to teach my brother and me about the promise of America. He and my mother made sure that we never wasted the opportunities presented to us, especially an education in the excellent New York

City public school system. My brother grew up to be a Port Authority police officer and a successful businessman, and I grew up to arrive at this humbling moment. I am glad my mother is here to see this day, and I know my father would be proud.

In addition to my family, there are others who have inspired and guided me. Sitting here today, the very day that civil rights leader Martin Luther King would have celebrated his 80th birthday, I acknowledge the debt that I owe him and the thousands of other Americans, black and white, who fought and died to break the back of segregation. Dr. King devoted himself to breathing life into our Constitution. I feel privileged just to stand in his shadow and hope that as Attorney General I can honor his legacy.

Now, one of those who served on the front lines of the struggle for equality was my late sister-in-law, Vivian Malone Jones, who integrated the University of Alabama in 1963. In an atmosphere of hate almost unimaginable to us today, she and fellow student James Hood faced down Governor George Wallace, and in the presence of then-Deputy Attorney General Nicholas Katzenbach, they enrolled in that great university.

The very next day, NAACP leader Medgar Evers was gunned down in his driveway in Mississippi. But Vivian never considered backing down. She went to class despite the ever present danger, later saying simply that she "decided not to show any fear." She never did, throughout her too short life. In a career in public service that began in the Civil Rights Division at the Department of Justice and ended as an advocate for environmental justice, she showed me the meaning of courage and perseverance.

Finally, I want to acknowledge the thousands of career employees at the Department of Justice. They have been my teachers, my colleagues, and my friends. When I first joined the Department's Public Integrity Section in 1976, they showed me what it meant to serve the people. When I was the United States Attorney in the District of Columbia, they worked beside me to fight drug crimes, drug trafficking, and public corruption. And when I was Deputy Attorney General of the United States, they were my troops in the daily battle for justice.

These career professionals are not only the backbone of the Department of Justice, they are its soul. If I am confirmed as Attorney General, I will listen to them, respect them, and make them proud of the vital goals we will pursue together.

In fact, if I have the honor of becoming Attorney General, I will pursue a very specific set of goals:

First, I will work to strengthen the activities of the Federal Government that protect the American people from terrorism. Nothing I do is more important.

I will use every available tactic to defeat our adversaries, and I will do so within the letter and the spirit of the Constitution. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must remain a beacon to the world. We will lead by strength, we will lead by wisdom, and we will lead by example.

Second, I will work to restore the credibility of a Department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by

partisanship. Under my stewardship, the Department of Justice will serve justice, not the fleeting interests of any political party.

Attorney General Michael Mukasey and Deputy Attorney General Mark Filip have done much to stabilize the Department and restore morale. For that, Judges Mukasey and Filip deserve the gratitude of the American people, and they have my personal gratitude and thanks. But there is more work to do.

Third, I will reinvigorate the traditional missions of the Justice Department. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace the historic role in fighting crime that it has, in protecting civil rights, preserving the environment, and ensuring fairness in the marketplace.

To that end, the Justice Department must wage an aggressive effort against financial fraud and market manipulation. As taxpayers are asked to rescue large segments of our economy, they also have a right to demand accountability for wrongdoing that only the Department of Justice can provide. At the same time, we must rededicate ourselves to the fight against violent crime which tears at the fabric of our neighborhoods.

The Justice Department must also defend the civil rights of every American. In the last 8 years, vital Federal laws designed to protect rights in the workplace, the housing market, and the voting booth have languished. Improper political hiring has undermined this important mission. That must change, and I intend to make this a priority as Attorney General.

The Department of Justice must also protect American consumers. We need smart antitrust enforcement to prevent and to punish unlawful conduct that hurts markets, excludes competition, and harms consumer welfare. The Justice Department should also reinvigorate its efforts to protect the public in areas such as food and drug safety and consumer product safety. And we must work actively with EPA and other agencies to protect our environment.

In all of this, I hope to establish a full partnership with this Committee and with Congress as a whole. The checks and balances in our Constitution establish a healthy tension among the three branches as each ensures that the others do not overstep their boundaries. But too often in recent years, that natural tension has expressed itself in unhealthy hostility.

President-elect Obama and I respect Congress. And we respect the Federal judiciary. We will carry out our constitutional duties within the framework set forth by the Founders, and with the humility to recognize that congressional oversight and judicial review are necessary; they are beneficial attributes of our system and of our Government. In particular, I know how much wisdom resides in this Committee from your collective decades of service in Government, and I will be sure to draw upon it.

The years I spent in Government taught me a lot. As a public corruption prosecutor, I took on powerful interests to ensure that citizens received the honest services of the people who serve them. As a judge, I used the awesome power I had to deprive criminals of their liberty, a power that weighs heavily on anyone who exercises it. And as a high-ranking official in the Department of Justice, I faced a series of complex, time-sensitive prosecutorial and administrative decisions every time I stepped inside the building.

Now, my decisions were not always perfect. I made mistakes. I hope that enough of my decisions were correct to justify the gratifying support that I have received from colleagues in law enforcement in recent weeks. But with the benefit of hindsight, I can see my errors clearly, and I can tell you how I have learned from them.

I can also assure you that I will bring to office the principle that has guided my career—that the Department of Justice first and foremost represents the people of the United States. Not any one President, not any political party, but the people.

I learned that principle in my first days at the Department, when I sent corrupt public officials from both parties to jail. It guided my work as U.S. Attorney for the District of Columbia when I prosecuted one of the most powerful members of my own party at the very time he held in his hands the top legislative initiative of my own President. And it guided my service as Deputy Attorney General when I recommended independent counsel investigations not just of members of the Cabinet, but of the very President who appointed me and in whose administration I proudly served.

None of those calls was easy. But I made them because I believed they were the right decisions under the law. If confirmed as Attorney General, I pledge to you that this same principle will guide my service and inform every decision that I make.

I have spent most of my career at the Department of Justice, and I cherish it as an institution. Its history, unmatched within the Federal Government. If I have the honor of serving as Attorney General, I will uphold the trust that you have placed in me. I will do so by ensuring that the Department is an instrument of our great Constitution, but more than that the servant of the American people.

Thank you very much.

[The prepared statement of Mr. Holder appears as a sumission for the record.]

[The biographical information of Mr. Eric Holder, Jr., follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR ERIC HOLDER, JR., ATTORNEY GENERAL NOMINEE

PUBLIC

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

   Eric Himpton Holder, Jr.

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

   Attorney General of the United States

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

   Office: Covington & Burling LLP
   1201 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004

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

   January 21, 1951; New York, New York

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

   Married to: Sharon Denise Malone
   Physician

   Number of Dependents: We have three dependent children.

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

   Columbia Law School - New York, New York
   1973 – 1976
   J.D. awarded May 1976

Columbia College - New York, New York,
1969 – 1973
B.A. awarded May 1973

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

Partner
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
July 2001 – present

Deputy Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530
1997 – 2001

United States Attorney for the District of Columbia
U.S. Department of Justice
Washington, D.C. 20005
1993 – 1997

Associate Judge
District of Columbia Superior Court
500 Indiana Avenue, N.W.
Washington, D.C. 20001
1988 – 1993

Trial Attorney
U.S. Department of Justice
Criminal Division
Public Integrity Section
Washington, D.C. 20530
1976 – 1988

Law Clerk
U.S. Department of Justice
Criminal Division
Washington, D.C. 20530
Summer 1975

Law Clerk
N.A.A.C.P. Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York, New York
Summer 1974

Systems Engineer
International Business Machines
475 Northern Blvd
Great Neck, NY
Summer 1973

NON-PROFIT BOARDS:
George Washington University – Board of Trustees
October 25, 1996 – 1997
No payment received

American Constitution Society
1333 H Street, N.W., 11th Floor
Washington, D.C. 20005
Board member: 2003 – present
No payment received

Columbia University
2960 Broadway
New York, NY 10027-6902
212-854-1754
Trustee: 2007 – present
No payment received

Georgetown Day School
4200 Davenport Street, N.W.
Washington, D.C. 20016
202-274-3200
Trustee: 2006 – present
No payment received

Meyer Foundation
1400 16th Street, N.W.
Suite 360
Washington, D.C. 20036
202-483-8294
Board member: 2001 – present
No payment received

Morehouse School of Medicine
720 Westview Drive, S.W.
Atlanta, GA 30310-1495
404-752-1500
Trustee: 2005 – present
No payment received

Save the Children Foundation
54 Wilton Road
Westport, CT 06880
1-800-728-3843
Board member: 2004 – present
No payment received

Turnaround for Children
25 West 45th Street, 6th Floor
New York, NY 10036
646-786-6200
Board member: 2004 – present
No payment received

Washington, DC Police Foundation
Federal City Council
1156 15th Street
Suite 600
Washington, D.C. 20005
202-223-4560
Chairman: 2006 – present
No payment received

American Bar Association
740 15th Street, N.W.
Washington, D.C. 20005-1019
202-662-10000
General Member; Task Force on the Judiciary: 2001 – 2003
No payment received

Appleseed Foundation
7272 15th Street, N.W.
11th Floor
Washington, D.C. 20005
202-347-7960
Board Member: 2002 – 2003
No payment received

Columbia Law School
Board of Visitors
435 West 116th Street
New York, NY 10027-7297
Member: 2002 – 2005
No payment received

D.C. Appleseed Center for Law & Justice, Inc.
1111 14th Street, N.W.
Suite 510
Washington, D.C. 20005
202-289-8007
Board member: 2003 – 2004
No payment received

D.C. Commission on Judicial Disabilities and Tenure
515 5th Street, N.W.
Suite 246
Washington, D.C. 20001
202-727-1363
Commissioner: 2002 – 2008
No payment received

District of Columbia Education Compact
25 E Street, N.W.
Suite 300-B
Washington, D.C. 20001
202-552-6580
Board member: 2006 – 2007
No payment received

Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003
202-863-8000
Member, African American Working Group; Member, National Lawyers Council
2005 – 2007
No payment received

Equal Justice Works
2120 L Street, N.W.
Suite 450
Washington, D.C. 20037-1541
202-466-3686
Board member: 2001 – 2003
No payment received

I Am Your Child
335 N. Maple Drive
Suite 135
Beverly Hills, CA 90210
310-285-2385
Board member: 2001 – 2004
No payment received

Innocence Project of the National Capital Region
American University Washington College of Law
4801 Massachusetts Avenue, N.W.
Washington, D.C. 20016
202-274-4199
Board member: 2002
No payment received

Eastman Kodak Company
343 State Street
Rochester, NY 14650
585-724-4000
Member, Diversity Advisory Panel: 2002 – 2004
Received payment (to Covington & Burling LLP)

Lawyers for One America
4136 Redwood Highway, Suite 9
San Rafael, CA 94903
415-479-3636
Board member: 2001 – 2005
No payment received

Markle Foundation
Task Force on National Security
10 Rockefeller Plaza, 16th Floor
New York, NY 10020
212-713-7600
Member: 2002
No payment received

MCI, c/o Verizon Communications
One Verizon Way
Basking Ridge, NJ 07920
212-395-1525
Member, MCI Board of Directors: 2003 – 2006
Received payment

National Capital Area September 11 Fund
United Way of the National Capital Area
8391 Old Courthouse Road, Suite 200
Vienna, VA 22182
202-488-2000
Member, Governance Committee: 2001 – 2003
No payment received

National Center for Victims of Crime
2000 M Street, Suite 480
Washington, D.C. 20036
202-467-8700
Board member - 2003 - 20007
No payment received

National Gallery of Art
Trustees Council
4th & Constitution Avenue, N.W.
Washington, D.C. 20565
202-737-4215
Member: 2003 – 2007
No payment received

National Institute of Law & Equity
University of Memphis, CJUS
311 McCord Hall
Memphis, TN 38152
901-324-4377
Board member: 2002 – 2003
No payment received

PEW Hispanic Center
1615 L Street, N.W.
Suite 700
Washington, D.C. 20036
202-419-3600
Member, Advisory Board: 2003
No payment received

Sullivan Commission on Diversity in the Healthcare Workforce
Duke University School of Medicine
2301 Erwin Road
Durham, NC 27710
919-684-8111
Commissioner: 2003-2006
No payment received

U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002
(202) 502-4500
Member, Ad Hoc Advisory Group: 2002 – 2003
No payment received.

Washington Center for Internships and Academic Seminars
1333 16th Street, N.W.
Washington, D.C. 20036-2205
202-238-7900
Board member: 2002 – 2003
No payment received

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

   I have not served in the military.

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

   Columbia College – New York State Regents Scholarship

   Columbia College – Dean's List

   Department of Justice Special Achievement Award – 1985

   Department of Justice Outstanding Performance Awards – 1979, 1980, 1984, 1985, 1986

   National Black Prosecutors Association – Pioneer Award – July 1994

   District of Columbia Bar Association – Beatrice Rosenberg Award – February 17, 1995.

   Greater Washington Urban League, Inc – "Black and White and Great Together, the Unity Continues" – Award – March 8, 1995.

American Jewish Congress National Capital Region – Conscience of the Community Award – June 27, 1995.

Phi Beta Sigma Fraternity – African-American Male Image Award – July 14, 1995.

George Washington University – Martin Luther King, Jr. Medal for Outstanding Service in Human Rights – January 23, 1996.

Columbia College's 1996 John Jay Award – March 21, 1996.

National Organization of Black Law Enforcement Executives (D.C. Chapter) – Public Service Award – April 1996

Federation of Citizens Associations of D.C. – Recognition Award –April 24, 1996

Omega Psi Phi Fraternity, D.C. Area Chapter, Citizen of the Year for 1996 - 1997 – November 15, 1996.

Brotherhood of Shiloh Men, Shiloh Baptist Church, Washington, D.C.
Community Service Award – January 18, 1997

McDonald's Family Restaurants Award – Black History Maker of Today – February 13, 1997

Asian Pacific American Bar Association – Community Service Award – March 18, 1997.

Lawyer of the Year – Bar Association of the District of Columbia – December 6, 1997

Honorary Degree – Bowie State University – 1999

Honorary Degree – George Washington University – 1998

Honorary Degree – LeMoyne Owen College – 2000

Distinguished Alumni Award – Black Law Students Association of Columbia Law School – March 26, 2004

William Tucker Garvin Public Service Award – Queens County District Attorney's Office – February 23, 2006

Legal Times, The 90 Greatest Washington Lawyers of the Last 30 Years – May 2008

America Lawyer, America's 50 Most Influential Minority Lawyers – 2008

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

American Bar Association – Coalition for Justice – 1995 – 1996

American Bar Association – High Profile Trials Team – 1996 – 1997

District of Columbia Superior Court
Bias Task Force Subcommittee
1992

District of Columbia Bar
Courts, Lawyers and Administration of Justice Section
Steering Committee
1990 – 1995

American Bar Association – Member – 2001 – 2003

American Bar Association – Section of Litigation - 2001 – 2003

American Bar Association's Task Force on the Judiciary – 2001 – 2003

11. **Bar and Court Admission**:

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

New York State Bar: 2nd Dept – Admitted September 7, 1977 (Inactive)
District of Columbia Bar – Admitted January 23, 1980

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

U.S. Supreme Court Bar – Admitted April 24, 2000
U.S. District Court for the District of Columbia – Admitted May 29, 2002
U.S. Court of Appeals for the First Circuit – Admitted May 1, 2006

12. **Memberships**:

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

Concerned Black Men, Inc.
1983 – present

National Foundation for Teaching Entrepreneurship Advisory Board
1994 – 1997

Sigma Pi Phi Fraternity
1994 – present

See Forever Foundation
1995 – 2002

Please also see non-profit organizations listed in response to Question no. 7.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations have discriminated or do discriminate.

13. **Published Writings and Public Statements**:

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

"Importance of Diversity in the Legal Profession" Cardozo Law Review, 2001
23: 2241

The Prosecution of Public Corruption; article written on "Sentencing Advocacy"; U.S. Department of Justice; February, 1988

"A Distorted Portrait of a Superb Nominee," Letter to the Editor, The Wall Street Journal, June 14, 1994

"Dealing with the Media in High-Profile White Collar Crime Cases: The Prosecutor's Dilemma" (with Kevin A. Olson) - Contained in the ABA's 1995 White Collar Crime Manual. The Manual is a publication of the ABA's Section of Criminal Justice and the Center for Continuing Legal Education.

"911 for the D.C. Police" (Parts I and II), The Washington Post, Op-Ed Page, 1/31/96 and 2/1/96.

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

None.

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

I have testified before the U.S. Congress on the following occasions:

Committee / Subcommittee	Subject	Date
House Judiciary Committee (Crime)	Combating Crime in the District of Columbia	1995-6-22
Senate Judiciary	Confirmation hearing for position of Deputy Attorney General	1997-6-13
Senate Judiciary	Dep't of Justice priorities	1998-7-15
Senate Judiciary	Hate Crimes Prevention Act of 1999	1999-5-11
House Judiciary (Crime)	Proposed legislation re gun shows	1999-5-27
House Judiciary	Hate Crimes Prevention Act of 1999	1999-8-4
Senate Appropriations (Labor)	Youth Violence Initiative	1999-9-14
Senate Judiciary	Clemency to FALN members	1999-10-20

Committee / Subcommittee	Subject	Date
House Government Reform	Pardon of Marc Rich	2001-2-8
Senate Judiciary	Pardon of Marc Rich	2001-2-14

Please also see speeches found at: http://www.usdoj.gov/archive/index-dag.html

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

Title	Location	Date
Commemoration of the Life and Legacy of Dr. Martin Luther King, Jr.	J. Edgar Hoover FBI Building, Washington, DC	1999-1-13
Responding to Child Maltreatment Conference	San Diego, CA	1999-1-26
Affirmative Action Press Conference	Dep't of Transportation, Washington, DC	1999-1-29
Alliance of Concerned Men	Jones Mem'l Utd. Methodist Church, Washington, DC	1999-1-29
American Hospital Association	Washington, DC	1999-2-1
Nat'l Symposium on Victims of Federal Crime	Washington, DC	1999-2-8
14th Annual Black Alumni Reception	Columbia Univ., New York, NY	1999-2-22
AARP, HHS & DOJ News Conference	Atlanta, GA	1999-2-24
Vice President's Corruption Panel	State Dep't, Washington, DC	1999-2-25
MCOPS Vehicle Presentation	Washington, DC	1999-2-26
Harvard Univ. School of Public Health, Center for Health Communication	Cambridge, MA	1999-3-10
NDIC Regional Heroin Conference	Baltimore, MD	1999-3-16
NOBLE Luncheon	Oakland, CA	1999-3-19
Chamber of Commerce	Oakland, CA	1999-3-19
Community First Event	Oakland, CA	1999-3-19
HHS-OIG & Health Compliance Ass'n	Washington, DC	1999-3-22
NAAG Meeting	White House, Washington, DC	1999-3-25
Sister-to-Sister Fly-In Juvenile Justice & Teen Violence Workshop	Washington, DC	1999-4-21
Wreath Laying Ceremony, National Law Enforcement Officers Mem'l	Judicial Square, Washington, DC	1999-5-1
NAAG Meeting	Jackson, MS	1999-5-3

Title	Location	Date
Law Day Celebration, MLK Memorial Library	Washington, DC	1999-5-4
Law Club of the City of Chicago	Chicago, IL	1999-5-4
Nat'l Advisory Council on Violence Against Women	Dep't of Health & Human Services, Washington, DC	1999-5-10
Put the Brakes on Youth Crime Law Enforcement Roundtable	Rocky Mount, NC	1999-5-14
DC Domestic Violence Training Conference	Washington, DC	1999-5-19
Peace Officers Mem'l Day Ceremony	Glynco, GA	1999-5-20
Coalition of Bar Ass'ns of Color	McDermott, Will, & Emery, Washington, DC	1999-5-21
Future Educators of America Leadership Conference	Charles County Public Schools, Charles County, MD	1999-5-27
Council for Court Excellence, Justice Potter Stewart Award Dinner	U.S. Supreme Court, Washington, DC	1999-5-25
Elizabeth Seton H.S. Commencement	Washington, DC	1999-6-1
Office of Small & Disadvantaged Business Utilization	Washington, DC	1999-6-2
DeMatha Catholic H.S. Commencement	Hyattsville, MD	1999-6-4
Legal Profession Day	Georgetown Univ. Law Ctr., Washington, DC	1999-6-8
Strengthening Police-Community Relationships Conference	Marriot Wardman Park Hotel, Washington, DC	1999-6-9
U.S. Conference of Mayors	New Orleans, LA	1999-6-12
INS New Attorney Training Conference	Washington, DC	1999-6-16
Congressional Black Caucus Luncheon	U.S. Capitol, Washington, DC	1999-6-16
Hate Crimes Summit	Sharonville, OH	1999-6-21
National Summit on Children Exposed to Violence	Washington, DC	1999-6-22
Crimes Against Children Conference	Dallas, TX	1999-6-22
Black McDonald's Operators Ass'n	New York, NY	1999-7-10
NAACP Annual Convention	New York, NY	1999-7-13
Robert F. Kennedy Youth Leadership Conference	George Washington Univ., Washington, DC	1999-7-15
Economic Crime Summit	Orlando, FL	1999-5-11
Investiture of Eric T. Washington	Washington, DC	1999-7-16
Call to Action for Racial Justice in the 21st Century	White House, Washington, DC	1999-7-20
Lawyers for One America Dinner	Washington, DC	1999-7-20
FBI Nat'l Acad. Assocs.	Chicago, IL	1999-7-24
Gun Free Schools Act Report	Dep't of Education, Washington, DC	1999-8-10
Safe From The Start MA Summit	Boston, MA	1999-9-13
Int'l Conference on Combating Child Pornography on the Internet	Vienna, Austria	1999-9-29
ABA White Collar Crime Practice Development Subcommittee for Young Lawyers	Washington, DC	1999-10-12

Title	Location	Date
ABA Colloquium on Diversity	Aspen, CO	1999-10-15
Acad. for Educational Development Roundtable on Improving Access to Health Care	Washington, DC	1999-10-19
Voices Against Violence Conference	Washington, DC	1999-10-20
National Children's Alliance Legislative Conference	Washington, DC	1999-10-20
NAPO Top Cops Event with the President	White House, Washington, DC	1999-10-21
Nursing Home Fraud and Abuse Ctr.	Philadelphia, PA	1999-10-26
U.S. Attorneys' Hate Crimes Conference	Washington, DC	1999-10-28
Call to Action for Racial Justice in the 21st Century	San Diego, CA	1999-11-4
Annual Meeting of the Medical Society of DC	Washington, DC	1999-11-8
Secret Service Nigerian Organized Crime Conference	Washington, DC	1999-11-9
Diversity in the Legal Workplace Conference	Atlanta, GA	1999-11-16
Child Welfare in DC in the 21st Century Symposium	Washington, DC	1999-11-17
Nat'l Conference of State Legislatures, Children, Families, and Health Comm.	Washington, DC	1999-12-2
American Jewish Congress	Washington, DC	1999-12-6
Announcement of New Internet Crimes Against Children Task Force Grants	Alexandria, VA	1999-12-13
High-Tech Crime Summit	Washington, DC	2000-1-12
Commemoration of Martin Luther King, Jr.	J. Edgar Hoover FBI Building, Washington, DC	2000-1-14
Press conference re United States v. Fresenius AG	Boston, MA	2000-1-19
Swearing-In Ceremony for John W. Marshall, Dir., USM Service	Arlington, VA	2000-2-1
IRS Criminal Investigation Div. Meeting	Arlington, VA	2000-2-1
Conference of Chief Justices of the State Supreme Courts	Austin, TX	2000-2-2
Lancers Boys Club	Baltimore, MD	2000-2-4
Digital Divide Event	Eastern Boys & Girls Club, Washington, DC	2000-2-10
Black History Month Celebration	E.D. Va. U.S. Attorney's Office, Richmond, VA	2000-2-11
Traffic Stops and Data Collection	Washington, DC	2000-2-17
Pro Bono Institute 10th Annual Seminar	Washington, DC	2000-2-25
D.C. Dep't of Health Maternal Health Conference	Washington, DC	2000-2-28
Presidential Certification Decision	State Dep't, Washington, DC	2000-3-1
Nat'l Money Laundering Strategy Roll Out	Treasury Dep't, Washington, DC	2000-3-8
Children Exposed to Violence Initiative Conference re Innovations in the Medical Profession	Washington, DC	2000-3-13

Title	Location	Date
Public Policy Conference on Economic Viability and Violence	Washington, DC	2000-3-13
Nat'l Ctr. for Neighborhood Enterprise Luncheon	Washington, DC	2000-3-15
Project Recover Opening, William Wendt Center	Washington, DC	2000-3-21
Civil Chiefs' Conference	Remarks by video from Washington, DC	2000-4-3
Diversity in the Legal Profession	Denver, CO	2000-4-4
Metropolitan Black Bar Ass'n Annual Awards Dinner	New York, NY	2000-4-27
Navy General Counsel's Conference	Alexandria, VA	2000-5-4
Children Exposed to Violence Initiative	Yale Univ. Child Study Center, New Haven, CT	2000-5-8
ADL Nat'l Leadership Conference	Washington, DC	2000-5-8
ICAC Task Force Grants Announcement	Alexandria, VA	2000-5-10
LeMoyne-Owen Coll. Commencement	Memphis, TN	2000-5-13
Nat'l Law Enforcement Officers Candlelight Vigil **(WRITTEN BUT NOT DELIVERED)**	Washington, DC	2000-5-13
GLADD Media Awards Dinner	Washington, DC	2000-5-13
FBI Memorial Service **(WRITTEN BUT NOT DELIVERED)**	Los Angeles, CA	2000-5-16
Maryland State Police Domestic Violence Conference	Baltimore, MD	2000-5-22
National Missing Children's Day	J. Edgar Hoover FBI Building, Washington, DC	2000-5-25
Weed and Seed Law Enforcement Conference	New Orleans, LA (by video from Washington, DC)	2000-5-25
Univ. of Maryland Law School Commencement	College Park, MD	2000-5-26
Nat'l Bar Ass'n Women Lawyers' Division	Washington, DC	2000-5-30
Sixth Circuit Judicial Conference	Cincinnati, OH	2000-6-2
Caribbean Justice Ministerial Conference	Port of Spain, Trinidad	2000-6-11 - 2000-6-13
Racial Diversity in the Legal Profession Forum	San Francisco Bar Ass'n, San Francisco, CA	2000-6-14
HCFA/DOJ Conference re Combating Health Care Fraud and Abuse	Arlington, VA	2000-6-26
League of United Latin American Citizens	Washington, DC	2000-6-26
Do the Write Thing Challenge Program	Dep't of Justice, Washington, DC	2000-7-18
Operation PUSH Convention	Chicago, IL	2000-7-26
Nat'l Urban League Convention	New York, NY	2000-8-2
Nat'l Ass'n of Police Organizations	Washington, DC	2000-8-6
Nat'l Black Prosecutors Ass'n Convention	Washington, DC	2000-8-9
Nat'l Black Prosecutors Ass'n Convention	Washington, DC	2000-8-10
Int'l Assoc. of Chiefs of Police Community Policing Conference	Durban, South Africa	2000-8-28

Title	Location	Date
Hate Crimes Event	White House, Washington, DC	2000-9-13
Nat'l Campaign Against Youth Violence Press Conference	Nat'l Press Club, Washington, DC	2000-9-14
Congressional Black Caucus Brain Trust re Police Brutality	Washington, DC	2000-9-14
Congressional Black Caucus Foundation Legislative Conference	Washington, DC	2000-9-15
DOJ / ABA Career Day	Dep't of Justice, Washington, DC	2000-9-15
Anti-Defamation League Event	Washington, DC	2000-9-20
Tribute to Sen. Schumer, Coalition to Stop Gun Violence Awards Dinner	Washington, DC	2000-9-20
Southwest Border Conference	Washington, DC	2000-9-20
National District Attorneys' Assoc. Community Prosecution Meeting	Washington, DC	2000-9-25
First Monday 2000 Campaign	Philadelphia, PA	2000-10-2
Lehigh County Bar Assoc. Bench and Bar Conference	Washington, DC	2000-10-5
Symposium on Fed. Sentencing Policy for Economic Crimes and New Technology Offenses	Arlington, VA	2000-10-12
National Law Enforcement Officers Memorial Fund Wreathlaying Ceremony	Washington, DC	2000-10-13
Mercer Univ. Executive Forum Series	Atlanta, GA & Macon, GA (same remarks)	2000-10-19
Inauguration of Ronald Mason, Jr.	Jackson State Univ., Jackson, MS	2000-10-20
Am. Acad. of Child and Adolescent Psychiatry Meeting	Manhattan, NY	2000-10-26
Investiture of Thomas Motley	D.C. Superior Court, Washington, DC	2000-10-27
Am. College of Trial Lawyers Meeting	Washington, DC	2000-10-28
Column written in memory of Chuck Ruff		2000-11-21
Children Exposed to Violence Initiative, Safe from the Start Forum	Berkeley, CA	2000-12-5
Conference of Human Rights Commissioners	Washington, DC	2000-12-11
Baltimore City COPS Grant Event	Baltimore, MD	2001-1-18
OJJDP National Conference re Justice for Children	Washington, DC	2000-12-14
Janet Reno Portrait Presentation	Dep't of Justice, Washington, DC	2000-1-11
Janet Reno Farewell Ceremony	Dep't of Justice, Washington, DC	2001-1-11
Commemoration of Dr. Martin Luther King, Jr.	Dep't of Justice, Washington, DC	2001-1-16
Lynne Battaglia Swearing-In Ceremony	Maryland State house, Annapolis, MD	2001-1-26
"Congressional Oversight and Investigations in the 110th Congress"	Covington & Burling LLP E-Alert	2006-11-16
"The Feds' Increasing Focus on the Pharmaceutical Industry"	Journal of the Food and Drug Law Institute	2001-11/12

Title	Location	Date
"The Impact of the McNulty Memorandum"	Covington & Burling LLP Conference Call	2006-12-22
Prison Drug-Testing Directive	White House, Washington, DC	1998-1-12
Commemoration of Dr. Martin Luther King, Jr.	Dep't of Justice, Washington, DC	1998-1-15
Dr. Martin Luther King, Jr. Commemorative Program	CIA, Arlington, VA	1998-1-22
Electronic Exchange of Legal Documents Symposium	Washington, DC	1998-1-28
Dublin Laurens Alternative School	Rentz, GA	1998-1-29
Nat'l Bar Assoc. Judicial Council and Board of Governors Meeting	U.S. Virgin Islands	1998-1-30
AARP Conference	Washington, DC	1998-2-4
Remarks re Black History Month	Lisbon Elementary School, Dallas, TX Townview Magnet H.S., Dallas, TX FBI Field Office, Houston, TX U.S. Attorney's Office, Houston, TX Thurgood Marshall Elementary School, Washington, DC (SAME REMARKS)	1998-2-6 1998-2-12 1998-2-18
Hate Crimes Conference	Washington, DC	1998-2-4
Professional Responsibility Officers Conference	Washington, DC	1998-3-5
Black Law Students Association, Univ. of Maryland Law School Awards Dinner	College Park, MD	1998-3-7
D.C. Chamber of Commerce	Washington, DC	1998-3-19
Anti-Drunk Driving Legislation	White House, Washington, DC	1998-3-30
Columbia Law School, Public Interest Award Presentation	New York, NY	1998-4-2
Anti-Defamation League Leadership Conference	Washington, DC	1998-4-6
Black Students Assoc. Alumni Conference	Columbia Law School, New York, NY	1998-4-17
Nat'l Police Survivors' Seminar	Alexandria, VA	1998-5-14
U.S. Attorney Awards to Law Enforcement Agencies	Wilmington, DE	1998-5-20
Bowie State Univ. Commencement	Landover, MD	1998-5-23
Geo. Washington Univ. Law School Commencement	Washington, DC	1998-5-24
Executive Office of Immigration Review Conference	Aspen Institute, Queenstown, MD	1998-5-26
School Without Walls Commencement	Washington, DC	1998-6-12
Volunteers of America Conference	New Orleans, LA	1998-6-15

Title	Location	Date
Father's Day Communion Brunch	Church of the Resurrection, East Elmhurst, NY	1998-6-21
INS / Int'l Assoc. of Chiefs of Police Conference	El Paso, TX	1998-6-26
National Black Prosecutors Convention	New Orleans, LA	1998-7-21
Value-Based Violence Prevention Initiative	White House, Washington, DC	1998-7-22
Chicago Anti-Narcotics Initiative Rollout	Chicago, IL	1998-8-10
Youth Sunday	New Home Baptist Church, Landover, MD	1998-9-13
Safer Communities, Brighter Futures Conference	Des Moines, IA	1998-9-16
Investiture of Greg Sleet	Wilmington, DE	1998-9-28
Hotspot Communities Initiative Conference	Baltimore, MD	1998-9-29
Border Coordination Initiative Rollout Conference	Washington, DC	1998-9-29
Council on Foreign Relations remarks re International Crime	Carnegie Foundation Building, Washington, DC	1998-10-14
Fulton Hotel Ground-Breaking Ceremony	Washington, DC	1998-10-16
Investiture of Richard Roberts	Washington, DC	1998-10-19
Nursing Home Quality of Care and Fraud Conference	Herndon, VA	1998-10-21
Robert F. Kennedy Memorial Foundation Conference re Juvenile Justice	Dep't of Justice, Washington, DC	1998-10-22
Am. Health Lawyers Assoc. remarks re Health Care Fraud and Abuse	Arlington, VA	1998-10-22
Hispanic Law Conference and Career Fair	American Univ. Washington College of Law, Washington, DC	1998-11-7
Day with Justice remarks re Private / Public Partnerships for Children	Dep't of Justice, Washington, DC	1998-11-10
Community Prosecution Forum	Washington, DC	1998-12-1
General Counsel Conference	Treasury Dep't, Washington, DC	1998-12-3
Nat'l Conference for Reporters and Editors, Gannett Co.	Crystal City, VA	1998-12-8
Society of Black Lawyers	London, England	1998-12-12
Children Exposed to Violence Initiative	White House, Washington, DC	1998-12-29
FBI Training Academy	Quantico, VA	1997-9-17
Hispanic Nat'l Bar Assoc.	White House, Washington, DC	1997-9-23
Dedication of FBI Washington Field Office Building	Washington, DC	1997-9-26
Mary Alice Stoddard Community Service Award	Washington, DC	1997-10-6
Association of General Counsel	Washington, DC	1997-10-9
Nat'l Conference on Prevention of Crime	Washington, DC	1997-10-13
Swearing-In of D.C. Trustees	Washington, DC	1997-10-17
Public Information Officer Conference	Washington, DC	1997-10-27
Institute of Caribbean Studies Awards Dinner	Washington, DC	1997-11-14
Criminal Chiefs' Conference	Arlington, VA	1997-11-18

Title	Location	Date
Albert C. Maule Memorial Lecture	Quinn Chapel, Chicago, IL	1997-11-20
Amindon Elementary School	Washington, DC	1997-11-25
D.C. Bar Assoc. Banquet	Washington, DC	1997-12-6
Diamond Jubilee Anniversary Celebration	First Baptist Church, East Elmhurst, NY	1997-12-12
American Constitution Society Annual Convention	Washington, DC	2008-6-13
"Essay Concerning Programming Themes: Youth Violence"	U.S. Attorney's Office, Washington, DC	1994-8-22
Naturalization Ceremony	U.S. District Court, Washington, DC	1994-5-10
Youth Sunday	First Baptist Church of Deanwood, Washington, DC	1995-1-29
African-American Festival of Academic Excellence	Washington, DC	1995-5-6
D.C. Children's Advocacy Center, Interagency Agreement Signing Ceremony	Washington, DC	1995-10-6
Memorial Ceremony for Clendon Lee, Jr.	U.S. District Court, Washington, DC	1996-5-2
Federal Bar Assoc. Annual Salute to Law Enforcement	Washington, DC	1996-5-17
Eastern Armed Robbery Conference	Washington, DC	1996-7-25
DARE Graduation Ceremony	Washington, DC	1996-7-26
Omega Psi Phi Man of the Year Award Presentation **(WRITTEN STATEMENT)**		1996-11-15
Dedication of Sergeant Henry J. Daly Building	Washington, DC	1996-12-13
D.C. Circuit Public Forum	Washington, DC	1997-4-16
Swearing-In Speech, U.S. Attorney	Washington, DC	1993-10-15
Martin Luther King Day Speech	Peoples' Congregational United Church of Christ, Washington, DC	1994-1-16
Robert F. Kennedy Mem'l Foundation Conference re Juvenile Justice	Washington, DC	1994-1-18
D.C. Bar Assoc.	Washington, DC	1994-3-2
"Statement Regarding the Federal Assistance Program"	Law Enforcement Coordinating Committee, U.S. Attorney's Office, Washington, DC	1994-3-18
Law Day	Washington, DC	1994-5-4
Statement re Public Safety and Law Enforcement Support Act of 1994	D.C. Committee on the Judiciary, Washington, DC	1994-7-6
D.C. Dep't of Corrections Awards Ceremony	Washington, DC	1994-9-17
131st Anniversary Celebration	Shiloh Baptist Church, Washington, DC	1994-9-23
Testimony re D.C. Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994	Washington, DC	1994-10-17

Title	Location	Date
Martin Luther King Day Speech re gun control efforts	Washington, DC	1995-1-13
Black History Month		1995-2
Urban League Conference	Washington, DC	1995-2-4
Rosenberg Award Presentation	Washington, DC	1995-2-17
Criminal Law Seminar, Virginia State Bar	Richmond, VA	1995-2-24
D.C. Public Schools Division on Homeless Children, Homeless Awareness Week	Washington, DC	1995-4-3
Legal Aid Society "Servant of Justice" Awards Dinner	Washington, DC	1995-4-18
Black Law Students Assoc. Distinguished Service Award Presentation	Columbia Law School, New York, NY	1995-4-20
Columbia Law School Commencement	New York, NY	1995-5-16
Center for Youth Services Law Day Conference	Washington, DC	1995-5-31
"Operation Ceasefire" Kickoff Announcement	Washington, DC	1995-6-8
Voluntary Bar Assoc. of D.C. Luncheon	Washington, DC	1995-6-20
Remarks re D.C. Law Enforcement	House Judiciary Committee, Washington, DC	1995-6-22
Testimony, Hearing on Combating Crime in the District of Columbia	House Judiciary Committee, Subcommittee on Crime, Washington, DC	1995-6-22
Investiture of Eric Washington	Washington, DC	1995-7-13
Asian Pacific American Bar Assoc. Installation Dinner	Washington, DC	1995-7-21
Jack and Jill Regional Conference	Reston, VA	1995-7-27
Nat'l Black Child Development Institute Conference	Washington, DC	1995-9-29
Address on the 100th Anniversary of Frederick Douglass's Death	Frederick Douglass Home, Washington, DC	1995-10-14
Testimony, Oversight Hearing on Operation Ceasefire	D.C. Council Judiciary Committee, Washington, DC	1995-10-25
Black History Month Speech		1996-2
Statement re Formation of New Domestic Violence Unit	U.S. Attorney's Office, Washington, DC	1996-4-1
Fifth District Community Prosecution Pilot Program Announcement	Washington, DC	1996-6-3
Faith Moravian Church Dinner	Chevy Chase, MD	1996-9-28
Heritage Foundation Symposium on Crime	Washington, DC	1996-10-15
Bias-Related Crimes Task Force Press Conference	Washington, DC	1996-10-21
Domestic Violence Forum	Dep't of Veterans Affairs, Washington, DC	1996-10-30
D.C. Street Academy Dinner	Washington, DC	1996-11-2
Press Conference re New Drug Legislation	Washington, DC	1996-12-4
Commemoration of Dr. Martin Luther King, Jr.	Dep't of Justice, Washington, DC	1997-1-17

Title	Location	Date
Black History Month Speech		1997-2
Testimony, Felony Murder Amendment Act of 1997	D.C. Council Judiciary Committee, Washington, DC	1997-3-12
Secret Service Special Agent Training Course Graduation	Beltsville, MD	1997-3-21
Citizens Advisory Council Awards Banquet	Washington, DC	1997-4-4
Washington Hebrew Congregation Mitzvah Day Celebration	Washington, DC	1997-4-11

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

I recall providing an interview to "HistoryMakers" in December 2004, but do not have a transcript. *See* http://www.thehistorymakers.com/programs/dvl/files/Holder_Ericf.html.

I have tried to recall and search for all the times that I have been interviewed. In answering this questionnaire, I performed a search of the Lexis-Nexis "Transcripts" database to locate interview transcripts. That search revealed the interviews listed below; there are undoubtedly other interviews that I do not recall and for which I do not have transcripts:

Program	Headline	Date
NPR, *All Things Considered*	Democrat Offers Rationale for Biden Pick	2008-08-27
Fox News Sunday	Interview with Eric Holder, Kenneth Blackwell	2004-10-17
Fox News, *Hannity & Colmes*	Interview with Eric Holder	2004-4-19
CBS Morning News	Government's case against Zacarias Moussaoui shows signs of cracks	2002-11-7
NBC News, *Meet the Press*	Eric Holder and Rep. Tom DeLay Discuss the Elian Gonzalez Case	2000-4-23
CBS News, *Special Report*	Continuing Coverage of the Elian Gonzalez Story	2000-4-22
ABC News, *This Week*	Preventing Gun Violence	1999-5-2
Federal News Service/FDHC Political Transcripts	Justice Department Media Availability	1998-7-9
CNN News	At Issue – Race in the Criminal Justice System	1995-10-8

In addition, I performed a search of the Lexis-Nexis "CQ Transcriptions" database, which revealed the press conferences listed below; there are undoubtedly other conferences or interviews that I do not recall and for which I do not have transcripts:

Location (Subject if applicable)	**Date**
Congressional Black Caucus news conference (police brutality and racial profiling)	2000-9-14
Dep't of Justice News Briefing	2000-4-6
White House News Briefing	2000-3-17
Dep't of Justice News Briefing	2000-3-2
Dep't of Justice News Briefing	2000-2-10
Dep't of Justice News Briefing	2000-2-7
Dep't of Justice News Briefing	1999-12-22
Dep't of Justice News Briefing	1999-12-9
Dep't of Justice News Briefing	1999-11-18
Joint News Conference with Secretary of Education Richard Riley and Secretary of the Interior Bruce Babbitt (department budgets)	1999-10-26
Dep't of Justice News Briefing	1999-10-21
Joint News Conference with Secretary of the Treasury Lawrence Summers (combating money laundering)	1999-9-23
Dep't of Justice News Briefing	1999-7-1
Dep't of Justice News Briefing	1999-6-16
Dep't of Justice News Briefing	1999-4-22
Dep't of Justice News Briefing	1999-3-11
Dep't of Justice News Briefing	1999-3-4
Dep't of Justice News Briefing	1999-2-5
Dep't of Justice News Briefing	1999-2-4
Dep't of Justice Press Conference (children exposed to violence)	1998-12-29
Dep't of Justice News Briefing	1998-10-1
Dep't of Justice News Briefing	1998-7-9
Dep't of Justice News Briefing	1998-4-16
Joint News Conference with OMB Director Franklin Raines and several members of Congress (drunk driving legislation)	1998-4-1
Dep't of Justice News Briefing	1998-2-26
Dep't of Justice News Briefing	1998-2-5
Dep't of Justice News Briefing	1997-12-18
Dep't of Justice Press Event (fortieth anniversary of Civil Rights Division)	1997-12-8
Dep't of Justice News Briefing	1997-10-23
U.S. Attorney's Office Press Conference (guilty plea of former Rep. Dan Rostenkowski)	1996-4-9

14. **Legal Career:** Please answer each part separately.

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

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

I did not serve as a judicial clerk.

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

I have not practiced as a solo practitioner.

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

United States Department of Justice
Criminal Division
Public Integrity Section
1976 – 1988
Trial attorney in official corruption cases

District of Columbia Superior Court
Associate Judge
1988 – 1993
Local trial court judge (nominated by President Reagan and confirmed by United States Senate)

United States Attorney
District of Columbia
1993 – 1997
Nominated by President Clinton and confirmed by the United States Senate

United States Department of Justice
Deputy Attorney General of the United States
1997 – 2001
Nominated by President Clinton and confirmed by the United States Senate

Partner
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
2001 – present

b. Describe:

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

From 1976 through 1988, I was a prosecutor at the U.S. Department of Justice specializing in official corruption cases. From 1988 to 1993, I was a trial court judge at the District of Columbia Superior Court. From 1993 to 1997, I was the United States Attorney for the District of Columbia. From 1997 to 2001, I was the Deputy Attorney General of the United States. Since 2001, I have been a partner at the law firm of Covington & Burling LLP.

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

As a trial attorney with the U.S. Department of Justice, I represented the United States and tried federal criminal cases against public officials charged with corruption.

As a D.C. Superior Court judge, I did not have clients or a specialized docket, although my case load primarily involved criminal matters.

As U.S. Attorney, I represented the United States and supervised criminal and civil matters involving the United States as a party in the District of Columbia.

As Deputy Attorney General, I represented the United States and supervised a wide array of litigation and policy matters on behalf of the United States.

At Covington & Burling LLP, my practice involves a mix of litigation and advisory work, including *pro bono* matters. I have represented a wide array of clients, including large and small corporations, non-profit organizations, and individuals. My practice has focused on employment matters, white-collar criminal work, internal investigations, and other litigation-related activities.

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.

While I was a prosecutor at the Department of Justice, I appeared in court frequently. As the United States Attorney, I appeared in court only occasionally. I did not appear in court as the Deputy Attorney General.

In my practice at Covington & Burling, I have appeared in court occasionally:

i. Indicate the percentage of your practice in:

All of my court appearances between 1976 and 1988 were in federal court. As a judge from 1988 to 1993, I sat in the local court for Washington D.C. From 1993 to 1997, as U.S. Attorney, I appeared in both local and federal courts in Washington, D.C.

In my practice at Covington & Burling, my appearances have been:

1. federal courts – 60%
2. state courts of record; – 40%
3. other courts - none.

ii. Indicate the percentage of your practice in:

1. civil proceedings
2. criminal proceedings

While at the Department of Justice 100% of my litigation was criminal in nature. As a judge about 85% of the cases over which I presided were criminal matters and about 15% civil in nature. As United States Attorney I supervised both a civil division and two criminal (federal and local) divisions; I estimate that I spent approximately 80% of my time supervising criminal matters and 20% of my time supervising civil matters.

In my practice at Covington & Burling, my practice consists roughly of 70% civil proceedings and 30% criminal proceedings.

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

I tried approximately twenty cases while at the Department of Justice and the U.S. Attorney's Office. The trials were from one to six weeks in duration. Prior to 1978, I was associate counsel in all of my trials. After 1978, I was chief counsel in all of my trials. I tried one case to judgment while at Covington & Burling, in which I was lead counsel.

i. What percentage of these trials were:
   1. jury - 100%
   2. non-jury.

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

I have not practiced before the U.S. Supreme Court as counsel of record on the merits. I recall serving as counsel on two petitions for certiorari, neither of which was granted:

1. Brian Bush Ferguson v. State of West Virginia (No. 04-1328)

2. Ernesto Santiago v. John L. LaManna, Warden (No. 04-7671)

I have participated as an amicus party in three amicus briefs:

1. D.C. and Fenty, Mayor of the District of Columbia v. Heller (No. 07-290)

2. Miller-El v. Cockrell (No. 01-7662)

3. Johnson v. Bush (No 02-14469C)

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) United States v. Herbert Cain
Eastern District of Pennsylvania - Philadelphia
Judge Edmund Ludwig
February 1988
862 F.2d 311 (3rd Cir. 1988)
Counsel for defendant - Morris Baran
Jenkintown Plaza
Suite 508
Jenkintown, PA 19046
(215) 886-3588

The defendant in this matter was a Court of Common Pleas judge in Philadelphia who was convicted of accepting bribes to decide cases he tried without a jury.

(2) United States v. Albert Greenwood
Eastern District of Virginia - Norfolk
Judge Richard B. Kellam
August 1985
795 F.2d 49 (4th Cir. 1986)
Counsel for the defendant was Wayne Lustig who is now deceased.

The defendant was an FBI agent convicted of defrauding the government by creating and submitting false documents to the FBI in connection with his transfer that enabled him to receive money to which he was not entitled.

(3) United States v. Cristobal Pangelinan
District of Guam
Judge Cristobal Duenas
November 1984
No. 85-1019 (9th Circuit opinion - not published -
September 16, 1985)
Counsel for defendant - Bradley Klemm

1008 Pacific News Building
238 Archbishop F.C. Flores Street
Agana, Guam 96910
(671) 477-7858

The defendant was the director of the Supply Management Division of the government of Guam. He was responsible for the procurement of all supplies used by the government. He was convicted of extorting at least $260,000 from vendors who sought to do business with the government.

(4) United States v. James Osticco
Middle District of Pennsylvania - Harrisburg
Judge William Caldwell
August 1983
738 F.2d 424 (3rd Cir. 1984)
Counsel for defendant - John Rodgers Carroll
Suite 850
400 Market Street
Philadelphia, PA 19106
(215) 925-4100

The defendant was an organized crime figure (a "capo" in the Bufalino family) who convinced a juror in a public corruption case, by paying her husband, to vote to acquit the four public officials who were standing trial. After a six week trial the jury announced it was deadlocked at eleven to one for conviction and a mistrial was declared. Osticco was convicted of obstruction of justice.

(5) United States v. Samuel Lovecchio
Middle District of Pennsylvania - Harrisburg
Judge William Caldwell
August 1983
561 F.Supp. 221 (M.D. Pa. 1983)
Counsel for defendant - Anthony Panaway
65 West Jackson Street
Wilkes Barre, PA 18702
(717) 822-5148

The defendant was an associate of David Osticco and had knowledge of the jury-tampering scheme. He was convicted of perjury for lying to a grand jury about the extent of his knowledge.

(6) United States v. Robert Matthews
Northern District of Indiana - Hammond
Judge Jesse Eschbach
June 1981
HCR80-14
Counsel for defendant - William Kowalski
4704 Indianapolis Blvd.
East Chicago, IN 46312
(219) 397-7233

The defendant was a police officer in Gary, Indiana, and was convicted of seizing drugs from drug dealers and then selling the drugs back to them.

(7) United States v. Perch Hankin
Middle District of Pennsylvania - Harrisburg
Judge R. Dixon Herman
May 1979
607 F.2d 611 (3rd Cir. 1979)
Counsel for the defendant was Theodore Flowers who is now deceased.

The defendant was convicted of violating the federal election laws by having friends and relatives submit as their own campaign contributions (to the Shapp for President campaign) money that actually came from the defendant. The defendant in that way was able to avoid the monetary limit placed on individual contributors.

(8) United States v. Thomas O'Malley
Southern District of Florida - Miami
Judge Charles Fulton
November 1978
707 F.2d 1240 (11th Cir. 1983)
Counsel for defendant - Jeffrey A. Tew
Tew & Nowak
201 South Biscayne Blvd.
Suite 340
Miami, Florida 33131-2305
(305) 577-3900

The defendant was the Florida state treasurer/insurance commissioner. He was convicted of extorting money from businesses that sought to operate in Florida. I tried the case with M. Patrick Sullivan, an Assistant United States Attorney in Miami. His address is:

U.S. Attorney's Office
Southern District of Florida
99 N.E. 4th Street
Miami, Florida 33132
(305) 536-4471

(9) United States v. John Para
Middle District of Pennsylvania - Scranton
Judge William Nealon
March 1978
CR-7798
Counsel for defendant - Anthony Panaway
65 West Jackson Street
Wilkes Barre, PA 18702
(717) 822-5148

The defendant was a local public official convicted of extorting money from out-of-state contractors who were in the area to repair damage caused by the floods from the remnants of Hurricane Agnes.

(10) United States v. Frank Martin
Northern District of Indiana - Hammond
Judge Phil McNagny (deceased)
October, 1977
HCR 77-67
Counsel for defendant - Martin Kinney
500 East 86th Avenue
Merrillville, IN 46410
(219) 769-4793

The defendant was a local public official who was accused of extorting money from a restaurant owner for a zoning variance. Though the defendant was acquitted, the case was significant because it brought to light a pattern of corrupt activity.

(11) Butler v. MBNA
Northern District of Texas (Dallas)
Judge Barefoot Sanders
3-02CV1715-H
2004
Co-counsel: Thomas Williamson, Covington & Burling LLP
David Ellis, K&L Gates

1717 Main Street, Suite 2800
Dallas, TX 75201
Counsel for defendant - Laura Mall and Sekou Gary
Gary, Williams, Parenti, Finney, Lewis,
McManus, Watson & Sperando
221 East Osceola Street
Stuart, FL 34994

The plaintiff in this case alleged race-based discrimination by her employer, the defendant MBNA. At trial, the jury found in favor of the defendant and the trial judge ordered the plaintiff to pay certain costs incurred by my client.

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

As an attorney with the Public Integrity Section I was responsible for the investigation and, when appropriate, prosecution of complex, oftentimes sensitive, official corruption matters. This was accomplished through the use of investigative grand juries and working with agents from federal, state and local law enforcement agencies. Beginning in 1978 I was lead counsel in all of the investigations in which I was involved. These investigations included cases which resulted in guilty pleas (involving, among others, the former American ambassador to the Dominican Republic, an Assistant United States Attorney in New York City, and an F.B.I. agent in New York) and cases in which, for a variety of reasons, no indictments were sought (a part of the ABSCAM inquiry, a state lieutenant governor, a mayor of a major city and a federal judge, among others).

As a judge, I was involved in a substantial number of serious, highly contested trials both civil and criminal. These trials ranged from felony cases involving murders and rapes to civil proceedings that involved matters as diverse as forced amputations and complicated property settlements.

As United States Attorney for the largest office in the nation, I supervised 300 lawyers involved in civil, appellate, local criminal and federal criminal matters. In essence, and given the unique nature of the legal structure in Washington, D.C., I have functioned as both the local district attorney and the federal prosecutor. There are approximately 600 people in the office and the budget for 1996 was approximately

$48,000,000. I managed this large office and also supervised the office's work with federal investigative agencies (the FBI, DEA and ATF) as well as local law enforcement. This work has included cases involving political corruption, violent crime, civil and appellate matters.

As Deputy Attorney General, I supervised all of the Department's litigating, enforcement, and administrative components in both civil and criminal matters. Under my guidance, the Department developed and issued guidelines on the criminal prosecution of corporations and issued guidelines on the use of the False Claims Act in civil health care matters. I also created a task force that developed the existing regulation concerning the appointment of special counsels to investigate allegations involving high-level federal officials. I instituted the Department's Children Exposed to Violence Initiative and prioritized enforcement efforts in health care fraud, computer crimes and software piracy. I worked to fund and expand nationwide the concept of community prosecution, which seeks to connect more directly prosecutors with the citizens they serve. At the request of the President, I also began and directed Lawyers for One America, a multi-agency, public/private partnership designed to diversify the legal profession and to increase the amount of pro bono work done by the nation's attorneys.

As a partner at Covington & Burling, I have handled the following significant matters that did not progress to trial:

In 2008, I represented UBS Financial Services, Inc. in cases alleging that UBS's efforts to establish a branch office in Prince George's County, Maryland, headed by an African-American manager, were part of an effort to provide "segregated" services to African-Americans; the district court found that UBS's efforts were part of a diversity program to increase opportunities for African-Americans in the financial services industry and granted summary judgment on behalf of UBS.

In 2008, I represented Merck & Co., Inc. in negotiating various civil settlement agreements that resolved investigations by the United States Department of Justice, the United States Attorneys for the Eastern District of Pennsylvania and the Eastern District of Louisiana, and various states concerning certain of Merck's discount pricing programs and sales and marketing practices.

In 2007, I represented Chiquita Brands International, Inc. in criminal plea negotiations arising out of an investigation into extortion payments made by Chiquita's former Colombian subsidiary to Colombian paramilitary groups. *See United States v. Chiquita Brands International, Inc.*, No. CR-07-55 (D.D.C.).

In 2007, I represented the Special Litigation Committee of the Hewlett-Packard Company Board of Directors in shareholder derivative litigation challenging the

Board's response in 2005 and 2006 to leaks of confidential company information to the press.

In 2006, I represented Purdue Pharma LP in a consumer protection action brought by the State of West Virginia relating to OxyContin, which action was successfully resolved on eve of trial.

In 2005, I represented Itochu Corporation in defending a breach of contract action brought by Citibank which was settled before trial.

In 2004, I represented the District of Columbia Water and Sewer Authority in an internal investigation relating to alleged environmental reporting issues concerning lead in the water supply.

Also while at Covington & Burling, I have registered as a federal lobbyist for three clients:

1. Global Crossing, Inc.
   1499 West 121st Avenue
   Westminster, CO 80234
   303-633-3000
   2002 - 2003 - Federal

I advised Global Crossing in connection with legislative and regulatory issues arising from a potential sale to an Asian purchaser as Global Crossing emerged from bankruptcy.

2. Large Scale Biology Corp.
   333 Vaca Valley Parkway, Suite 1000
   Vacville, CA 95688
   707-446-5501
   2002 - Federal

I arranged and attended one meeting with a legislator on behalf of Large Scale Biology Corp. regarding potential funding of research relating to the development of anti-terrorism technology.

3. Defendants in Medical Resident Antitrust Litigation
   2003 - 2004 - Federal

I lobbied with legislators on behalf of the defendant medical schools in the Medical Resident Antitrust Litigation regarding the resident matching program.

17. **Public Office, Political Activities and Affiliations**:

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

District of Columbia Superior Court
Associate Judge
1988 - 1993
Nominated by President Ronald Reagan

United States Attorney for the District of Columbia
1993 - 1997
Nominated by President Bill Clinton

Deputy Attorney General of the United States
Acting Attorney General of the United States
1997 - 2001
Nominated by President Bill Clinton

I have never been a candidate for elected office, nor have I been nominated unsuccessfully for appointed office.

b. If, in connection with any public office you have held, there were any policy memoranda or statements which were prepared or produced with your personal participation, please supply four (4) copies of these materials. "Participation" includes, but is not limited to, membership in any subcommittee, working group or other such group, which produced a report, memorandum, testimony or responses to Congressional inquiries, or a policy statement. If any of these materials are not available to you, please give the name of the document, the date of the document, a summary of its subject matter, and where it can be found.

Two memos issued while I was the Deputy Attorney General:

a. Memorandum signed on June 16, 1999 -- "Bringing Criminal Charges Against Corporations."

b. Memorandum dated June 3, 1998 -- "Guidance on the Use of the False Claims Act in Civil Health Care Matters."

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

Obama for President campaign; national co-chair; 2007 - 2008

Linda Cropp for Mayor campaign; co-chair; 2006

Democratic National Committee; member, African American Working Group; member, National Lawyers Council; 2005 - 2007

18. **Judicial Office**

a. Approximately how many cases did you preside over that went to verdict or judgment?

Approximately 400 – 500 cases.

i. Of these, approximately what percent were:

jury trials? 60%; bench trials 40% [total 100%]

civil proceedings? 30%; criminal proceedings? 70% [total 100%]

b. 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 (if not reported).

The Superior Court of the District of Columbia Court is the trial court of general jurisdiction for the District of Columbia, handling all local trial matters, including civil, criminal, family court, probate, tax, landlord-tenant, small claims, and traffic. Given the nature and volume of cases I handled, I do not have a strong recollection of significant cases during my time on the bench. I have, however, listed below ten cases that were appealed, affirmed and reported, in order to give a representative sample of the types of matters I handled on a routine basis in D.C.

Superior Court. I do not have information on trial counsel for these cases, but see below in section (c) for names of attorneys who appeared before me regularly.

(1) Reeves v. U.S., 694 A. 2d 52 (D.C. 1997)

Two defendants were convicted of armed first-degree murder, carrying a pistol without a license and possession of a firearm during a crime of violence. The conviction was upheld on appeal, although a ruling made by another judge who took over the case after I was appointed U.S. Attorney was remanded.

(2) Davis v. Davis, 663 A. 2d 499 (D.C. 1995)

A husband in a divorce action filed for a declaratory judgment that he was entitled to have DNA testing done on his wife and her two children to determine whether or not he was their father. Because this issue had been litigated twice in the divorce action, I ruled that collateral estoppel prevented the father from relitigating the issue. The conviction was affirmed.

(3) Garrett v. U.S., 642 A. 2d 1312 (D.C. 1994)

A defendant was convicted of burglary, theft and destruction of property, after breaking into a family's home and taking a television set. The conviction was affirmed.

(4) Williams v. U.S., 641 A. 2d 479 (D.C. 1994)

Defendants were convicted of conspiracy, burglary, assault, possession of a firearm, theft and obstructing justice after robbing a McDonald's restaurant. Their appeals were denied, although the case was remanded for resentencing on one of the charges.

(5) Hughes v. U.S., 633 A. 2d 851 (D.C. 1993)

Defendant was convicted of cocaine distribution and possession. The conviction was affirmed.

(6) In re M.E.B., 638 A. 2d 1123 (D.C. 1994)

Sixteen-year-old defendant was convicted of second-degree murder after a shooting at the door of a laundromat. The conviction was affirmed.

(7) Scott v. U.S., 619 A. 2d 917 (D.C. 1993)

Defendants mother and son were convicted of armed robbery, and the son was also convicted on a weapons charge, after three employees of a nightclub were held up after closing the business late at night. The convictions were affirmed.

(8) Annetti v. U.S., 600 A. 2d 387 (D.C. 1991)

Defendant was convicted of assault. His conviction was affirmed.

(9) In re J.D.C., 594 A. 2d 70 (D.C. 1991)

Defendant charged in a shooting death moved to exclude the media from proceedings. I denied his motion, and was affirmed.

(10) Bethea v. U.S., 499 A. 2d 415 (D.C. 1991)

Defendant was convicted of cocaine distribution. His conviction was affirmed.

c. For each of the 10 most significant opinions you wrote, 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.

As a Superior Court Judge I wrote orders, jury charges, findings of facts and conclusions of law, but handed down few, if any, written decisions. A search of the relevant records indicates that none were published. The Clerk of the District of Columbia Superior Court has searched the Court's library and reports that they have no published or unpublished opinions by me on file. The Clerk indicated that the files of the cases over which I presided are located in off-site storage and he would have to access a computer system no longer in use at the court to determine the extent to which the files could be located and searched, all of which would require significant Court resources.

I have listed below the names and contact information of attorneys who appeared in front of me during that time:

Glennon Threatt
Threatt & Blocton LLC
2 20th Street N
Suite 920
Birmingham, AL 35203-4017
205-251-8747

Michele Roberts
Akin Gump Strauss Hauer & Feld LLP
Robert S. Strauss Bldg.
1333 New Hampshire Ave. N.W.
Washington, D.C. 20036

The Honorable John Mott
D.C. Superior Court
202-879-8393

The Honorable Hiram Puig-Lugo
D.C. Superior Court
202-879-8370

d. Provide a brief summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.

To my knowledge, only two of my decisions were reversed by the D.C. Court of Appeals:

Lewis v. United States, 632 A.2d 383 (D.C. 1993) (holding, contrary to my ruling at trial, that police search of a locked automobile from which defendant had walked away was improper).

In re J.D.C., 594 A.2d 70 (D.C. 1991) (holding, contrary to my ruling, that members of the media should have been excluded from murder proceedings involving juvenile defendant)

e. Unless otherwise listed above, provide citations or docket numbers for significant opinions on federal, state, or District constitutional issues, including on questions arising under the District of Columbia Charter and Self-Government and

Governmental Reorganization Act, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

None

19. **Recusal:** Please provide a list of any cases, motions or matters that came before you as a judge in which a litigant or party requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employed an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

I do not recall ever recusing myself in any matter that came before me as a judge.

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

I have not taught any courses.

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

If I am confirmed, I will resign as a partner of Covington & Burling LLP. Upon my separation from the firm, and prior to assuming the duties of Attorney General, I will receive repayment of my partner capital account ($632,767), deferred compensation from the firm's prior fiscal year ($680,820), a pro rata share of partner compensation for work I performed in the current fiscal year (including pension contributions) ($484,073), and a separation payment to be paid prior to or immediately following my separation ($1,344,050). I will remain vested in the firm's Defined Benefit Plan and Retirement Savings Plan; however, there will be no further contributions to these Plans following my separation from the firm.

22. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I have no plans for outside employment.

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

Sources of Income	2008	2009
Covington & Burling LLP (partner compensation)	$2,154,364	$2,508,943[1]
PNC Bank (interest)	$15,421	unknown
Verizon stock (dividends)	$5,534	unknown
Fidelity Investments – Joint WROS Account (dividends & capital gains)	$1,969	unknown
Fidelity Investments – Traditional IRA (dividends & capital gains)	$180	unknown
Schwab Retirement Plan Services, Inc.– Covington & Burling Retirement Savings Plan (dividends & capital gains)	$10,719	unknown

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

See Net Worth Statement

25. **Potential Conflicts of Interest**:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

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

[1] Includes deferred compensation from prior fiscal year, pro rata share of partner compensation for work performed in current fiscal year (including pension contributions), and separation payment to be paid prior to or immediately following separation from firm.

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 arising from clients and matters my firm and I have handled, and from any other potential sources. In the event of a potential conflict of interest I would consult with the Department's ethics official and take all necessary steps to ensure that I comply with their guidance.

26. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since I have joined Covington & Burling LLP, I have done more than fifty hours of pro bono work in every year except one, and in a variety of public and confidential matters. My public pro bono matters have included:

(1) the representation of Dennis Patrick Brown — who was wrongfully convicted of a rape he did not commit as a 17 year-old African American and served nearly 20 years in Louisiana state prison before he was exonerated by DNA evidence — in connection with a federal proceeding alleging that he was deprived of his constitutional rights in connection with his arrest and prosecution, as well as a state proceeding seeking compensation from an innocence compensation fund;

(2) the representation of a rape victim with respect to the negligence of an educational institution she attended;

(3) the representation of Brian Ferguson in connection with post-conviction review proceedings following his murder conviction in West Virginia state court; and

(4) the representation of the wife of Robert Wone, a murder victim in Washington, D.C.

In addition to these litigation and advisory matters, I have also served as a board member or a trustee of numerous non-profit organizations for numerous years (listed under Question #7 above) which include:

American Constitution Society - Board member since 2003

Columbia University - Trustee since 2007
Meyer Foundation - Board member since 2001
Morehouse School of Medicine - Trustee since 2005
Concerned Black Men - Member since 1983

Eric Holder

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	$1,446,470	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	$185,596 See Schedule A.	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned-add schedule	$1,900,000 See Schedule B	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	$150,000		
Cash value-life insurance			
Other assets itemize:			
IRAs	$30,095		
Thrift Savings Plan	$60,494		
Wife's Pension Plan	$576,706	Total liabilities	
Nominee's Pension & Retirement Savings Plans	$1,372,585	Net Worth	$5,721,946
Total Assets	$5,721,946	Total liabilities and net worth	
CONTINGENT LIABILITIES		GENERAL INFORMATION	

As endorser, comaker or guarantor	None	Are any assets pledged? (Add schedule)	No
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 A: Securities are mutual funds, and bonds, held at Fidelity investments ($82,596), and Verizon stock ($103,000).

Schedule B: Real estate owned is residence.

AFFIDAVIT

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

12-14-08
(DATE)

(NAME)

(NOTARY)

Notary Public District of Columbia
CHARLES HELLER
My Commission Expires: Sept 30, 2013

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

December 17, 2008

Eric H. Holder, Jr.
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mr. Holder:

Thank you for providing your questionnaire and assembled materials to the Judiciary Committee. Committee staff reviewed your questionnaire responses and noted a number of apparent omissions. In view of these omissions, I respectfully ask that you revisit the questionnaire and supplement your submission as soon as possible, or provide an explanation as to why you believe your submission is fully responsive.

To assist you in supplementing your questionnaire, below are some of the potential omissions detected after a preliminary review:

(1) In Section 13.a., you omit two 2001 op-eds regarding gun show background checks and the Robert Mueller nomination and at least six other op-eds concerning issues such as affirmative action in college admissions, gun ownership restrictions, and criminal charges for corporations;

(2) In Section 13.c., you omit your testimony from five Congressional hearings;

(3) In Section 13.d., you omit your 2004 speech to the American Constitution Society in which you called for a "liberal renaissance;"

(4) In Section 13.e., you did not list a number of interviews, including a series of interviews with CNN from 2002-03 addressing Geneva Conventions and detainees, the D.C. sniper case, and the arrest of Khalid Sheikh Mohammed in Pakistan;

(5) In Section 14.a.iii., which calls for a list of "governmental agencies with which you have been affiliated," you omitted your work for Illinois Governor Rod Blagojevich in 2004. This information was also not listed in response to Question 17, which calls for any appointment to a government office;

(6) In Section 14.c., you begin to describe your appearances in court while at Covington & Burling, but end your description with a colon and no further information;

(7) In Section 18.e., you did not list any cases or docket numbers in which you issued "significant opinions on federal, state, or District constitutional issues," yet you heard criminal cases in which Fourth, Fifth, and Sixth Amendment issues were likely to have been contested; and

(8) You did not provide any specific "affiliations, pending litigation, financial arrangements, or other factors" likely to present conflicts-of-interest in response to Question 25.a.

Although you provided a good deal of information to the Committee, it is important that your information be complete for the Committee to process your nomination through the upcoming Holiday season. Please provide the aforementioned materials as well as any other omitted materials to the Committee as soon as possible.

Thank you for your attention to this matter. I look forward to your supplement.

Sincerely,

Arlen Specter

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

November 24, 1997

Honorable Janet Reno
The Attorney General
U.S. Department of Justice
Washington, D.C.

Dear Madame Attorney General:

RE: CAMPAIGN CONTRIBUTIONS (CAMPCON)
AND THE INDEPENDENT COUNSEL STATUTE

In May, 1997, I provided you with an overview of the FBI's investigative strategy in Campcon. This document also included an analysis of the related aspects of the Independent Counsel Statute. At the time, the investigative plan focused on three distinct but inter-related matters: (1) a campaign fund-raising strategy executed by a core group of individuals from the DNC and the White House; (2) an allegation of illegal conduct by a myriad of "opportunists"; and, (3) efforts by the PRC and other countries to gain foreign policy influence through illegal contributions. In conjunction with providing you this document, I recommended that you refer the Campcon matter to an Independent Counsel.

Since May, there have been a number of significant developments in each of the above-three areas. In addition, there have been numerous discussions on issues associated with this overall investigation which impact on the Independant Counsel Statute. Today, I am convinced, now more than ever, that this entire matter should be referred to an Independent Counsel.

I have attached a current overview of an evaluation which I requested, and which I believe will clarify my understanding of the Independent Counsel Statute, as well as the investigative focus and direction of the Campcon Task Force.

Per our conversation this afternoon, a copy of the attached document is only being provided to you and to the Deputy Attorney General.

DOJ-FLB-00001

Honorable Janet Reno

I am available to discuss these matters at your convenience.

Sincerely,

Louis J. Freeh
Director

Enclosure

DOJ-FLB-00002

A. PURPOSE OF THE INDEPENDENT COUNSEL STATUTE

The Independent Counsel Act establishes a system "to investigate and prosecute allegations of criminal wrongdoing by officials who are close to the President. The purpose of this system is to ensure fair and impartial criminal proceedings when an Administration attempts the delicate task of investigating its own top officials."[1] When this legislation was first enacted in 1978, the Senate Governmental Affairs Committee listed a number of reasons for such a system. The top three reasons were:

(1) The Department of Justice has difficulty investigating alleged criminal activity by high-level government officials.

(2) It is too much to ask for any person that he investigate his superior. . . . "[A]s honorable and conscientious as any individual might be, the public could never feel entirely easy about the vigor and thoroughness with which the investigation was pursued. Some outside person is essential." (quoting former Special Prosecutor Cox)

(3) It is a basic tenet of our legal system that a lawyer cannot act in a situation where he has a conflict of interest or the appearance thereof. This is not a question of the integrity of the individual. . . . The appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself.[2]

1 - Attorney General Remo (Copy 1 of 6)
2 - Deputy Attorney General Holder (Copy 2 of 6)
3 - Director Freeh (Copy 3 of 6)
4 - Deputy Director Bryant (Copy 4 of 6)
5 - Mr. Gallagher (Copy 5 of 6)
6 - Mr. Parkinson (Copy 6 of 6)

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[1] S. Rep. No. 123, 100th Cong., 1st Sess. 2 (1987), reprinted in 1987 U.S.C.C.A.N. 2150. To simplify, subsequent citations to legislative history will be cited in this shorthand form: "1987 CAN 2150."

[2] 1978 CAN 4216.

Copy 1 of 6 copies

DOJ-FLB-00003

For nearly a year, the Campcon Task Force has been actively investigating a variety of fundraising activities by a core group of White House and DNC officials (as well as others). The Task Force is examining these activities through a variety of traditional investigative techniques, including the use of grand jury subpoenas and testimony. Because this criminal investigation has taken our investigators into the highest reaches of the White House -- including an examination of many specific actions taken by the President and Vice President -- we have had to assess the potential application of the Independent Counsel statute virtually every step of the way.

B. STRUCTURE OF THE INDEPENDENT COUNSEL STATUTE

1. Mandatory and Discretionary Provisions

The Independent Counsel statute can be triggered in one of two ways. First, the Attorney General shall conduct a preliminary investigation under the so-called "mandatory" or "covered persons" provision in the following circumstances:

> whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any ["covered person"] may have violated any federal criminal law other than [certain minor violations].

28 U.S.C. § 591(a). Second, the Attorney General may conduct a preliminary investigation under the following "discretionary" provision:

> When the Attorney General determines that an investigation or prosecution of a [non-covered] person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person . . . if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than [certain minor violations].

28 U.S.C. § 591(c).[3]

---

[3] Section 591(c) was amended in 1994 to give the Attorney General discretionary authority to use the independent counsel process with respect to Members of Congress. It was also reworded for "simplication" purposes, but otherwise made no change from the existing law in the "substantive reach or scope" of the discretionary provision. The Senate bill would have

2. What Triggers the Mandatory Provision?

The independent counsel statute contains three basic requirements for triggering a preliminary investigation under the "mandatory" provision: (a) Specific information, (b) From a credible source, (c) That a covered person may have violated the law.[4]

a. Specific Information. The purpose of the specificity requirement is to weed out "generalized allegations of wrongdoing which contain no factual support [such as] a letter saying that a particular member of the President's cabinet is a 'crook.'" 1982 CAN 3548. Clearly, the specificity threshold is low one, intended simply to weed out "frivolous or totally groundless allegations." Id.; 1978 CAN 4270.

b. From a Credible Source. The credibility requirement was added to the statute in 1983 after Congress concluded that the existing standard (specificity only) was too low. "Public confidence is not served by investigating meritless allegations made by unreliable sources." 1982 CAN 3548. In considering whether a source is credible, the Attorney General is expected to follow "the usual practices of the Department of Justice in determining the reliability of a source." Id.[5]

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authorized the Attorney General to use the independent counsel process to investigate a "matter" as well as a person, but that proposed revision was rejected in conference "because it would in effect substantially lower the threshold for use of the general discretionary provision." 1994 CAN 793.

[4] The statute as originally passed in 1978 required a preliminary inquiry whenever the Attorney General received "specific information that [a covered] person has committed a violation" of federal law. In 1982, Congress decided to add a "credibility" requirement. Unfortunately, instead of simply changing "specific information" to "specific and credible," it replaced "specific information" with "information sufficient to constitute grounds to investigate." To figure out what that means, one must look to § 591(d)(1), which sets forth the specificity and credibility requirements.

[5] One question that has arisen in the course of the Campcon investigation is whether newspaper reports can or should constitute a "credible source." This is a debatable proposition, particularly where reputable news organizations have successfully tracked down witnesses and documents. Early in the investigation, the Public Integrity Section took the position that newspaper articles cannot be a credible source for purposes

It is important to note that the statute permits the Attorney General to consider only the two factors of "specificity" and "credibility" in determining whether there are grounds to investigate. In 1987, Congress added the word "only" to the statutory language of § 591(d)(1) in an effort to curb the Department's "disturbing practice" of conducting lengthy "threshold inquiries" before deciding whether the statute had been triggered. 1987 CAN 2164.

c. That a Covered Person May Have Violated the Law. The Attorney General must conduct a preliminary inquiry if she receives specific and credible information that a covered person may have violated any federal criminal law. In 1987, Congress changed the statute from "has committed" to "may have violated." The legislative history makes very clear that DOJ's role should be limited:

> It cannot be expected, at this first step in the process, that the Attorney General could or should determine that a criminal act has been committed.

1987 CAN 2164; see also 1982 CAN 3549 ("[I]f facts or suspicious circumstances suggesting that a covered person may have engaged in criminal activity come to the attention of the Department of Justice, these would qualify as 'information sufficient to constitute grounds to investigate,' thus triggering a preliminary investigation.")

Congress amended the statute in 1987 in direct response to what it saw as DOJ's "disturbing practice" of conducting extended "threshold inquiries," often lasting months and involving "elaborate factual and legal analyses." As stated in the Senate Report:

> It is not clear why the Department of Justice has adopted this practice. Some have suggested that the Department is conducting preliminary investigations in all but name to avoid statutory reporting requirements that attach only after a 'preliminary investigation' has taken place. Since these reporting requirements are the primary means of ensuring the Attorney General's accountability for decisions not to proceed

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of the statute. That position appeared to change in early September when the Attorney General announced that DOJ had opened a 30-day inquiry regarding the Vice President's telephone solicitations based upon a Washington Post article by Bob Woodward.

under the statute, Congress intended them to attach in all but frivolous cases.[4]

3. Seeking an Independent Counsel

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[4] According to the 1987 Senate Committee report, DOJ reported processing a total of 36 cases under the independent counsel statute between 1982 and 1987. Of the 36 cases, the Department reported closing 25 prior to conducting a preliminary investigation. It reported closing five of these cases because the allegations did not involve a covered official, and 20 others (which did involve covered persons) because a "threshold inquiry" had determined that the information was insufficient to trigger a preliminary investigation. In the 20 cases involving covered officials, DOJ reported spending an average of approximately 75 days before closing the case. 1987 CAN 2155.

The Senate Committee criticized the Department for failing to clearly articulate why, in the 20 cases on covered persons, it found the information insufficient to trigger a preliminary investigation. The Committee concluded that DOJ had closed 10 cases, despite receiving specific information from a credible source of possible wrongdoing, because it determined that the evidence available did not establish a "crime." In at least five of these 10 cases, the decision appeared to have been based, at least in part, on insufficient evidence of criminal intent. The Committee concluded:

> Thus, contrary to the statutory standard, in 50% of the cases handled by the Justice Department since 1982 in which it declined to conduct a preliminary investigation of a covered official, it relied on factors other than credibility and specificity to evaluate the case. Moreover, in at least half of these cases, the Department of Justice refused to conduct a preliminary investigation into the alleged misconduct, because it had determined there was, at this early stage in the process, insufficient evidence of criminal intent.

Id. at 2155-56.

Upon completion of a preliminary inquiry,[7] the Attorney General must apply to the court for appointment of an independent counsel if she determines that "there are reasonable grounds to believe that further investigation is warranted." 28 U.S.C. 592(c). In making that determination, she may not conclude that the person under investigation "lacked the state of mind" required for the relevant criminal violation unless there is clear and convincing evidence that the person lacked such state of mind. 28 U.S.C. 592(a)(2)(B)(ii).

If the Attorney General concludes that an independent counsel is required, she must file with the court an application which contains sufficient information to assist the court in (1) selecting an IC, and (2) defining the IC's jurisdiction so that the IC "has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter." 28 U.S.C. 592(d) (emphasis added).

C. COVERED PERSONS BEING INVESTIGATED BY THE TASK FORCE

The Task Force currently has preliminary investigations pending against five "covered persons": (1) President Clinton; (2) Vice President Gore; (3) Former Energy Hazel O'Leary; (4) Interior Secretary Bruce Babbitt, and (5) Alexis Herman. The Task Force has also been investigating a number of activities of a sixth covered person -- Peter Knight, the chairman of the Clinton/Gore campaign. Among other things, Knight coordinated VP Gore's fundraising calls from the White House and was present when the calls were made. The Department has not yet triggered an independent counsel review as to Knight.

It should be noted that, in the current Administration, even the most senior White House staffers (such as former Deputy Chief of Staff Harold Ickes) are not "covered persons" under the statute. The "covered persons" provision includes individuals working at the Executive Office of the President who are paid at or above level II of the Executive Schedule (currently $133,600). Although Congress clearly intended to capture a significant

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[7] After initiating a preliminary inquiry, the Attorney General normally has 90 days to decide whether an independent counsel should be appointed (with the option of one 60-day extension upon a showing of good cause). However, when a preliminary inquiry is begun following a congressional request, the Attorney General must make her decision no later than 90 days after the request is received. Therefore, the Attorney General must resolve the matter of the Vice President's telephone solicitations no later than December 2, 1997, which is 90 days after the House Judiciary Committee's request for appointment of an independent counsel on this matter.

number of high-level White House officials within the "covered persons" provision, most of the current officials have avoided coverage simply by accepting a salary below level II.[8] While currently authorized by statute to appoint and pay twenty-five persons at level II, President Clinton pays only six persons at that level, none of whom are the focus of the Campcon investigation.[9]

D. OVERVIEW OF THE CAMPCON INVESTIGATION

1. The Investigative Plan

The Campcon investigative plan, which has remained essentially unchanged since it was originally crafted by the FBI investigators in early 1997, has focused on three distinct but interrelated matters:

-- An aggressive campaign fundraising operation developed and executed by a core group of individuals from the DNC and the White House, including the President, the Vice President, and a number of top White House advisors.

-- Allegations of illegal conduct by a myriad of opportunists and other individuals who gained White House access in order to further their personal, business, and political interests.

-- Efforts by the PRC and other countries to gain foreign policy influence by illegally contributing foreign money to U.S. political campaigns and to the DNC through domestic conduits.

The core group investigative plan was based on a theory that most of the alleged campaign abuses flowed, directly or indirectly, from the all-out effort by the White House and the DNC to raise money. It was this consuming quest for campaign

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[8] As originally structured in 1978, the total number of covered Executive Branch positions was approximately 120, with approximately 93 of those positions within the Executive Office of the President (EOP). In 1983, Congress reduced the total coverage of Executive Branch positions to approximately 70, of which approximately 36 were within the EOP. 1982 CAW 3543.

[9] Those six persons, according to the most recent listing provided by the White House Counsel's Office to the FBI's Public Corruption Unit, are the Director and two Deputy Directors of OMB, the Chairman of the Council of Economic Advisors, the U.S. Trade Representative, and the Director of the Office of Science & Technology Policy.

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cash, for example, that led to the transfer of John Huang from the Department of Commerce to the DNC to begin the aggressive solicitation of Asian Americans. It led to the ambitious plan for White House coffees, overnights, and other perks for large donors. It led to the telephone solicitations by the President and the Vice President and the attempted merger of the WHODB and DNC databases. In fact, virtually all of the viable Campcon investigative avenues are clearly connected to the core group's initiatives. While that does not mean the core group members necessarily are culpable for the criminal violations the investigation uncovers, neither should they be immune from intensive investigative scrutiny.

While the DOJ prosecutors in charge of the Campcon investigation did not formally object to this investigative plan, they also did not embrace it.[10] From the beginning, there was a fundamental disagreement about how the investigation should proceed. The FBI investigators wanted to focus intently on the core group, on the theory that many of the apparent campaign abuses flowed, directly or indirectly, from the core group's all-out effort to raise money. In contrast, the prosecutors wanted to focus on the opportunists, with a "bottom up" strategy that might or might not lead eventually to the core group.

For the most part, the prosecutors' approach prevailed. Throughout the investigation, the Task Force has focused on building prosecutable cases against individuals such as Charlie Trie, Maria Hsia, and. While this approach may be understandable and is beginning to show promising results, it did neglect some of the larger issues. With the exception of the investigation of the White House fundraising calls, begun belatedly in September 1997, there has never been a concentrated investigation of the core group and its fundraising efforts. In fact, DOJ did not assign a prosecutor specifically to core group activities until July, after Director Freeh ordered an aggressive plan to interview all relevant core group and DNC officials and to become more persistent on subpoena compliance issues.

Even after the September shakeup and expansion of the Task Force, the "bottom up" approach has continued to dominate the investigation. While the Task Force has made significant progress in developing prosecutable cases against several of the opportunists, the activities of the core group -- with the

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[10] The reference to "DOJ prosecutors" is not meant to include the line prosecutors conducting the day-to-day investigation. For the most part, those line prosecutors appeared to be removed from the major decisions about how the investigation would proceed, particularly on issues that potentially involved the independent counsel statute.

exception of the White House telephone solicitations -- have received comparatively little attention.

2. Cautious Approach to Investigating "Covered Persons"

From the outset, the DOJ attorneys in charge of the Task Force have proceeded very cautiously before authorizing any investigative step that might involve a "covered person." Unlike a normal investigation, where agents and attorneys simply follow all logical investigative leads, the DOJ attorneys have been extremely reluctant to venture into areas that might implicate "covered persons." This reluctance has led to a flawed investigation in several ways.

First, the Task Force has partitioned its investigation, focusing on individual persons and events without effectively analyzing their relationship to the broader fundraising scheme. Second, the Task Force attorneys sometimes have made dispositive factual assumptions without investigating to see if those assumptions are accurate. For example, the attorneys concluded in the spring of 1997 that Vice President Gore's White House fundraising calls were not worth investigating because they all involved solicitation of "soft money" (a factual assumption that turned out to be incorrect). The White House coffees are a second example; until very recently, there still has been no serious investigation of the coffees, primarily because the DOJ attorneys had assumed -- incorrectly -- that they all occurred in "private" White House space. Third, important investigative areas, such as the serious allegations raised by Common Cause, have never been pursued because they have been tied up in lengthy threshold legal analyses within the Department.

The Department has also walled off the day-to-day investigation from much of its Independent Counsel legal analyses. Most decisions regarding IC issues are still being handled by DOJ attorneys who have only limited involvement in the ongoing investigation. While obviously these issues deserve the careful scrutiny of experienced Public Integrity attorneys, the separation between the legal analysts and the front-line investigators (both agents and attorneys) has been unusually rigid. Ironically, this separation became even more pronounced following the September shakeup of the Task Force. Until at least mid-October, the new Task Force heads, Chuck LaBella and Jim DeSarno, had no meaningful role in the Department's handling of Independent Counsel-related matters. As a result, the investigative approach to those matters has suffered from lack of coordination.[11]

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[11] There was also a marked change in how the Independent Counsel issues were discussed. Before the September changes, there had been regular discussions during the weekly Campcon

E. THE CORE GROUP'S FUNDRAISING SCHEME

1. The Common Cause Allegations

By pursuing its "bottom-up" investigative strategy instead of focusing on the core group, DOJ has failed to adequately address many of the larger campaign financing issues that could and should lead to the appointment of an Independent Counsel. As a starting point, the Campcon Task Force has failed to address an overarching issue: whether the Clinton/Gore campaign (as well as the Dole campaign) engaged in an illegal scheme to circumvent the federal campaign financing laws. This issue was first raised by Common Cause in October 1996, long before the Task Force was even constituted, but it has never been pursued. To this day, there has been no decision on whether the allegations should be investigated by the Task Force or referred to the FEC.

As background, candidates seeking the presidential nomination are eligible to receive public matching funds if they so choose. However, in exchange for the public funds, a candidate is required to limit his overall campaign spending. In 1996, the spending limit was approximately $37 million for the primary campaign and approximately $62 million for the general election. For knowing and willful violations of these limitations, there are criminal penalties set forth in the FECA and the Presidential Primary Matching Payment Account Act and the Presidential Election Campaign Fund Act.

The alleged scheme appears to have been borne in the summer of 1995, in response to a plan by campaign strategist Dick Morris to run an extremely ambitious series of TV ads, primarily in swing-voter states where President Clinton had problems. Morris wrote in his book that the key to Clinton's reelection was this early television advertising, designed to show selected TV viewers from "150 to 180 airings" or "about one every three days for a year and a half." According to published reports, there was an internal debate within the Clinton/Gore campaign about whether to turn down public financing during the primary elections "in order to avoid federal spending limits." In the end, the campaign appears to have designed a scheme to have it both ways -- to receive taxpayer funds and agree to a spending

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meetings about all Task Force matters, including those involving the potential application of the Independent Counsel statute. Beginning in September, however, the nature of the weekly meetings changed markedly, and there no longer was any meaningful discussion of IC-related issues. While the FBI has very recently received several DOJ drafts on pending IC matters, FBI officials have not had any significant role in the deliberative process.

limit, and simultaneously use the DNC to buy millions in advertising above the spending limit. According to Common Cause, the expenditures for the ad campaign totaled at least $34 million.

The heart of the Common Cause allegations is that the Clinton/Gore campaign -- and not the DNC -- fully controlled the advertising campaign, and that the so-called "soft money" funneled through the DNC was a sham. That is, the money was not used for "party building" activities, as "soft money" is supposed to be used, but rather to directly support the President's reelection. As stated in the October 28, 1997, Common Cause letter to the Attorney General: "[T]he presidential campaigns, and not the parties, fully controlled the raising and spending of these funds and designed, targeted and conducted the TV advertising campaigns financed with these funds. While the money was technically deposited into and disbursed out of political party bank accounts, the parties in reality played only a clerical role in serving as a conduit for these funds. In short, these funds were raised and spent by the presidential campaigns "for the purpose of influencing" a federal election, and thus should be treated as within the scope of the federal campaign finance laws."

While the Campcon Task Force has not undertaken any concerted effort to trace the funds used for these advertising campaigns, it has obtained substantial evidence that the President and his key advisors controlled virtually all aspects of the DNC fundraising efforts. There are numerous documents supporting such a conclusion, but none quite so compelling as the 4-17-96 memorandum from Harold Ickes to DNC Chairman Don Fowler:

> This confirms the meeting that you and I and Doug Sosnik had on 15 April 1996 at your office during which it was agreed that all matters dealing with allocation and expenditure of monies involving the Democratic National Committee ("DNC") including, without limitation, the DNC's operating budget, media budget, coordinated campaign budget and any other budget or expenditure, and including expenditures and arrangements in connection with stats splits, directed donations and other arrangements whereby monies from fundraising or other events are to be transferred to or otherwise allocated to state parties or other political entities and including any proposed transfer of budgetary items from DNC related budgets to the Democratic National Convention budget, are subject to the prior approval of the White House.

With respect to the ads themselves, Dick Morris and others have stated the President personally reviewed and approved all ads before they ran. As Morris wrote in his book:

> [President Clinton] worked over every script, watched each ad, ordered changes in every visual presentation, and decided which ads would run when and where: He was as involved as any of his media consultants were. The ads became not the slick creations of admen but the work of the president himself. . . . Every line of every ad came under his informed, critical and often meddlesome gaze. Every ad was his ad.

Behind the Oval Office, at 144.

The recently-uncovered White House videotapes bolster the Common Cause allegations. At a DNC luncheon at the Hay Adams Hotel on December 7, 1995, the President stated to his supporters:

> We realized that we could run these ads through the Democratic Party, which meant we could raise money in $20,000 and $50,000 and $100,000 blocks. So we didn't have to do it all in $1000 and run down what I can spend, which is limited by law so that is what we've done.

On that tape and others, the President emphasized that the TV ad campaign was central to his favorable position in the polls. As Common Cause correctly points out, this certainly looks like an intentional scheme to evade the contribution and spending limits by "running these ads through" the DNC.

The Justice Department has weighed in on the legal issue, at least initially concluding that this scheme was simply an act of "coordination" between the Clinton/Gore campaign and the DNC. In her April 14 letter to Congress, the Attorney General stated that the FECA "does not prohibit the coordination of fundraising or expenditures between a party and its candidates for office." The Common Cause response, which appears to be supported by the evidence, is that this is not a case about mere "coordination." Instead, it argues, the case is about a scheme in which President Clinton and his top advisors raised and spent millions in direct support of his candidacy, and used the DNC as a mere conduit.

The circumstances of this case present unprecedented legal issues that have sparked a substantial difference of opinion among various election law experts, particularly on the "hard money vs. soft money" issue. If one thing is certain, it is that the law in this area is unclear and that there are no established enforcement policies either at DOJ or the FEC. See 1982 CAN 3551 ("Any case in which there is no clear policy against prosecution or any arguably exceptional circumstances are present should be sent to a special prosecutor.") DOJ has invited substantial criticism by appearing to resolve these

untested legal issues at the outset of the investigation, before the facts are fully developed.

On their face, the Common Cause letters present serious allegations of potential criminal conduct that deserve to be investigated. Of all the potential campaign violations brought to the attention of the Campcon Task Force, these arguably are the most serious. The allegations were compelling when they first reached the Justice Department in October 1996, and they have become stronger as more and more facts have been uncovered during the investigation. Because the allegations clearly involve the President, they should be investigated by an Independent Counsel. Moreover, the Attorney General should seek the appointment of an Independent Counsel immediately, for two reasons: (1) the Department has had the allegations for more than a year; and (2) there is virtually no chance that the allegations could be resolved in the course of a limited preliminary inquiry.

2. Other Allegations Connected to the Scheme

In addition to allegations of a broad conspiracy to circumvent the campaign contribution and spending limits, many of the other allegations that have arisen in the course of the investigation have a direct connection to the core group's fundraising scheme. For example, the fundraising operation included a $7 million targeting of the Asian-American community. The key player in this effort was John Huang, who was moved from the Department of Commerce to the DNC following the personal intervention of the President. Huang and others involved in carrying out the Asian-American targeting have been implicated in illegal fundraising. Huang is closely tied to the and the Lippo Group, which has substantial connections to the Chinese government.

As this one example illustrates, it is important to keep in mind that virtually all of the various pieces of the Campcon investigation are connected to the overall fundraising scheme. While this is not to suggest that the core group necessarily is culpable for all the fundraising improprieties being uncovered, it does demonstrate the need for an investigative strategy that includes a comprehensive look at the core group's activities.

F. VICE PRESIDENT GORE'S TELEPHONE SOLICITATIONS

1. The Statute

18 U.S.C. § 607 makes it unlawful "for any person to solicit or receive any contribution within the meaning of section 301(8) of the FECA in any room or building occupied in the discharge of official duties by any [officer or employee of the United States]." On its face, this felony prohibition would

appear to cover Vice President Gore's fundraising calls from his White House office.

2. The Investigation

While Vice President Gore admitted in March 1997 that he had made fundraising calls from his West Wing office at the White House, the Task Force did not undertake any serious investigation of these calls until July. In her April 1997 letter to Chairman Hatch, the Attorney General rejected a call to trigger the Independent Counsel statute for investigation of potential 607 violations. The Attorney General's letter implicitly relied on the argument that because Section 607 applies only to "contributions" as technically defined by the FECA, it would not prohibit the solicitation of "soft money." (VP had originally characterized the calls as soft money solicitations.) When it became apparent in early September that a portion of the monies raised by the Vice President's telephone solicitations had been placed into a "hard money" account by the DNC, the Department initiated a threshold inquiry and later a preliminary investigation under the Independent Counsel Act.

The Task Force has now established that the Vice President made approximately 86 fundraising calls from his West Wing Office and reached at least 43 potential donors. At least five of the persons solicited by the Vice President gave money that was deposited, in part, into a DNC "hard money" account.

3. Legal Issues

At this point, the Attorney General is faced with three questions: (1) Does Section 607 apply to the Vice President's telephone solicitations? (2) Assuming Section 607 does apply, is there an established DOJ policy of non-prosecution of such offenses? (3) Assuming Section 607 applies and there is no established policy of non-prosecution, is further investigation warranted by an Independent Counsel?

In determining whether the statute applies to the Vice President's telephone calls, the Department has focused on three threshold legal questions. First, does the statutory phrase "any person" include the President and Vice President, or are they exempt from the statute's coverage for separation of powers reasons? On this point, there appears to be a consensus that the statute does indeed reach the President and Vice-President. The Office of Legal Counsel reached the same conclusion in 1979 when analyzing a White House political event hosted by President Carter.

Second, because Section 607 was principally designed to prevent government workers from being pressured for contributions in their offices, does the statute apply to solicitation of non-

federal persons? DOJ has apparently concluded that non-federal persons are protected by the statute.

Third, because the statute prohibits the solicitation or receipt of contributions "in any room or building occupied in the discharge of official duties," does it apply to the Vice President's calls made to persons located on non-federal property? Stated differently, does a telephone "solicitation" occur both where the call was received and where the call was made? The DOJ attorneys who have been analyzing this issue have reached different conclusions, but all agree that it is a close question.

The disagreement on this point stems largely from differing interpretations of the Supreme Court's decision in United States v. Thayer, 209 U.S. 39 (1908), which is one of only four reported decisions (and the only Supreme Court decision) involving a Section 607 prosecution. Thayer involved a prosecution of a private individual who solicited contributions by mail from federal employees working in a post office. The defendant argued that because he had never set foot in the post office, he had not solicited "in" a federal building. In rejecting that argument, the Court stated that "the solicitation was in the place where the letter was received." 209 U.S. at 43-44.

Notwithstanding the broad language of Thayer, the better view is that Section 607 does prohibit telephone calls from a federal office to an outside location. The Court in Thayer was defining the point in time when the offense was complete, and obviously the mailing of a letter involves a time gap. In contrast, a telephone conversation occurs simultaneously at both ends of the line, and a prohibited solicitation would be complete when made.

Assuming the Attorney General resolves the three threshold legal questions in a way that supports a technical violation of Section 607, she must then decide whether there is an established DOJ policy of non-prosecution of such offenses. In determining whether there are "reasonable grounds to believe that further investigation is warranted," the Attorney General is directed by the Independent Counsel Act to comply with "written or other established policies of the Department of Justice with respect to the conduct of criminal investigations." 28 U.S.C. 592(c)(1)(B). Primarily because Section 607 cases are necessarily fact-bound, there is neither a written nor "other established" policy of non-prosecution of these kinds of offenses. While there appears to be a consensus within DOJ that the telephone solicitations at issue here would never be prosecuted even if there was a technical violation, the Department nevertheless must concede that the Independent Counsel

statute does not permit the Attorney General to simply dispose of a case through an exercise of prosecutorial discretion.

With respect to the final issue -- whether further investigation is warranted -- the Attorney must apply to the court for appointment of an Independent Counsel unless she concludes, by clear and convincing evidence, that the Vice President "lacked the state of mind" required for a Section 607 violation. Based on the facts, the Attorney General simply cannot reach such a conclusion. The evidence tends to show that the Vice President was a active participant in the core group fundraising efforts, that he was informed about the distinctions between "hard" and "soft" money, and that he generally understood there were legal restrictions against making telephone solicitations from federal property.

We have received a draft DOJ memorandum dated November 21, 1995, which recommends shutting down the investigation on the ground that there is clear and convincing evidence that the Vice President subjectively intended to ask only for "soft" money. However, the draft memorandum is seriously flawed, relying almost exclusively on the Vice President's own statements to draw inferences favorable to him, even where those statements are contradicted by other reliable evidence. The weak analysis is demonstrated by the following introductory statement:

> There are a few circumstances and a few ambiguous descriptions by donors of their conversation with the Vice President which raise the question of whether the Vice President may have been asking in a handful of cases for contributions that could have been characterized as hard money contributions. However, in each instance, the same evidence can be viewed as leading to the contrary inference that the Vice President was asking the donor in question to make a soft money contribution.

This simply is not close to carrying the burden of demonstrating a lack of intent by "clear and convincing" evidence. In establishing the "clear and convincing" standard, Congress intended to set a high threshold before an Attorney General can close down an investigation involving a "covered person." In the face of compelling evidence that the Vice President was a very active, sophisticated fundraiser who knew exactly what he was doing, his own exculpatory statements must not be given undue weight. If the Attorney General relied primarily on those statements to end this investigation, she would be inviting intense and justified criticism.

4. Conclusion

The Attorney General should seek the appointment of an Independent Counsel with respect to the Vice President's telephone solicitations. Such an appointment is warranted on two levels. The preferable course of action would be to refer this matter as simply one piece of a comprehensive Independent Counsel investigation which focuses on the alleged scheme to circumvent the campaign financing laws, as discussed above in Section E. Viewed in that context, it is essentially immaterial whether the telephone solicitations sought "hard" money or "soft" money, or whether they were made from public space or private space. Because they were a key component of the overall fundraising scheme alleged by Common Cause and others, these solicitations should be referred for further investigation by an Independent Counsel. Such a referral could be made under either the mandatory clause of the statute or as a discretionary matter.

If the Attorney General decides not to seek an Independent Counsel on the broader fundraising scheme, she still should refer the matter of the Vice President's telephone solicitations. Even on the narrowly focused issue presented by the existing preliminary inquiry, there appears to be a technical violation of Section 607. Given the uncertain state of that law and probable difficulty establishing a knowing violation, this may well be an area in which prosecution is unwarranted. However, under the Independent Counsel Act, the Attorney General is not authorized to use prosecutorial discretion to resolve such matters at this stage; those decisions must be left to an Independent Counsel. The Attorney General is free, when requesting appointment of an Independent Counsel, to include "the Department's views of the potential prosecutorial merit of the case." 1994 CAN 766.

G. PRESIDENT CLINTON'S TELEPHONE SOLICITATIONS

The preliminary investigation of President Clinton's telephone solicitations has led the Task Force to the conclusion that, based on the investigation to date, there is no specific and credible evidence of a Section 607 violation. Although the evidence indicates that the President was asked to place fundraising calls on five separate occasions, he appears to have made such calls on a single date: October 18, 1994. The available evidence indicates that the President called nine donors on that date, and that six of the nine definitely were called from the President's study in the White House residence (apparently on the advice of the White House Counsel's office). As to the calls to the remaining three donors (John Connelly, Arthur Coia, and John Torkelson), there is circumstantial evidence that they were also made from the President' study, but that fact has not been conclusively established.

Notwithstanding the conclusion on the narrowly-constructed Section 607 issue, the Attorney General should also

seek the appointment of an Independent Counsel with respect to the President's telephone solicitations. Like those of Vice President Gore, the President's fundraising calls were part of the alleged scheme to circumvent the campaign financing laws, regardless of where the calls took place or how the money is characterized. While the DOJ memorandum suggests that further investigation would not be warranted even if the calls to the three donors were placed from the Oval Office (because "the evidence suggests these donors were solicited for soft money"), this conclusion is incorrect when considered in connection with the broader scheme. An Independent Counsel should be appointed to investigate this scheme, and the President's solicitations should be part of that investigation. As with the Vice President's calls, such a referral could be made under either the mandatory clause of the statute or as a discretionary matter.

H. FORMER ENERGY SECRETARY HAZEL O'LEARY

The preliminary investigation of Former Energy Secretary Hazel O'Leary has led the Task Force to the conclusion that O'Leary was not personally implicated in the solicitation of the $25,000 Africare donation from Johnny Chung. While there is no reason to challenge this conclusion based on the evidence known to date, it is also clear that the donation was made under extraordinarily suspicious circumstances that are worthy of additional investigation, as stated in the DOJ recommendation. Moreover, the events surrounding the donation and the meetings at the Department of Energy and the Africare event show substantial involvement by DNC officials, including Richard Sullivan and Don Fowler. Consequently, these events should be further investigated by an Independent Counsel as part of an investigation of the broader fundraising scheme of the core group. This course of action is particularly important in light of the various other Chung fundraising matters still under active investigation.

I. OTHER MATTERS IMPLICATING THE IC STATUTE

1. White House Coffees and Overnights

As part of its broad fundraising efforts, the White House/DNC Core Group devised and implemented an ambitious plan to reward big donors with White House coffees, overnight stays, trips on Air Force One, and other types of access to the President and Vice President. All of these activities are being investigated through grand jury subpoenas and other traditional law enforcement methods.

With respect to the coffees, the investigation to date shows that from January 1995 to November 1996, the White House hosted 108 coffees, attended by 1239 DNC and Clinton/Gore supporters. 314 of these supporters made donations within 90

days of the event (either before or after). 185 gave solely "hard money" contributions, 25 gave only "soft" money, and 91 gave a combination of the two. Within the 90-day windows, the supporters contributed approximately $2.35 million in "hard" money and $5.15 million in "soft" money. According to White House records, President Clinton attended 74 of the coffees and Vice President Gore attended 38 of them.

In her April letter to the Senate Judiciary Committee rejecting an Independent Counsel request, the Attorney General relied primarily on one implied argument: that the events may have taken place in private areas of the White House residence rather than in areas "occupied in the discharge of official duties." That argument has both factual and legal flaws. As a factual matter, the Task Force has learned that the coffees were held in at least eight different locations. While DOJ attorneys have been quick to characterize the "Map Room" (where at least 65 of the coffees were held) as private White House space, there has been virtually nothing to demonstrate that assertion. Even if the "Map Room" turns out to be part of the private living space, there were many other coffees held in other parts of the White House.

DOJ has relied very heavily on a 1979 opinion from the Office of Legal Counsel, but that opinion has only limited reach. The key issue addressed by OLC was whether § 603 (the predecessor to § 607) prohibited an alleged campaign solicitation by President Carter during a luncheon for Democratic Party donors and fundraisers that took place in the Family Dining Room of the White House. After undertaking a fact-specific analysis of how the Family Dining Room was used and how the luncheon was arranged, OLC concluded that the solicitation "probably" fell outside the scope of § 603.

The OLC opinion concluded that rooms in the White House may fall outside the scope of § 603 if used for "personal entertaining where there is a history of such use and where . . . the cost of such use is not charged against an account appropriating funds for official functions." Applying that fact-specific standard, there is little basis to conclude that any of the White House coffees, including those held in the "Map Room," fall outside the scope of the § 607 prohibition.

In addition to determining the character of the rooms used for the coffees, the Task Force must also investigate whether the President or other participants made a "solicitation" within the meaning of Section 607. Although the recently-discovered White House videotapes appear to be of only limited value in determining the full scope of the coffee discussions, the coffees certainly were effective in raising millions of

dollars -- both "hard" and "soft."[12] In any event, the Task Force has subpoenaed White House records and is undertaking a criminal investigation of these activities which involve the President and Vice President.

Because the coffees, overnights, and other White House perks for big donors were simply pieces of the broader fundraising scheme carried out the the White House and DNC, they should be part of a comprehensive Independent Counsel investigation of that scheme.

2. Soliciting Contributions from Foreign Nationals

The Federal Election Campaign Act explicitly prohibits any person from soliciting, accepting, or receiving from a foreign national "any contribution of money or other thing of value . . . in connection with an election to any political office." 2 U.S.C. § 441e. The Campcon investigation has developed substantial evidence that money from foreign nationals flowed into the DNC as a result of the massive fundraising effort coordinated by the DNC and the White House. The DNC has turned back millions of dollars because of apparent improprieties.

The key legal questions are (1) whether "soft money" falls within the scope of the FECA, and (2) whether the foreign gifts to the DNC were in fact "soft money." DOJ has taken the legal position that all soft money falls outside the scope of the FECA -- including § 441e -- because it fails to meet the strict definition of "contribution" in § 431. This interpretation by the election law experts at the Public Integrity Section has been publicly adopted on several occasions by the Attorney General. This position has been greeted with intense criticism from some election law attorneys, who correctly point out that, at the very least, these are uncharted areas of the law. The FECA, after all, neither defines "soft money" nor specifically addresses "soft money" gifts to national parties. The uncertain state of the law invites the question of whether DOJ should be resolving these thorny legal issues, particularly in the face of independent counsel concerns. Certainly there are significant passages in the legislative history of the independent counsel statute that admonish the Department not to undertake such "elaborate legal analyses" when a covered person is involved. 1987 CAN 2158.

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[12] The one coffee for which we have developed significant information shows strong evidence of solicitation. At a 6-18-96 coffee in the Map Room attended by the President, John Huang, Don Fowler, [redacted] two Thai businessmen, and others, Huang directly directly solicited the businessmen -- in the presence of the President -- after Fowler described the upcoming election as the most important since Lincoln.

Even if it is appropriate for DOJ to resolve the threshold question of "soft money" at this stage, it is not at all clear that the suspicious foreign gifts in this case all constitute "soft money." In light of the evidence of nearly absolute control of DNC fundraising efforts by the White House, there is a very real issue about whether the "soft money" argument is largely a sham. The FEC's General Counsel is quoted in the 1-6-97 Legal Times as saying that if money "is used for a candidate's election directly, then there is no question that 441e applies."

At the very least, we need to investigate far more thoroughly before we can comfortably conclude -- as a factual matter -- that the specific gifts at issue were in fact "soft money" donations. In some cases, such as the Hsi Lai Temple fundraiser attended by the Vice President, the evidence points specifically to the solicitation of "hard money contributions."

3. Misuse or Conversion of Government Property

Since early 1997, the Task Force has been investigating whether White House personnel misused or converted government property for political purposes. The most significant example is that of the WHODB database, which appears to have been a high priority for the President and the First Lady. According to a recently-discovered White House memo, the President wanted to integrate the taxpayer-funded database with the DNC database. Despite a January 1994 warning from the White House Counsel's Office not to use WHODB for political purposes, the new memo for Erskine Bowles and Harold Ickes shows an intent to do just that. The memo, written by a former Bowles aide, states:

> Harold and Deborah DeLee want to make sure WHODB is integrated w/DNC database--so we can share--evidently POTUS want this to[o]! Makes sense.

The Task Force obtained database and related White House documents through subpoena and had developed an aggressive investigative strategy to examine its procurement and use (although that investigation appears to faded into the background in recent months). Whether or not the investigation leads to prosecutable offenses, the Task Force again is in the posture of investigating the activities of senior White House officials, including the President. And while it may turn out that the President had no hands-on role in either the development or use of the database, it is difficult to contend that there is "insufficient information to investigate" for purposes of the Independent Counsel statute.

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least subjects (and potential targets) of the criminal investigation. Beyond the Core Group, the Task Force has focused intense investigative effort toward others who also appear to be close to the President, such as Charles Yah Lin Trie and John Huang. Investigation of such individuals is precisely the kind of circumstance for which the discretionary provision was designed. "This [discretionary] provision could apply, for example, to members of the President's family and lower level campaign and government officials who are perceived to be close to the President." 1987 CAN 2165.

With respect to McLarty and Ickes, it appears that Congress intended to capture within the "covered persons" provision individuals who occupy such high-level White House positions. As presently written, the "covered persons" section includes any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule. § 591(b)(3). Although he is authorized by statute to appoint and pay twenty-five persons at level II, the President currently pays only six persons at that level.

As these numbers show, the White House has avoided mandatory coverage for virtually all of its top level officials by simply paying them below level II. Whether or not this is an intentional effort by the White House to limit the number of "covered" senior officials, it certainly exposes a loophole in the independent counsel statute. In deciding whether or not to exercise her discretion under the statute, the Attorney General should consider whether McLarty and Ickes are among that group of top level officials so close to the President that DOJ investigation of them would "present the most serious conflict of interest of an institutional nature." 1978 CAN 4269.

4. DOJ is Investigating Top Campaign Officials.

Because the Independent Counsel statute arose from the abuses of Watergate, it reserves a unique spot for campaign-related misconduct. Top campaign officers are the only non-government officials to be included as "covered persons" within the mandatory provision of the statute. The reason for including campaign officials is spelled out clearly in the legislative history:

> There are few individuals who are as important to an incumbent President running for re-election or a serious candidate for President than that individual's campaign manager or the chairman of any of his national campaign committee of his or of his party.

1978 CAN 4269.

The mandatory "covered persons" provision of § 591(b)(6) currently includes "the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President."[13] The Independent Counsel law was originally drafted to cover the chairman of <u>any</u> national campaign committee seeking the election of reelection of the President, but that section was dropped after the Department of Justice expressed concern that it could potentially cover hundreds of campaign committees that spring up during a national campaign, such as "Youth for Carter" or "Doctors for Ford." 1978 CAN 4394.

By its literal terms, the Independent Counsel statute covers only the chairman and treasurer of the Clinton-Gore Committee (Peter S. Knight and Joan Pollit, respectively), along with any officer "of that committee" exercising authority at the national level. It does not by its terms cover senior officers of the Democratic National Committee. However, in deciding whether to exercise her discretionary authority, the Attorney General should consider how the DNC was used during the 1996 election cycle. By essentially commandeering the DNC for the purpose of getting the President re-elected, the White House appears to have erased the traditional lines between the President's own campaign committee and the national party committee. In fact, the DNC was in large part the President's central re-election machine, under the tight control of senior White House advisors. Under the circumstances, it is almost nonsensical that the Independent Counsel statute could be invoked for Peter Knight or Joan Pollit but not for Don Fowler and John Huang.

5. <u>Precedent</u>.

This Attorney General has invoked the discretionary clause in at least three matters: Whitewater, the White House requests for FBI files, and the Bernard Nussbaum perjury allegation. In the Whitewater matter, the Attorney General invoked the political conflict of interest provision because of allegations of criminal conduct by "McDougal and other individuals associated with President and Mrs. Clinton." Similarly, the Attorney General found a conflict of interest in the Nussbaum matter because the investigation would "involve an inquiry into statements allegedly made by a former senior member of the White House staff."

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[13] Section 591(b)(7), which provides that "covered" government officials remain subject to the independent counsel statute for one year after leaving the office or position, does not apply to campaign officials.

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It would certainly be consistent with those precedents to find a political conflict of interest in this case, where there are strong allegations against "individuals associated with" the President. Charles Trie, for one, has been described as a personal friend. Similarly, Thomas (Mack) McLarty, who serves as "Counselor to the President" and is one of the President's closest friends and advisors, has been implicated in the Tamraz matter.

6. National Security Matters.

With respect to the investigation of Chinese government efforts to influence U.S. elections, DOJ and the FBI have conflicting duties to (1) keep the President informed about significant national security matters, and (2) simultaneously keep from the White House certain national security information that may relate to the ongoing criminal investigation. DOJ and the FBI have faced this conflict several times during the course of the investigation, most recently in early November 1997.

Although the appointment of an Independent Counsel certainly would not eliminate the difficulty of deciding which matters should be brought to the attention of the President, it would lessen the perception problem.

7. Appearance of a Conflict.

There is a widespread public perception that the Department of Justice has a conflict of interest in investigating the campaign financing allegations. When testifying before Congress in 1993 in support of the Independent Counsel Reauthorization Act, the Attorney General emphasized the importance of avoiding the appearance of a conflict:

> There is an inherent conflict of interest whenever senior Executive Branch officials are to be investigated by the Department of Justice and its appointed head, the Attorney General. . . .
>
> It is absolutely essential for the public to have confidence in the system and you cannot do that when there is conflict or an appearance of conflict in the person who is, in effect, the chief prosecutor. . . . The Independent Counsel Act was designed to avoid even the appearance of impropriety in the consideration of allegations of misconduct by high-level Executive Branch officials and to prevent . . . the actual or perceived conflicts of interests. The Act thus served as a vehicle to further the public's perception of fairness and thoroughness in such matters, and to avert even the most subtle influences that may appear in an investigation of highly-placed Executive officials.

Senate Hearing 103-437, at 11-12 (May 14, 1993). These comments are virtually identical to statements appearing throughout the legislative history of the independent counsel statute.

Notwithstanding her statements in 1993, the Attorney General recently took the position (in her letter to Chairman Hatch) that in order to invoke the discretionary provision of the statute, she "must conclude that there is a potential for an actual conflict of interest, rather than merely an appearance of a conflict of interest." This position, based upon a 3-14-97 memorandum from DAAGs Mark Richard and Robert Litt,[14] has been strenously challenged by Chairman Hatch and others.

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[14] The Richard/Litt memorandum relies primarily on legislative history from 1982 and 1994. When it reconsidered the statute in 1982, the Senate passed an amendment allowing the discretionary appointment of an independent counsel "if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest, or the appearance thereof." 1982 CAN 3545. However, Congress eventually adopted the House version of the amendment, which did not contain the "appearance" language underscored above. The floor manager of the House bill, Rep. Hall, stated: "The bill as amended deletes the reference to appearances, and thereby requires the Attorney General to determine that an actual conflict may exist in order to utilize the special prosecutor provisions." Congressional Record, Dec. 13, 1982, at H9507.

In 1994, Congress considered two changes relevant to this issue. First, it rejected a DOJ proposal to allow the Attorney General to seek discretionary appointment of an independent counsel if a conflict existed with respect to a "matter" (in addition to a specific individual), concluding that such an amendment "would in effect substantially lower the threshold for use of the general discretionary provision." 1994 CAN 793. Second, Congress extended coverage of the statute to Members of Congress, in circumstances where the Attorney General concludes that appointment of an independent counsel "would be in the public interest." The legislative history characterizes this as a "broader standard" which enables the Attorney General to consider "a larger range of factors and to exercise greater discretion" in cases involving Members of Congress. "For example, the Attorney General could consider not only whether an actual conflict of interest might result if the Department handled the matter, but also whether an appearance of a conflict of interest might weaken public confidence in the investigation and any prosecution." 1994 CAN 781.

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While there certainly is support for the Attorney General's recently-stated position (as set forth in the Richard/Litt memo), it seems contradicted by a host of references in the legislative history. Moreover, it makes little sense conceptually to conclude that appearances can be taken into account for investigating "covered persons" but not other officials. After all, the underlying premise for the mandatory trigger is that there is an actual conflict of interest whenever Attorney General is called upon to investigate a "covered person" (so there is no need to analyze appearances).

On balance, the better argument seems to be that the Attorney General can and should consider the "appearance of a conflict" as one of the factors in deciding to invoke the discretionary clause. And in the circumstances of the Campcon investigation, that factor should weigh heavily.

8. The Chief Investigator Has Concluded That There is a Conflict of Interest.

The chief Campcon investigator, Director Freeh, has concluded that the investigation presents the Department with a political conflict of interest. This by itself does not trigger the independent counsel statute, since the ultimate resolution of the conflict issue rests solely with the Attorney General. However, the Director's view should be a significant factor in the Attorney General's continued analysis of whether to invoke the discretionary provision.

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April 2, 2004

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Elzie Higginbottom
Chairman
Illinois Gaming Board
160 North LaSalle, Suite 300
Chicago, Illinois 60601

Re: First Request for Documents

Dear Mr. Higginbottom:

As you know, Governor Blagojevich has appointed me to investigate issues relating to gaming in the Village of Rosemont, Illinois. I appreciate your assurances that you will assist this investigation so that it may be completed in a prompt, fair, and efficient manner.

The first phase of the investigation will focus on reviewing documents provided by various people and entities, including the Illinois Gaming Board (the "Board"). Although I anticipate making additional requests as the investigation progresses, I would like to request that the Board provide copies of the following documents:

(1) all reports prepared by the Board's staff concerning recommendations for the tenth license;

(2) all FBI reports provided to the Board concerning alleged ties between investors in Emerald Casino and organized crime;

(3) all FBI reports provided to the Board concerning alleged ties between the Village of Rosemont (or its officials) and organized crime;

(4) the videotape and transcript of any interviews the Board has conducted of Mayor Stephens;

(5) all reports provided to the Board by Robert Shapiro concerning alleged ties between the Village of Rosemont (or its officials) and organized crime;

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Mr. Elzie Higginbottom
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Page 2

(6) transcripts or tapes of all Regular and Special meetings of the Board between September 9, 2003 and April 1, 2004;

(7) a list of all individuals interviewed by the Board (or its staff or investigators) relating to the subject of this investigation, and all memoranda prepared to summarize these interviews;

(8) copies of all communications between the Board (or its staff or investigators) and the Village of Rosemont (or its officials) relating to the tenth casino license;

(9) all reports provided to the Board by Rothschild, Inc. relating to the tenth casino license; and

(10) any material that has been provided to the media pursuant to the state's Freedom of Information Act or on any other basis.

To help ensure that the investigation can be completed in a timely fashion, I would appreciate it if you could provide the requested documents by April 16, 2004.

As I indicated to you in our telephone conversation, Gary Rubman from my office plans to attend the public session of the Board's hearing on April 8. I think that it would be useful for Gary to establish contact with the appropriate people on the Board's staff during this visit. To that end, and consistent with what I understand from you is the staff's desire to meet with us, we will contact you to arrange the meeting.

I understand that much of the material we have requested is sensitive in nature. Please be assured that any documents provided to us will remain confidential and will be appropriately protected.

Please do not hesitate to contact me if you or the Board have any questions or would like clarification with respect to any of these requests. Thank you again for your assistance with this important matter.

Sincerely,

Eric H. Holder, Jr.

cc: Violet M. Clark
William E. Dugan
William E. Fanning
Gary L. Peterlin

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Chairman LEAHY. Thank you, Mr. Holder. We will have in the first round 10 minutes for questions.

Waterboarding has been recognized to be torture since the time of the Spanish Inquisition. The United States had prosecuted American soldiers for using this technique early in the last century. They prosecuted Japanese soldiers for using it on Americans in World War II. But the two most recent nominees to serve as Attorneys General of the United States hedged on the question of waterboarding. They would not say that if an American were waterboarded by some other government or terrorist anywhere in the world whether it would be torture and illegal. They maintained that it would depend upon the circumstances.

Do you agree with me that waterboarding is torture and illegal?

Mr. HOLDER. If you look at the history of the use of that technique used by the Khmer Rouge, used in the Inquisition, used by the Japanese and prosecuted by us as war crimes—we prosecuted our own soldiers for using it in Vietnam—I agree with you, Mr. Chairman, waterboarding is torture.

Chairman LEAHY. Do you believe that other world leaders would have the authority to authorize the torture of United States citizens if they deemed it necessary for their national security?

Mr. HOLDER. No, they would not. It would violate the international obligations that I think all civilized nations have agreed to, the Geneva Conventions.

Chairman LEAHY. Do you believe that the President of the United States has authority to exercise a Commander-in-Chief override and immunize acts of torture? I ask that because we did not get a satisfactory answer from former Attorney General Gonzales on that.

Mr. HOLDER. Mr. Chairman, no one is above the law. The President has the constitutional obligation to faithfully execute the laws of the United States. There are obligations that we have as a result of treaties that we have signed, obligations obviously in the Constitution. Where Congress has passed a law, it is the obligation of the President or Commander-in-Chief to follow those laws.

The President acts most forcefully and has his greatest power when he acts in a manner that is consistent with the congressional intent—consistent with congressional intentions and directives. If one looks at the various statutes that have been passed, it is my belief that the President does not have the power that you have indicated.

Chairman LEAHY. The reason I asked that, just yesterday here in the Washington Post you see it says, "'Detainee tortured,' says U.S. official. Trial overseer cites abusive methods against 9/11 suspect."

Now, she said the convening authority for the military commissions, a top Bush administration official in charge of deciding whether to bring Guantánamo Bay detainees to trial wouldn't not refer an important case for trial because, as she said, we tortured the detainee involved. I am glad to see we now have a nominee for Attorney General who is unequivocal on this.

Now, one substantive criticism I have heard of your position on important issues stems from a brief you signed on to before the Supreme Court decided the case of *District of Columbia* v. *Heller*. The

Supreme Court has now clarified the law in that area, and for those who may wonder, in the *Heller* case, the Court recognized the person right to bear arms guaranteed in the Second Amendment of the Constitution, expressly held for the first time that the Bill of Rights includes this right among its guarantees of individual liberty and freedom.

As I have told you, Mr. Holder, I am a gun owner, as a very large percentage of people in my State of Vermont are. At my own home in Vermont, I enjoy target shooting. And before anybody asks, our nearest neighbor is over half a mile away, and it is our son.

But do you accept and understand that the Second Amendment guarantees an individual right to bear arms?

Mr. HOLDER. I understand that. The Supreme Court has spoken. The amicus brief that I signed on to recited the history of the Justice Department's positions that had been taken prior to the *Heller* decision; also expressed the belief in that amicus brief that was signed by a number of other Justice Department officials that it was our view, looking at the Second Amendment and looking at the applicable case law, that the Second Amendment did not confer an individual right.

The reality is now that the Supreme Court has spoken, and that is now the law of the land. I respect the Supreme Court's discussion, and my actions as the Attorney General, should I be confirmed, will be guided by that Supreme Court decision.

Chairman LEAHY. Last year, for the first time in our history, this Committee reported media shield legislation, a bipartisan 15–4 vote in the Senate—in the Committee. This legislation provided a qualified privilege that allows journalists to maintain confidentiality of their sources, with reasonable exceptions, of course, to prevent terrorism and protect national security and personal safety.

If you are confirmed as Attorney General, will you work with both Republicans and Democrats on this Committee on a Federal media shield law?

Mr. HOLDER. Yes, I will, Mr. Chairman. It is my belief that a carefully crafted law to shield the press in the way that you have described is appropriate.

Now, there are concerns that I am sure will be expressed by people in the Justice Department. I want to talk to the career folks in the Department. And I also want to ensure that with the passage of any law, we will still have the capacity to protect the national security and to prosecute any leaks of intelligence information that might occur.

But with those caveats and with the ability to interact with people in the Department, I am in favor of the concept of such a law.

Chairman LEAHY. Now, you are very familiar with the Justice Department's Office of Legal Counsel. They are supposed to provide fair, impartial, independent legal advice for the executive branch. Now, the press reports and our own hearings have shown that it has been used most recently to advance extreme theories of Executive power. We have seen it in torture, warrantless wiretapping, and so on.

Will you, if you are confirmed as Attorney General, commit to undertake a comprehensive review of all OLC opinions currently in effect and to correct and withdraw any that have what appear to

be incorrect or problematic analyses? Understand, these opinions really carry a de facto weight of law throughout the executive branch.

Mr. HOLDER. Yes, I will make that pledge. It is important that these OLC opinions, which are so important, as you describe, that they truly reflect what the law is, that they reflect our values. And I want to ensure that any OLC opinions that are in effect are consistent with those two purposes.

I will do so respecting the fact that OLC respects the notion of stare decisis, that we don't change OLC opinions simply because a new administration takes over. The review that we would conduct would be a substantive one and will reflect the best opinions of probably the best lawyers in the Department as to where the law should be, what their opinion should be. It will not be a political process. It will be one based solely on our interpretation of the law.

Chairman LEAHY. Thank you.

Now, some Senators, including commentators like Karl Rove, have spoken extensively about your role in the pardon of fugitive Marc Rich at the end of President Clinton's second term. In fact, I was very critical of that pardon at the time, notwithstanding the President's constitutional right to pardon people. I probably have been critical of a number of different Presidents' use of that constitutional right.

You have also publicly said you wish you had handled the issue differently. Details of this matter have been exhaustively hashed out in several congressional hearings. The Congress has spent millions of dollars looking into this. You appeared voluntarily and repeatedly to testify on the matter, something we have not seen from officials of the current administration.

So I want to give you a chance to address the suggestion by some that, based on your actions, you are not independent, that you will not be able to say no to a President who might nominate you. I have a two-part question to you. How do you respond to those who say that the Marc Rich pardon shows you do not have the character to be an independent Attorney General? And what did you learn from that experience?

Mr. HOLDER. Well, as I indicated in my opening statement, I made mistakes, and my conduct, my actions in the Rich matter was a place where I made mistakes. I have never said anything other than that. I appeared before two congressional committees and said nothing but that. I have accepted the responsibility of making those mistakes. I have never tried to hide. I have never tried to blame anybody else. What I have always said was that given the opportunity to do it differently, I certainly would have.

I should have made sure that everybody, all the prosecutors in that case were informed of what was going on. I made assumptions that turned out not to be true. I should have not spoken to the White House and expressed an opinion without knowing all of the facts with regard to that matter.

That was and remains the most intense, most searing experience I have ever had as a lawyer. There were questions raised about me that I was not used to hearing. I have learned from that experience. I think that as perverse as this might sound, I will be a bet-

ter Attorney General, should I be confirmed, having had the Marc Rich experience.

I have learned that I have to ensure that there is full consultation with all the prosecutors who are involved in those kinds of matters. I cannot assume that that, in fact, will happen. I have to make sure that it happens.

I think we have to work to improve the pardon process within the Department of Justice. It appears that at the end of every administration there seems to be a deterioration in the process. And so I think we have to work on the Justice Department side to make sure that the rules and regulations are followed.

It was something that I think is not typical of the way in which I have conducted myself as a careful thoughtful lawyer. As I said, it is something where I made mistakes, and I learned from those mistakes.

Chairman LEAHY. And, of course, the pardon was issued by President Clinton, not by you. What I am going to do—and I have talked this over with Senator Specter. Obviously, Senator Specter is next. I will then recognize Senators by seniority back and forth in the usual way if they are here. If a Senator misses their turn, then they would be put in the next time they appear.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Holder, pursuing the issue of the Rich pardon, you are a high-level professional, outstanding record, no doubt about your professional judgment, and the comment that it is a mistake is one way of approaching it. But when you take a look at the hard facts, it is a little hard for me to see how you came to the conclusion you did, even conceding the fact that none of us is perfect.

In the Rich matter, he was charged with trading with the enemy. He reached a deal with the Khomeini regime during the Iranian hostage crisis to purchase Iranian oil in exchange for arms, automatic rifles, and hand-held rockets. He was involved in trading with Soviet and Iranian oil to the apartheid government, reprehensible apartheid government, in exchange for Namibian uranium, which was sold back to the Soviet Union; reportedly involved with Castro's efforts to escalate its nuclear war program in 1991, and with respect to a uranium deposit in western Cuba.

He had contributed very large sums to the Democratic Party, $867,000; Clinton Library, $450,000; $63,000-plus to others. And in this context, the House Committee found that you recommended Jack Quinn, had told Jack Quinn, who is former White House Counsel, "You do not have to provide a copy of the petition," and that he could go directly to the White House, which circumvented the normal pardon procedures. And you had the pardon attorneys opposed to it. Margaret Love said no.

The House Committee came to these conclusions: The preponderance of the evidence indicates that Eric Holder was deliberately assisting Quinn with the Rich petition and deliberately got the rest of the Justice Department out of the process to help Quinn obtain the pardon for Marc Rich. This conclusion is supported by an e-mail sent by Quinn to Kitty Behan and others 3 days before Quinn's meeting with Holder on November 21st. And this is the confirmation e-mail. Subject: Eric. "Spoke to him last evening. He

says go straight to the White House. Also says timing is good. And"—s-h-d—"should get in soon. Will elaborate when we speak."

Now, I have had some experience with fugitives, and when you deal with a fugitive, it seems to me you focus on an extradition warrant. Given the background of this man, it is hard to brush it off, it seems to me, as a mistake. The guy had a reprehensible record. The guy was a fugitive. The indicators are, a House finding, that you were very heavily involved, and yet you testified you were only casually involved. A question of candor on that comment. And then you had a President who obviously wanted to grant a pardon.

Now, if this were some underling or somebody who wasn't too bright, wasn't too experienced, I would slough it off as a mistake. But given your experience and your background and your competency and the surrounding circumstance of President Clinton looking for a cover, how do you explain it beyond simply it is a mistake?

Mr. HOLDER. Well, I don't mean to minimize what I did by calling it a mistake or mistakes. And, in fact, I take what I did seriously and have expressed regret for what I did consistently.

I would not take as gospel everything that is contained in that House report, and we can certainly talk about the various things that they have said that I dispute.

Senator SPECTER. Well, what do you disagree with?

Mr. HOLDER. Well, for instance, this notion that I recommended Mr. Quinn to the gentleman I was sitting next to at a dinner. I mean, I think, first——

Senator SPECTER. What did happen?

Mr. HOLDER. Well, first, as a matter of fundamental fairness, I voluntarily appeared before that Committee and was never asked that question, and yet that appeared in the report. If you look at even the material that is contained in that report, you will see that after I supposedly made this recommendation to a person who I did not know—and according to the report, I said, "You go hire a lawyer. That person comes to me, and we will work it out."

Now, I as Deputy Attorney General, according to this report, would have said to a perfect stranger, "You come to me with a lawyer and we will work it out," I don't know what——

Senator SPECTER. What happened as to Quinn? Okay, you weren't asked about it, but did you recommend Quinn? What are the facts aside from what the House says?

Mr. HOLDER. I did not recommend Mr. Quinn. And, again, if you look at the report, you will see that the people who were trying to determine who a lawyer would be for Mr. Rich spent 6 months, interviewed a whole host of people after this dinner that I attended before they decided on the representation. They interviewed a number of people in addition to Mr. Quinn before they made that decision.

Senator SPECTER. Well, you refer to a dinner. There has been a report that at that dinner you pointed to Quinn as a person to represent Rich. Is that not true?

Mr. HOLDER. That is not correct.

Senator SPECTER. Well, what is correct?

Mr. HOLDER. I had a conversation with a gentleman, and he asked about what happens if somebody has a problem with the

Justice Department. And I think, as best I can remember, all I did was explain to him how the process worked, that there were levels of review, levels of appellate review, for lack of a better term, review within the Department. If somebody has an issue with somebody in the field, there are measures that you can take with a person in the field and that the Justice Department in Washington, D.C., has ultimate responsibility for the conduct of the Justice Department, including those parts of the Department that are in the field.

Senator SPECTER. Are you saying that Quinn's name never came up?

Mr. HOLDER. No, it did not. And if you look at the minority component of the report, there is some question as to whether or not the gentleman whose name I now remember, Mr. Kecks, even said what the majority says that he did say.

Senator SPECTER. Is it true that you told Quinn after he was in the case that he did not have to provide you with a copy of the petition?

Mr. HOLDER. No. I think if you are referring to Mr. Quinn's e-mail that says I told him to go straight to the White House, that did not occur.

Senator SPECTER. No, there is a separate point, a separate point that Quinn testified to, that you said in response to his offer to provide a copy of the Rich pardon petition, that you said you didn't have to. Those are the issues as to whether anybody else in the Department would have known about it.

Mr. HOLDER. I am sorry. Now I understand what you—yes. At a meeting that we had, I believe in November, Mr. Quinn indicated that that is what I told him after we had had a meeting on something else. I don't remember that conversation, but I have never disputed that I might have said that to Mr. Quinn, because I worked under the assumption—that was true—that pardon applications that were filed in the White House were routinely sent to the Justice Department. The White House sent matters for pardons, referrals for pardons to the Justice Department, because they are supposed to originate with the pardon attorney at the Justice Department.

Senator SPECTER. How do you explain this e-mail? And I acknowledge it is not your e-mail, but it is a contemporaneous e-mail which Quinn sent saying—corroborating at least as far as he is concerned, your statement, go directly to the White House, circumvent the Department of Justice. How do you explain that?

Mr. HOLDER. It is difficult for me to explain that. I never told Mr. Quinn to go straight to the White House. That would have been in some ways illogical given the fact that things that went to the White House would come to the Justice Department. In any case, I don't know what Mr. Quinn—where he got that from. I don't know if in a conversation I had with him he misinterpreted something that I said. But I never told him go straight to the White House with that pardon application.

Senator SPECTER. Were you aware, Mr. Holder, of the atrocious record that Rich had in dealing with Khomeini and the Iranians and an apartheid nation and arms in exchange for oil and rockets? Were you aware of this kind of a record this man had?

Mr. HOLDER. No, I was not, and that was one of the mistakes that I made. I did not really acquaint myself with his record. I knew that the matter involved—it was a tax fraud case. It was a substantial tax fraud case. I knew that he was a fugitive. But I did not know a lot of the underlying facts that you have described. And as I said, that was a mistake.

Senator SPECTER. One last question on this round.

Chairman LEAHY. I will give you extra time for that, but I am going to try to keep close to the time in this. Go ahead.

Senator SPECTER. One last question. When the pardon Attorney, Margaret Love, said don't do it, did you ask her why she said that—which would have been an avenue to find out what an atrocious record this man had?

Mr. HOLDER. Senator, with all due respect, Margaret Love was not the pardon attorney at the time that this matter was being considered, and the pardon attorney who was present at the time, Mr. Adams, never made—expressed an opinion about this, again, because he didn't have the material in front of him.

Senator SPECTER I will come back to this.

Chairman LEAHY. Thank you.

Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Mr. Holder, you have been selected by the President-elect for a very important position, and for that you must be very grateful to him personally. But as we know, once you are confirmed, you will not be his lawyer but the American people's lawyer. Your role among Cabinet members is unique. Your first duty will be to the Constitution, to the rule of law, and not to the President.

In the minds of many people, Attorney General Gonzales stepped over that line and was perceived too much as the President's lawyer and not the people's. One of your top priorities will be to restore the integrity of the Justice Department. Because of the U.S. Attorneys' firing and other scandals, the American people came to believe that the Department's activities from law enforcement to hiring were driven too much by politics.

How can you assure the American people that you are the right person to restore the independence of the Justice Department, especially in light of the questions raised by your critics that you were not sufficiently independence of the White House in the Clinton administration?

Mr. HOLDER. Senator, everything that I owe as a professional, I owe to the Department of Justice. It is an institution that I love. I came into the Department as a bright young lawyer, fresh young lawyer out of Columbia University into the Honors Program. I had the pleasure of working with the best lawyers, I think, in the world. I learned how to be a lawyer at the Justice Department.

I understand that the Attorney General is different from every other Cabinet officer. Though I am a part of the President's team, I am not a part of the President's team in the way that any other Cabinet officer is. I have a special and unique responsibility. There has to be a distance between me and the President. The President-elect said when he nominated me that he recognized that, that the Attorney General was different from other Cabinet officers.

I think if you look at my record, if you look at my career and the decisions that I have made, I have shown that I have the ability and, frankly, the guts to be independent of people who have put me in positions. President-elect Obama—President Obama is not, I expect, going to ask me to do anything that would compromise what I should be doing as Attorney General, but I want to assure you and the American people that I will be an independent Attorney General. I will be the people's lawyer.

Senator KOHL. In light of what you just said, are you prepared, if some issue comes up that is a matter of basic constitutional principles that you differ with the President on, that you will resign your job?

Mr. HOLDER. I do not think that that is a situation that I will face. We have a President-elect who is a brilliant constitutional lawyer, a person with a great moral compass, a person who I think will take criticism and advice. And I would think that if we had a constitutional problem as significant as the one that you are describing in your hypothetical, that we would somehow work it through.

If, however, there were an issue that I thought were that significant that would compromise my ability to serve as Attorney General in the way that I have described that, as the people's lawyer, I would not hesitate to resign.

Senator KOHL. Mr. Holder, for decades this country has been looked up to around the world for its unwavering commitment to human rights and the rule of law. There is a growing consensus that the detention center at Guantánamo Bay has tarnished that image. While the past two Attorneys General, the current Secretaries of Defense and State, and the President himself have publicly said that they would like to close Guantánamo, no steps as yet have been taken.

Many of us were encouraged by press reports which suggest that a change will occur in this next administration. Shortly after taking office, the President-elect will reportedly issue an order to close the prison, but it does remain unclear how this will be done and how long it will take.

Can you give us some indication about how you feel, what your priorities will be, how long you believe it will take, and what we will do with those detainees?

Mr. HOLDER. Yes, Senator. Guantánamo will be closed. The President-elect during the campaign made that promise. Steps are being taken as we speak to look at the manner in which that can occur.

I will tell you, this will not be an easy task. The physical closing of the facility is something that can be done relatively quickly. The question is what will we do with the people who are there now, roughly, I guess, 250 or so people.

To responsibly close the facility, I think that we have to understand who these people are, make an independent judgment of who they are based on an examination of the records that exist down there, so that we can treat them in an appropriate way. I think substantial numbers of those people can be sent to other countries safely. Other people can be tried in a jurisdiction and put in jail. And there are possibly going to be other people who we are not

going to be able to try for a variety of reasons, but who nevertheless are dangerous to this country. And we are going to have to try to figure out what we do with them.

But I think that review that we will have to go through to figure out who these people are and in what categories they fit will take an extended period of time. And I think that is the thing that will prevent us from closing Guantánamo as quickly as I think we would like. But I want to assure the American people that Guantánamo will be closed.

Senator KOHL. Mr. Holder, while the President and the Vice President have called them "enhanced interrogation techniques" or "special measures," as the facts have leaked out, we now know that the White House authorized the abuse of prisoners in our custody. The administration admitted to using waterboarding, and press reports have suggested that sleep deprivation, extreme temperatures, and other abusive techniques have also been authorized.

This administration, of course, has taken a different view with respect to their legality. They have maintained that they were advised by the Justice Department that all of the approved techniques were legal. They have had the backing of three Attorneys General. According to press reports, former Deputy Attorney General James Comey reportedly said that the administration would be "ashamed" when the world eventually learned of these legal opinions.

Will you put an end to the use of abusive interrogation techniques? What is your description of what they are? What can we hope to expect from you?

Mr. HOLDER. Our Justice Department will adhere to the values that have made this Nation great. It is the intention of the President-elect, it is my intention, to make sure that we have interrogation techniques that are consistent with who we are as Americans so that we don't do things that will serve as a recruiting tool for people who are our enemies.

The decisions that were made by the prior administration were difficult ones. It is an easy thing in some ways to look back and in hindsight be critical of the decisions that they made. And yet having said that, the President-elect and I are, I think, both worried, disturbed by what we have seen, what we have heard.

The pledge that he has made and that I will make is that we will make sure that the interrogation techniques that are sanctioned by the Justice Department are consistent with our treaty obligations, the Geneva treaty obligations that we have, and will be effective at the same time.

One of the concerns that I have, as I have talked to generals and admirals who are responsible for interrogation techniques is what they have said is that some of these enhanced techniques do not necessarily produce good intelligence. And we want to make sure that whatever it is that we do produces intelligence that will be useful to us and help us in our fight against those who would do us harm.

Senator KOHL. Thank you. One last question, and this relates to your ability to exercise your responsibilities independently of what the President may or may not like.

He is reported, as you know, to have considerable skills as a basketball player, and you have indicated to me, when we met in my office, that you also are a person of considerable skill. In the event, Mr. Holder, that he invites you to the gym for a little one-on-one, will you promise us and the American people that you will do everything in your power to defeat him as badly as you can?

[Laughter.]

Chairman LEAHY. My vote depends on your answer.

Mr. HOLDER. Senator Kohl, he is 10 years younger than me.

[Laughter.]

Mr. HOLDER. He plays a lot more frequently than I do. Having said that, I got New York City game.

[Laughter.]

Mr. HOLDER. I come from the city that produced Connie Hawkins, Kareem Adbul Jabar, Nate "Tiny" Archibald. I learned how to play ball in P.S. 127 in Queens. If you give me a little time and a little space to get back in shape, I think I could hang with him. I don't think I am ever going to be in a position to beat him, nor do I think that would be a wise thing to do.

[Laughter.]

Senator KOHL. Well said, sir.

Mr. HOLDER. Thank you.

Chairman LEAHY. I want you to know, Mr. Holder, I have been here 34 years in these hearings. That is the first time that question has ever been asked.

[Laughter.]

Chairman LEAHY. What we are going to do, I was going to break for 5 minutes at this point. Senator Kyl has, as we all do, different things he is supposed to be at, so to accommodate him, what we will do is we will do his round, and then we are going to break for about 5 minutes, then come back.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. If that is all right with you, Mr. Holder.

Mr. HOLDER. Sure, that is fine.

Senator KYL. And, by the way, I think Herb may be just looking for some new talent for the Bucks.

[Laughter.]

Senator KYL. Be careful there.

It is good to visit again, and I appreciated our discussion in which we discussed a wide range of issues. And as I mentioned at that meeting, one of the first things I would like to do is to just have you state for the record your views and commitments you made regarding a whole series of issues that we discussed.

The first one relates to DNA. As we discussed last December, the Justice Department published regulations that require Federal agencies to collect DNA samples from individuals who are arrested under Federal authority and from illegal immigrants who are being deported. The regulations require these agencies to collect DNA samples at the same time that they take fingerprints and mug shots. The Justice Department is charged with implementing and administering the new regulations. It is the Department's job to ensure that the DNA samples are collected and analyzed.

Mr. Holder, if you are confirmed as Attorney General, will you see to it that the new DNA regulations are enforced and that DNA samples are collected and analyzed as required under the new rules? And will you seek sufficient resources to implement the regulations?

Mr. HOLDER. Yes, I will, Senator. The collection of that evidence is, I think, critical for crime solving. The use of DNA evidence is often seen as a way in which people who are charged with crimes are absolved. And that certainly is a beneficial effect, but I think too often people forget that the collection of this evidence is a very important crime-fighting tool. And so I will support those regulations.

I think as you indicated, it is entirely possible that one of the things that we are going to need are additional resources to make sure that we have the capacity, the ability to do that job in the way that Congress intended.

Senator KYL. And at least I will do my best to help to make sure Congress supports the resource requirements.

Next, capital habeas. As you know, in 2005 Congress passed an amendment that will implement the opt-in system for a faster review of State capital cases in Federal courts. The amendment requires the U.S. Attorney General to review whether States are providing counsel to capital defendants with a review of the Attorney General's decision in the D.C. circuit court. The State of Arizona will probably be interested in submitting such a petition for review.

If you are confirmed as Attorney General, will you review the State of Arizona's application in a timely manner and make a timely determination of whether Arizona is providing counsel to capital defendants and post-conviction relief?

Mr. HOLDER. I will take my obligation seriously under those regulations and look at the evidence that the States provide with me that they have complied with the regulations. And to the extent the States do, I will give the relief that is dictated by those regulations.

I want to make sure that, in fact, the resources in capital cases that the regulations call for are provided to defendants. But for States that actually do meet those requirements, I will check the necessary boxes.

Senator KYL. And what you stated I think is absolutely true. We are just interested that that does not drag on beyond the time that a normal review process would require.

Next, we talked some about FISA. One of the amendments to FISA deals with the so-called lone wolf terrorists. These are individuals who are believed to be involved in international terrorism, but who we at least do not have any evidence that they are actually taking orders from a particular organization. And the provision was enacted specifically because of the FBI's previous inability to obtain a warrant to monitor Zacarias Moussaoui, the co-conspirator in the 9/11 plot who was arrested before the attacks, but who could not be searched pursuant to FISA because, despite his likely involvement in preparations for terrorism, agents could not link him to al Qaeda or any other group.

The lone wolf provision needs to be reauthorized by the end of this year. Will you support reauthorization of FISA's lone wolf surveillance authority?

Mr. HOLDER. I expect that I will. There are three provisions that are up for reauthorization. What I would like to do is examine how those provisions have worked, talk to people, investigators and lawyers, and get a sense of what it is they think has worked well with regard to those provisions, what perhaps needs to be changed.

At least a couple of those provisions were contained in a proposal that President Clinton made back in the late 1990s, and I went before a couple of congressional committees seeking their institution, and one of them was one wolf, and the other had to do with roving surveillance. And so I would expect that with regard to those I would probably be supportive of them.

Senator KYL. And, in fact, let me just discuss this because we discussed all three, and these are the other two. One is the reauthorization of the PATRIOT Act's multi-point wiretap authority, and the other is reauthorization of Section 15 of the PATRIOT Act, which, when we discussed this, I neglected to note, although you are probably aware, that unlike the typical administrative subpoena, this requires a judicial approval before it is granted.

First, with respect to the multi-point wiretap authority, would you support reauthorization of that?

Mr. HOLDER. Again, I would like to have some interaction with the people who are responsible for the use of that tool, which is a very useful tool, and make sure they are satisfied with the way in which it is presently constructed. But I would expect that I would be able to support that.

Senator KYL. And with regard to Section 215 orders as well?

Mr. HOLDER. That is one that I think has certainly generated more controversy, I believe, than the other two, and I think that the examination—the questions that I need to ask people in the field who have been using that, I would want to know as much as I possibly can. But as I said, the tools that we have been given by Congress in FISA are important ones, and so I would look at all three of these and make the determination as to whether or not I will be able to support them. But I would expect that I would.

Senator KYL. Let's see here. We also discussed the Operation Streamline—I tell you what. Before I ask that, we discussed the warrantless surveillance. Since that is somewhat related to this, you indicated that comments that you had made in a speech on June 13, 2008, were directed to the status of the law pre-FISA modifications from the legislative branch. When Congress later—I believe it was the next month—modified the FISA law, there was an explicit type of search that was provided allowing warrantless monitoring of suspected communications of international terrorists predicated on the principle that the Fourth Amendment gives greater leeway to intelligence investigations of foreign threats.

Do you agree with that general principle? But, more importantly in the context of our conversation, do you believe the new law is constitutional? And if confirmed, will you support its enforcement?

Mr. HOLDER. Yes, I believe that the law is constitutional. One of the things that I think is in some ways regrettable is that the program—that I have not been read into and I don't know all the dimensions of it. But as I understand it, that program is a very useful tool, is an essential tool for us in fighting terrorism.

I think that what is unfortunate is that we could have had that tool congressionally sanctioned at a much earlier stage. I think that as we saw in the steel seizure concurrence of Justice Jackson, the President has his greatest power when he acts consistent with congressional directives. And I think that in this instance, that is instructive. Had the administration come to Congress and asked for that enhanced authority many years before, I have no doubt that Congress would have granted him that tool. Having done that, though, and having had Congress say that this is an appropriate thing to do, I think, as I said, that is a very useful tool and one that we will make great use of.

Senator KYL. We discussed in the context of illegal immigration an operation called "Operation Streamline" by the Border Patrol, and there is a Department of Justice aspect to this. Essentially, that has been utilized in two Border Patrol sectors. A third one is now underway. I specifically discussed the Yuma Border Sector, for example. This is a situation where repeat illegal border crossers are put in jail for 30 days. Sometimes it can be more if they have committed the crime over and over and over. And that has resulted in an extraordinary disincentive for them to try to cross illegally.

In the Yuma Border Sector, for example, there has been a 93-percent reduction in border apprehensions after just 2 years, and much of that at least Border Patrol attributes to this policy of jailing the people for 30 days.

However, as with so many of these other things, it requires resources, and in that regard, a lot of the resources fall on the Department of Justice side. I hope I have gotten it to you already, but I promised I would get you a letter from Judge John Roll, who is the chief judge for the Arizona District, in which he outlines some of the requirements for additional judges, magistrates, U.S. marshals, prosecutors, defense attorneys, as well as the hearing space and detention facilities.

And if you would like to address all of those things individually, fine, but just as a general proposition, if you are confirmed, will you support the appointment of the additional personnel and the resources for the items that I mentioned to try to continue to expand Operation Streamline for as long as we may need that along our Southern border in order to help deter illegal immigration?

Mr. HOLDER. Yes, Senator, that was—I was not aware of that operation until you brought it to my attention during our meeting. I think it is actually a pretty interesting concept, and I think one that ought to be explored, and I would want to work with you all to see if it is something that can be expanded.

I think one component of it, at least as I understand it—you can correct me if I am wrong—was that for an initial—the first time a person comes across, I don't think they are jailed. I think the person is warned—and then is put in jail the second time?

Senator KYL. It is after the first crossing. In other words, it is for repeat offenders.

Mr. HOLDER. Repeat offenders. And I think that is something that is worth looking at.

One of the things that has always worried me is that a disproportionate share of what is a national problem is borne by the States along our Southern border. Resources that need to be di-

rected to what is, in essence, a national problem are too often not sent to the place where it is really needed—the State of Arizona and the other States along that border.

So my commitment would be to try to work with you, as I think we have in the past, to try to determine what resources are necessary, what programs would be good to try to effect a reduction in the number of illegal immigrants who come across those borders.

Senator KYL. I appreciate that. I just introduced your good friend and colleague, Governor Janet Napolitano from Arizona, in the Department of Homeland Security hearing, and she and I have discussed this as well. So I look forward to the opportunity of working with both of you on trying to provide some additional deterrence to illegal border crossing.

Chairman LEAHY. Thank you. I might note my friend from Arizona has raised some good points. Some of them we will probably have hearings on, especially on renewal of legislation. I will work with Senator Kyl and Senators on both sides of the aisle on that, but especially on these immigration matters, Senators who are from border States. I see Senator Cornyn here and Senator Kyl, and Senator Feinstein was here a few minutes ago. I rely heavily on their own personal experience.

Before we break, the Committee has received letters in support for Mr. Holder's nomination from numerous major national law enforcement and criminal justice organizations. And I am going to, without objection, put these letters into the record, including letters from the—and these are letters in support, Mr. Holder, of your confirmation, letters from the National Association of Police Organizations, the Fraternal Order of Police, the Federal Law Enforcement Officers Association, the National Association of Assistant U.S. Attorneys, the National Sheriffs Association, the American Probation and Parole Association, the International Association of Chiefs of Police, the International Union of Police Associations, the Major Cities Chiefs Association, the National Association of Blacks in Criminal Justice, the National Association of Drug Court Professionals, the National Association of Attorneys General, the National Black Prosecutors Association, the National Crime Prevention Council, the National Criminal Justice Association, the National District Attorneys Association—I noticed that especially as I was once Vice President of the National District Attorneys Association—the National Law Enforcement Officers Memorial Fund, the National Narcotic Officers Associations Coalition, the National Organization of Black Law Enforcement Executives, the National Organization of Police Officers, the National Troopers Coalition, the Police Executive Research Forum. I think one gets the drift of these.

They will be placed in the record, and with that we will stand in a short recess.

Mr. HOLDER. Thank you, Mr. Chairman.

[Whereupon, at 11:16 a.m. the hearing was recessed.]

AFTER RECESS [11:35 A.M.]

Chairman LEAHY. I am always hesitant to ask photographers to back off, but I am going to have to ask everybody to give us a little break here.

You should also understand what is going on here. We do not have Senator Kennedy with us this morning. He is in Cabinet nominations before the Committee he chairs. I should note that he is not only a former Chairman, but he served on the Judiciary Committee longer than any Senator in the Nation's history. This is his 46th year of service on this Committee.

Now, we are also missing Senator Biden, who made his valedictory address to the Senate this morning. We told Senator Biden, another former Chairman of this Committee, that we did not mind him taking a drop down in position to become Vice President. But we do miss him.

And the next person we are going to hear from is Senator Feinstein, the senior Senator from California. She is also the new Chair of the Senate Select Committee on Intelligence, and she is a very good friend of all of ours. Senator Feinstein the floor is yours.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. And welcome, Mr. Holder.

Mr. HOLDER. Good morning.

Senator FEINSTEIN. I hope shortly we will be calling you "Attorney General Holder." I would like to begin with something internal to the Department. I want to ask you a quick question on Guantánamo. If it is not something you can answer——

Chairman LEAHY. If the Senator could hold just a moment and see if we can get rid of that feedback, and we will start the clock again.

Senator FEINSTEIN. And about the use of contractors in carrying out interrogation techniques.

But let me begin with this: The Inspector General of the Department of Justice has over the past year put out four different reports which really revealed substantial politicization of the Department of Justice. The latest one just came out on January 13th. It was an investigation of allegations of politicized hiring and other improper personnel actions in the Civil Rights Division.

It points out that a Bradley Schlozman, a political appointee in the Civil Rights Division, had been screening applicants for career positions based on their political beliefs and had been removing "disloyal" lawyers from sections in the Department to make way for "real Americans."

The report also found that Schlozman made false statements in sworn testimony to this Committee, namely, in direct response to questions the Chairman put to him, a question that I put to him, and a question that Senator Schumer put to him.

My question is: Have you read this report? And if so, what actions can you take to follow up on it?

Mr. HOLDER. I have not had a chance to read the report, Senator, and yet I have read the news accounts of it. What is contained in the report is very disturbing. The notion that the Justice Department would ever take into account a person's political affiliation or political beliefs in making hiring decisions is antithetical to everything that the Department stands for and everything that I am familiar with. I served very proudly in the Justice Department under Republican Attorneys General, Democratic Attorneys General, and there was never a thought given to what your party affiliation was, what your political beliefs were in hiring, in promotion decisions.

What we have seen in that report I think is aberrant, but it is also, I think, one of the major tasks the next Attorney General is going to have to do. You have to reverse that.

Senator FEINSTEIN. Well, this documents clear lying to this Committee, and I believe that that is a violation of law. And I would hope that the Justice Department would take action, however you do it. I don't think we can do nothing to someone representing the Government who comes before us and lies.

Mr. HOLDER. Yes, I understand that prosecutors in the U.S. Attorney's Office in D.C.—again, just based on the press reports—actually reviewed the report and have made a prosecutive determination. If I am fortunate enough to be confirmed as Attorney General, I will indicate to you that I will review that determination. I don't know all the facts of the case, but given the findings in the Inspector General's report that are consistent with what you have said, I want to know why the determination was made not to pursue charges, criminal charges.

Senator FEINSTEIN. Thank you very much.

I listened carefully to your answers to Senator Kohl's question about Guantánamo. I also read the speech that you made in the middle of 2008 where you very clearly stated that it should be closed, and here you said it will be closed. Let me ask these questions about that.

Do you believe military commissions are sufficient to prosecute detainees who have been declared enemy combatants and pose a danger to the national security of the United States?

Mr. HOLDER. I don't think that the military commissions that we now have in place have all of the due process requirements that I would like to see contained in them. We have to come up with a system that will deal with those three categories of people that I described that I believe are contained at Guantánamo: those who I think we can safely repatriate to other countries, those who we can try, and then deal with those who perhaps are too dangerous, but nevertheless cannot be tried.

In trying to deal with those detainees who we will try, I think we have to examine what tools will be available to us, what forums will be available to us—Article III courts, military courts. The possibility exists, I suppose, that we could use military commissions, but they would have to be, I think, substantially revamped to provide the due process rights that I think are consistent with who we are as Americans.

Senator FEINSTEIN. Well, let me just discuss this with you. Assuming Guantánamo is closed—and one of the big criticisms of Guantánamo has been that it is a hypocritical situation. One set of laws applies to people at Guantánamo and another set of laws in the United States. So assuming that the 80 or so—well, however many detainees need to be relocated can be relocated, we have checked with military and Federal super-max and max prisons and believe there is space for them. And they come to the United States. You would assume they would fall under regular Federal law. Do you agree with that?

Mr. HOLDER. I think we want to leave our options open. I don't know exactly what system we would put in place or what system we would utilize in order to try those people. This is something

that, even as we speak, we are trying to work through as an administration in anticipation of President-elect Obama becoming President Obama.

But the one thing I can assure you and the American people—and, frankly, the world—is that whatever system we use, it will be consistent with our values; it will be a system that has due process guarantees; it will be seen as fair.

Senator FEINSTEIN. Some of us—Senator Whitehouse, myself, other Senators—have just introduced a bill that is in the Intelligence Committee which would close Guantánamo within 12 months, which would essentially provide for a single standard for interrogation across the United States Government, namely, the Army Field Manual, and prohibit the use of contractors doing interrogation.

Let me ask you about the Army Field Manual. As you know, it has been revised by the military. It is a comprehensive, thoughtful manual. It has more than a dozen different techniques. It is supported across the United States military and by about 30 retired generals as being an adequate standard for the United States to use.

Do you believe that the Army Field Manual should comprise the standard for interrogation across the United States Government?

Mr. HOLDER. Well, I have been impressed in my interactions with those generals and admirals, as they have discussed what they are allowed to do under the terms of the Army Field Manual and how they don't think that the inability to do these enhanced interrogation techniques has in any way had a negative impact on, they think, their ability to get good intelligence.

So my view is that I think starting with what we have in the Army Field Manual, I think that is a good place for us to start. I personally think that the techniques that are outlined there are consistent with what we are supposed to do under Common Article III and the other parts of the Geneva Convention. And I am not convinced at all that if we restrict ourselves to the Army Field Manual that we will in any way be less effective in the interrogation that we do of people who have sworn to do us harm.

This is something that the President-elect is considering now and is giving all components an opportunity to express their views, not only the military but those on the intelligence side. If there is a contrary view, we want to give them an opportunity to make their case. But it is my view, based on what I have had and the opportunity to review and what I have been exposed to, that I think the Army Field Manual is adequate.

Senator FEINSTEIN. Currently, all interrogation is done by contractors. CIA interrogation is done by contractors. And I wrote a letter to General Mukasey in the early part of last year challenging this, because all inherently governmental activities under the law should be carried out by Government employees. He wrote back saying that these contractors were not covered under that section of the law.

I have a real issue with this. Have you had an opportunity to look at that? And can you comment?

Mr. HOLDER. I am not up to speed on that, but let me say this: The concern that you express I think is a very legitimate one. I

think across the board, and especially when it comes to law enforcement functions interpreted pretty broadly, you want to have employees of our Government who are conducting and doing law enforcement activities. This is not something that you want to farm out, that you want to give to people who are not sworn. It does not mean that these people cannot be trained and everything, but I think that when it comes to core law enforcement responsibilities—and interrogation, I would think, would be one of those—I would like to, to the extent that it is possible, restrict that.

Senator FEINSTEIN. There is——

Chairman LEAHY. Thank you.

Senator FEINSTEIN. Oh, my time is up. So short. Thank you, Mr. Holder.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feinstein. And I am going to recognize next the senior Senator from Utah, Senator Hatch, who is a long-time friend. We have served here for decades, and he is also a former Chairman of the Committee, been a consistent supporter of the work of the Department of Justice. Senator Hatch, it is yours.

Senator HATCH. Well, thank you, Mr. Chairman. Congratulations, Mr. Holder, on this appointment, and welcome back to the Judiciary Committee. This is the fourth time that you have come to the Senate for confirmation, so far without a single negative vote. We will just have to see if that continues, that trend.

Now, candidly, there are some real issues and concerns, as you know. We have chatted about them, and you are chatting about them here. And I say that as someone who has said that I am inclined to support your nomination.

Now, in a speech last year, you stated, "I never thought I would see that a President would act in direct defiance of Federal law by authorizing warrantless NSA surveillance of American citizens. This disrespect for the law is not only wrong, it is destructive in our struggle against terrorism."

Now, do you believe that the President, whoever is President of the United States, has inherent authority under Article II of the Constitution to engage in warrantless foreign intelligence surveillance? Or in your opinion, does FISA trump Article II?

Mr. HOLDER. Senator, no one is above the law. The President has the constitutional obligation to make sure that the laws are faithfully executed. In rare instances where Congress passes a law that is obviously unconstitutional—if, for instance, Congress were to pass a law that the Secretary of Defense should be the Commander-in-Chief or that women would not have the right to vote—I think that the President in that instance would have the ability to act contrary to a congressional dictate.

But the President has his power at its maximum, at its zenith, when he acts consistent with congressional direction. And when it comes to the FISA statute, there is an exclusivity provision in the FISA Act that essentially says, as Congress has expressed, this is the exclusive way in which that kind of surveillance should occur.

My speech was taking the administration to task for not following the dictates of FISA. As I indicated, I think, in response to a previous question, I think that had the administration worked

with Congress, as we are pledging to do, that tool, that very valuable tool—very valuable tool—could have been in the arsenal of the administration without any question about its legality.

Senator HATCH. How do you reconcile your analysis of the Terrorist Surveillance Program with the longstanding precedents of *Truong* and *Keith*, the Foreign Intelligence Surveillance Court reviews decision in the *In Re: Sealed* case, and the recent Second Circuit decision in the *Wadi al Haj* case?

Mr. HOLDER. Senator, I can't hear you too well.

Senator HATCH. The recent Second Circuit decision in the *Wadi al Haj* case, I think it is.

Mr. HOLDER. I am sorry, Senator. I didn't hear the whole question.

Senator HATCH. Well, I asked you how do you reconcile—maybe I can pull this thing close. How do reconcile your analysis of the TSP, Terrorist Surveillance Program, with these longstanding precedents from *Truong*, *Keith*, *In re: Sealed*, and the *Wadi al Haj* case?

Mr. HOLDER. Well, Senator, it is my belief that the statute lays out the means by which the President has the power, the executive branch has the power to do that type of surveillance. It is, as I said, a very valuable tool. It is one that sets out very explicitly the means by which this can be done.

It seems to me that it is incumbent upon anybody in the executive branch who is engaged in that kind of surveillance to be mindful of the dictates of FISA and then to perform in that way.

Senator HATCH. Well, let me just ask this question: As a former Deputy Attorney General during the Clinton administration, were you part of the decisionmaking process at DOJ that authorized the warrantless search of the residence of the spy Aldrich Ames, a U.S. citizen, in 1993? Do you believe that search at that time was illegal?

Mr. HOLDER. Senator, I don't know all the circumstances under which that occurred. I was not at Main Justice in 1993. I was the U.S. Attorney in D.C., so I did not participate in 1993—if that is when it occurred, I didn't participate in that decision. And I am not familiar with all that might have happened. I don't know whether there were exigent circumstances. I don't know exactly what happened in connection with that.

Senator HATCH. Okay. But back to our prior point, is the President's inherent authority under the Constitution, can that be limited by a statute?

Mr. HOLDER. The President's inherent authority.

Senator HATCH. Right.

Mr. HOLDER. Well, it is——

Senator HATCH. I mean, you are relying on the statute as though that is binding on Article II of the Constitution.

Mr. HOLDER. Well, the President obviously has powers under the Constitution that cannot be infringed by the legislative branch. That is what I was saying earlier. There are powers that the President has and that have been delegated to him, or that he has, and in the absence—Congress does not have the ability to say with regard to those powers you cannot exercise them.

There is always a tension in trying to decide where that balance is struck, and I think we see the best result when we see Congress interacting with the President, the executive branch interacting with the legislative branch, and coming up with solutions——

Senator HATCH. All right. But that still does not negate the fact that the President may have inherent powers under Article II that even a statute cannot bury.

Mr. HOLDER. Well, sure. The——

Senator HATCH. Do you agree with that statement?

Mr. HOLDER. Yes. There are certain things that the President has the constitutional right, authority to do that the legislative branch cannot impinge upon.

Senator HATCH. Okay. Now, the FISA Amendments Act of 2008 included important civil liability protections for those providers who assisted the Government with the Terrorist Surveillance Program in the aftermath of the September 11th terrorist attacks.

Now, according to this Act, in order for the liability protections to apply, the Attorney General must first file a certification with the court.

Now, last fall, Attorney General Mukasey filed the appropriate certifications with the court. You are aware of that?

Mr. HOLDER. Yes.

Senator HATCH. Okay. Now, do you believe that those private partners who assisted the Government should be given civil liability protection?

Mr. HOLDER. Well, that is now contained in a statute. The duty of the Justice Department is to defend statutes that have been passed by Congress, unless there is some very compelling reason not to. President-elect Obama was against the immunity that was granted to those ISPs, Internet service providers, but nevertheless voted for the statute that contained that immunity. It would seem to me that unless there are compelling reasons, even given the opposition, unless there are compelling reasons, I would not—I don't think that we would reverse course.

Senator HATCH. Okay. So if confirmed as Attorney General, you will honor the certifications by Attorney General Mukasey.

Mr. HOLDER. Yes, I believe that we would. Obviously, we have to look at if there are changed circumstances, if there is some basis to change that determination. But in the absence of that, I don't think we would.

Senator HATCH. Thank you.

There have been numerous calls for prosecutor of various individuals ranging from the Vice President to attorneys at the Office of Legal Counsel for their support or approval of the Terrorist Surveillance Program and the CIA's interrogation and detention program. Now, if confirmed as the Attorney General, do you intend to undertake, order, or support a criminal investigation of those individuals, including those individuals at the Office of Legal Counsel, who are involved in drafting legal opinions on these matters? Or are you willing to acknowledge that there can be differences of opinion but they acted in accordance with their best good-faith efforts under the circumstances at the time?

Mr. HOLDER. Well, Senator, no one is above the law, and——

Senator HATCH. We all agree with that.

Mr. HOLDER. We will follow the evidence, the facts, the law, and let that take us where it should. But I think President-elect Obama has said it well. We don't want to criminalize policy differences that might exist between the outgoing administration and the administration that is about to take over. We don't want to do that.

Senator HATCH. Would you consider these policy differences or policy decisions?

Mr. HOLDER. Well, one of the things I am going to have to do is to become more familiar with what happened that led to the implementation of these policies. I have not been read into a variety of things that I will be exposed to, should I become Attorney General, and that would, I think, better inform any decision that I would make in that regard.

Senator HATCH. Okay. Let me just switch the subject for—I have got just another 40 seconds—and explore your position—well, let me just start with this: I want to ask you about the constitutional right to keep and bear arms. As you know, that is a matter of great concern. I have always been baffled by those who claim they see rights that are not in the Constitution at all, but cannot seem to see the rights that actually are expressly written there.

You have in the past, both as Deputy Attorney General and a private citizen, stated your belief that the Second Amendment confers only a collective right to keep and bear arms rather than an individual right. Last year, you signed a friend-of-the-court brief that took this position before the Supreme Court in the *District of Columbia* v. *Heller* case. Now, the Supreme Court rejected that position and held that the Second Amendment right to keep and bear arms is an individual right.

In this hearing, who is right—you or the Supreme Court?

Mr. HOLDER. In the ball game that we——

Senator HATCH. That sounds like an unfair question.

Mr. HOLDER. No, no. In the ball game that we call our judicial system, the Supreme Court gets to be the umpire. They call the balls and strikes. They made the determination that the Second Amendment conferred an individual right. I will obviously respect that, and any actions I take as Attorney General will take that into account.

Senator HATCH. The question I have, then, were they correct, the Supreme Court?

Mr. HOLDER. Well, you know, I will say that I think based on Justice Department precedent, there was a good argument to be made in the amicus brief that we submitted. But I think it is one I think lawyers can disagree on, and five Justices of the Supreme Court have indicated what the Second Amendment is and so, yes, they are right.

Senator HATCH. Thank you so much.

Thanks, Mr. Chairman. I appreciate it.

Chairman LEAHY. Thank you very much, Senator Hatch.

Before I recognize Senator Feingold, I have been trying to put these letters into the record. I mentioned the letters of support from 130 law enforcement and criminal justice organizations, civil rights organizations, victims' advocates, legal practitioners, and others.

I will now put into the record letters from several former officials, including a letter from the Attorney General, the Republican Attorney General under George H.W. Bush, William Barr, in support of you, and the Assistant Attorney General for the Office of Legal Counsel under President Reagan, and then Solicitor General under President George W. Bush, Ted Olsen; a former U.S. Attorney, a Republican Congressman, Under Secretary for Homeland Security in the Bush administration, Asa Hutchinson; Republican former Congressman Bob Barr; two former Deputy Attorneys General under President George W. Bush, Jim Comey and Larry Thompson; a letter from former Federal judge and FBI Director Louis Freeh, who was here earlier today; and then a number of other high-ranking Republican Senate staffers and executive branch officials. Without objection, those letters will be made part of the record.

Senator Feingold is the Chair of our Constitution Subcommittee. Senator Feingold, I yield to you.

Senator FEINGOLD. Thank you so much, Mr. Chairman. Mr. Holder, welcome. Congratulations on your nomination. I certainly appreciated your meeting with me on short notice a few weeks ago, and I look forward to many more fruitful discussions of the important issues facing the Department should you be confirmed. And I would like to start with a topic that we discussed then and that you were just talking to Senator Hatch about.

As you know, I have been very concerned about the extreme and wrong-headed legal theories that the outgoing administration came up with to justify assertions of executive power beyond what the Constitution allows. These theories were developed by lawyers operating from the Department of Justice in cooperation with lawyers from the White House Counsel's Office and the Office of the Vice President. They were used to justify actions by the executive branch, particularly in the areas of torture and warrantless surveillance, that I believe were illegal and inexcusable. I voted against the confirmations of Alberto Gonzales and Michael Mukasey because their answers on this key question of respect for the rule of law were so troubling.

So one of the things I am looking for from you is a clear indication that the new administration and your Department of Justice will make an unmistakable break from the past when it comes to these issues. And I already heard you make the statement that those gentlemen did not make, which is that the President is not above the law. So I will ask you the same question I asked Mr. Gonzales.

First, what is your view of the President's constitutional authority to authorize violations of the criminal law, duly enacted statutes that may have been on the books for many years, when acting as Commander-in-Chief?

Mr. HOLDER. The President, as I have said, is not above the law, has a constitutional obligation to follow the law and execute the laws that this Congress passes. If you look at the steel seizure concurrence of Justice Jackson, that I think sets out in really wonderful form the power that the President has and where the President's power is strongest and where it is weakest. It is weakest in Category 3, where Congress has indicated something contrary to

what the President wants to do. That is where Justice Jackson says the President's power is at its lowest exhibit. And I think—I am not a constitutional scholar, but I think that there has never been a President who has been upheld when he has tried to act in Category 3. I think but I am not——

Senator FEINGOLD. I believe that is right, and I want to follow that using the construct of Justice Jackson. More specifically, does the President, in your opinion, have the authority acting as Commander-in-Chief to authorize warrantless searches of Americans' homes and wiretaps of their conversations in violation of the criminal and foreign intelligence statutes of this country?

Mr. HOLDER. I think you are then getting into Category 3 behavior by the President. Justice Jackson did not say that the President did not have any ability to act in Category 3, although, as I said, I am not sure there has ever been an instance where the courts have said that the President did act appropriately in that category. It seems to me it is difficult to imagine a set of circumstances, given the hypothetical that you have used and given the statutes that you have referenced, that the President would be acting in an appropriate way given the Jackson construct, which I think is a good one.

Senator FEINGOLD. So you see FISA law as under Category 3, right?

Mr. HOLDER. Yes, I think the FISA law, it is a good statute, and it has an exclusivity provision that seems to me to be pretty clear.

Senator FEINGOLD. You discussed with Senator Hatch whether or not there was some kind of independent, inherent power of the President. Is there anything in the FISA statute that makes you believe that the President has the ability under some other inherent power to disregard the FISA statute?

Mr. HOLDER. No, I do not see that in the FISA statute.

Senator FEINGOLD. Well, thank you. I think that is a very important break in favor of the rule of law that we have been waiting for in this country for many years. And I appreciate that answer.

As I am sure you know, Congress will consider legislation this year to reauthorize an expiring provision of the USA PATRIOT Act. You were talking with Senator Kyl about that. Unfortunately, the last time Congress considered reauthorizing the PATRIOT Act, the administration used scare tactics and over-the-top rhetoric to discount the legitimate concerns raised by both Democrats and Republicans in Congress. And I have to say the administration seemed more interested in scoring political points than trying to sit down and find some common ground on some of these provisions, where we all want to stop those who intend to harm us, but not affect the rights of completely innocent Americans.

I hope to work with you in a productive way on legitimate concerns that I and others in the Senate have about the extent of Government's surveillance powers. In fact, I believe you joined a bipartisan letter in the summer of 2005 proposing a number of changes to the PATRIOT Act. I appreciate what you said in response to Senator Kyl about needing to hear from professionals who use these authorities. It is important to hear from experts and advocates concerned about these authorities and how they affect the privacy and civil liberties of innocent Americans.

So in light of that, will you commit to work with us on these issues, to keep the lines of communications open at all times, and to try to resolve any differences as partners who have the same ultimate goal—to protect the American people and the constitutional rights of our citizens?

Mr. HOLDER. Absolutely, Senator. I will be here as often as I can, either in formal settings or informal ones, to talk about the needs that I identify that we have in law enforcement in fighting terrorism.

I think we are going to need law enforcement tools. We need to always look at them to make sure that they are consistent with the obligations that we have, the new challenges that we face. But we always have to be mindful of the fact that there is a civil liberties component to this, and we have to make sure that we understand, as I have said in many speeches, that there is not a tension between respecting our great tradition of civil liberties and having very effective law enforcement and anti-terror tools.

There is a false choice, I think, that is often presented, so I would look forward to working with you and the other members of the Committee in trying to make sure that we have good, effective laws that are consistent with our values.

Senator FEINGOLD. Thank you for that answer.

As you know, there was much about last year's FISA Amendments Act with which I strongly disagreed, and that included, of course, the granting of immunity to telecommunications companies that allegedly cooperated with the President's warrantless wiretapping program, and the inclusion of new surveillance powers without adequate protection for the rights and privacies of innocent Americans.

But one positive provision was a requirement that the Department of Justice Inspector General, in cooperation with other relevant Inspectors General, undertake a comprehensive review of the warrantless wiretap program. And I am told the IG's report is due to be completed by July of this year. This report could offer the most complete assessment to date of how the program came about and operated for over 5 years.

Will you pledge the full cooperation of the Department of Justice with this effort? And will you pledge to support making as much of the report public as possible so that the American people can finally learn the full story of this illegal program?

Mr. HOLDER. Absolutely. I think the report that will be done by the Inspectors General and led by a fine Inspector General at the Department of Justice will be an important tool, an important assessment tool for us to find out how these statutes have been working, how these provisions have been working. I know that Glenn Fine and the people working with him will not be shy in expressing any concerns that the have, but they will also not be shy to tell us how these tools have been effective.

I think that that is going to be a good starting point for a conversation that I think we need to have about where we stand with regard to the state of the law and give us a good sense of are we in a good place, are there things that we need to change. So I look forward to that report, and I will do all that I can to ensure that as much of that is made public as is possible.

Senator FEINGOLD. Thanks. Your testimony recognizes the importance of restoring the credibility of the Department of Justice after the terrible issues involving the stewardship of Mr. Gonzales, and you correctly note that despite the steps in the right direction taken by Attorney General Mukasey, there is more work to be done. Certainly the release this week of the OPR IG report on politicized hiring and other personnel actions at the Civil Rights Division only underscores that point.

As with so many of the mistakes and abuses of the last administration, I don't think it is enough to just end the misconduct. The lingering effects of that misconduct must also be addressed. So whether it is politicized hiring in the Civil Rights Division or for immigration judges or allegations of politically motivated prosecutions as in the Siegelman case—and there may still be many more—what will you do to make sure that justice is truly served and that those who engaged in wrongdoing do not, in effect, have the last laugh? And, in addition, will you cooperate in any further oversight of these matters by the Congress, especially with respect to documents that have until now been withheld?

Mr. HOLDER. Well, one of the things I am going to have to do, I think, as Attorney General in short order is to make—basically do a damage assessment and understand in a way that I do not now how has the institution been harmed by the activities that were uncovered by these Inspector General reports. What has been the lasting impact? There has certainly been damage to the Department's reputation. I want to know as a result of those action has there been any structural damage to the Department.

I will work to make that assessment. I will be more than glad to come back to this Committee and share with you what I have found and perhaps with some suggestions that I might work out with you all how we might prevent those kinds of things from happening in the future. I look forward to working with you in that regard.

Senator FEINGOLD. What about the documents?

Mr. HOLDER. To the extent that there are documents that will help this Committee in that assessment, and to the extent that there is not a reason why we should be holding onto them, I will make them available, always with the presumption that, you know, transparency is the best thing and making available documents makes the most sense.

There are institutional concerns that we have that I think should be respected. But I also respect the oversight obligations that this Committee has, and to the extent that I can make documents available in this context or in others, I will do that.

Senator FEINGOLD. Thank you, Mr. Holder.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Thank you very much, Senator.

Senator Sessions is here. Of course, Senator Sessions is also a former U.S. Attorney and knows what one goes through in that regard, and we have relied on him for that experience.

Senator Sessions, it is over to you.

Senator SESSIONS. Thank you, Mr. Chairman, and congratulations, Mr. Holder, on the nomination. You certainly bring excellent background and experience to the job as a Federal prosecutor for

a number of years and as a Federal judge. I think you come to the office with far more experience than Attorney General Gonzales had. I thought he was a good man, but when you lack experience, sometimes you can make errors unintentionally. I think former Attorney General Janet Reno was a State prosecutor, but was really inexperienced in a lot of the big issues that come before an Attorney General.

So you do have the background. You have a great family. It is good to see your wife, a fine physician and an Alabamian, and the sister of one of the leading persons in changing the racial situation in the South, as she led the fight to alter the segregated higher education policies that were so often conducted in the South, and those were unacceptable, and she did a very important historic—played a big historic role in that and is so recognized today.

So I know you are committed to justice and fairness and equal rights. I just want to ask a few things. You have had a lot of questions so far about national security. In your opening statement, you said, "I will use every available tactic to defeat our adversaries." That is basically what President Bush says. "I am charged with defending this republic. I am going to use whatever power I can." And then you go on to say, "And I will do so within the letter and the spirit of the Constitution."

Well, first of all, fundamentally, isn't the controlling authority the constitutional requirements first? Would you agree, what the Constitution actually requires is the fundamental requirement of public service?

Mr. HOLDER. I am sorry, the Constitution requires?

Senator SESSIONS. What the Constitution requires is what you are committed to do. Is that not correct?

Mr. HOLDER. That is correct.

Senator SESSIONS. Now, the only thing that worries me about the spirit of the Constitution is that the spirit tends to be in the eye of the beholder, and that what you might think is the spirit of the Constitution, somebody else might not. And I guess I am worrying about these intelligence officers and military officers and people in the Department of Defense who attempted to protect and defend this country at a time of great concern after the 9/11 attacks. And if you formed a prosecution policy, you would want it to be based on the plain law of the Constitution, not what somebody might think is within the spirit of the Constitution. Would you not?

Mr. HOLDER. Well, Senator, as you know, having been a prosecutor and a great U.S. Attorney yourself, there are a whole variety of things that have to go into making a prosecutive determination: What was that person's intent? Did that person act under the thought that he or she had authorization from a higher authority? These are all the kinds of things that would have to be weighed in trying to make the determination whether somebody had acted appropriately, inappropriately, lawfully, or unlawfully. Those are the kinds of things that would have to be weighed.

Senator SESSIONS. I certainly agree with that. I do just note that in your June 2008 speech to the American Constitution Society, you say that actions after 9/11 were excessive and unlawful. Is that your prosecutorial decision, or is that your impression based on what you may have felt at the time?

Mr. HOLDER. I think that is a fair way of putting it. I think it is an impression. Again, I am not at that point and I am not now read into all of the programs that I was taking the administration to task there about. I was focusing on the warrantless surveillance program.

There may components to that that I don't understand, I am not familiar with. I have had a chance to look at everything that has been written—not everything, but a lot that has been written about, have looked at the—I guess the white paper that the administration put out justifying its view of how it could use the FISA statute.

Senator SESSIONS. I thank you for just saying that. It makes me feel somewhat better. I have been in probably 30 hearings in Armed Services and in Judiciary on these matters. They are very complex. The law changed as time went by. Supreme Court cases came and clarified uncertainties, sometimes overruling what had been previously approved to be legal. And so I think that is important.

It makes me feel a little better about your next statement in that speech, where you said, "We owe the American people a reckoning." You are not threatening and not guaranteeing you are going to prosecute people until you fairly evaluate all the facts and the evidence and the law they thought they were dealing with at the time.

Mr. HOLDER. No, Senator. And, actually, when I used that term—that has gotten a lot more attention than I think it deserves—I really was only talking about sharing information with the American people to the extent that we could about what was done in their name. I wasn't really thinking about prosecutions at all in that regard. I was thinking about information sharing.

Senator SESSIONS. Well, you know, Jack Goldsmith wrote the book "The Terror Presidency." He was a brilliant lawyer in the Department of Justice. He felt that some of the things that the Bush administration did were in error, and he has been critical and cited as a critic of the administration. But he made these comments: "One consequence of the OLC's authority"—that is the Office of Legal Counsel, and that is an office within the Department of Justice, as you know, that is given authority to express opinions. He said, "One consequence of their authority to interpret the law is the power to bestow on Government officials what is effectively an advance pardon for actions taken at the edges of vague criminal laws."

In other words, if something is vague and the Attorney General Office of Legal Counsel says it is okay, then isn't an official in the intelligence agencies and the military or the Federal Investigative Service entitled to rely on that until it is reversed?

Mr. HOLDER. Well, one of the things that you would have to take into account in making a prosecutive decision or just making a determination as to whether somebody had acted appropriately would be to see under what authority they were acting. An OLC opinion that gave a person the ability to do something and was reasonably relied on and the opinion was appropriately and in good faith drafted would be something that would obviously have to be taken into account in deciding whether somebody acted appropriately or not. That would be a huge factor.

Senator SESSIONS. I think that is true, and sometimes those opinions could have been in error. As Attorney General of Alabama, I used to have to issue those opinions, and it did protect the officers of the State until some lawful court reversed it. And I just think we need to remember that as these officers are out there trying to serve their country.

Attorney General Mukasey says you rely—he said if you don't follow that principle, it would tell people that if you rely on a Justice Department opinion as part of a program, then you will be subject to criminal investigation when and as and if the tenure of the person who wrote the position changed or the political winds changed. In other words, the average guy out there serving his country has got to be comfortable that he can rely on the opinions of the Department of Justice. Anyway, I am glad you say that.

With regard to the FALN clemency situation, we had a hearing on it in the Senate, and it was pretty contentious. The United States Senate passed a resolution that was 95–2—I think most of our—every member of this Committee supported it—that deplored that pardon and included, "Whereas, the release of terrorists is an affront to the rule of law, the victims and their families, and every American who believes that violent acts must be punished to the fullest extent of the law," then it deplored those activities.

We discussed that at some length—and my time is winding down now. Maybe we will be able to talk about it a little later.

Mr. HOLDER. Sure.

Senator SESSIONS. But fundamentally, let me say this: I thought it was an inexplicable pardon. I believe that it reversed the recommendation of Margaret Love, a very fine pardon attorney, who I believe you removed, and allowed this to go forward in a way that I think is unjustifiable. And you indicated you learned from that process.

Let me ask you fundamentally now on the merits——

Chairman LEAHY. A vote has started.

Senator SESSIONS. Okay.

Chairman LEAHY. And the time is up. Do you want to make a short——

Senator SESSIONS. I have got 20——

Chairman LEAHY. Because we are going to——

Senator SESSIONS. Oh, I am over. I thought I had 2 seconds, but I am over 20 seconds.

Chairman LEAHY. We are going to have a second round.

Senator SESSIONS. I will just ask this simple question. You have indicated you made a mistake. Do you believe that the decision and the ultimate act of President Clinton to pardon these individuals was wrong?

Mr. HOLDER. I think it is a difficult decision that the President had. I think that there were a lot of people who were in support of that clemency request: Nobel Peace Prize laureates, Coretta Scott King, President Carter, Desmond Tutu, Cardinal O'Connor in New York.

When one looks at the nature of the offenses that put those people in jail—and these were criminals. These were terrorists. These were bad people. But the President's determination was that they had not committed any acts themselves that resulted in death or

bodily injury. And on that basis, and given the amount of time that they had served in jail, roughly 16 to 19 years, most I think 19 years, and given the length of the sentences that they had received, it was his determination that the clemency requests were appropriate, taking all that into consideration. And——

Senator SESSIONS. But do you personally now—I know the President justified it. Do you personally have an opinion, after all of this, whether it was right or wrong?

Mr. HOLDER. I think that given all that I have described that what the President did was reasonable.

Chairman LEAHY. Senator Schumer, you are also, like all of us, juggling three different committees. I am going to recognize you. I would ask—because the vote has started us and several of us will be leaving, myself included—that at the end of your round of questioning, would you—we will then stand in recess until 2:15 at the end of Senator Schumer's questions. And, Senator Sessions, I guarantee you you will have another round.

Senator SESSIONS. Thank you.

Senator SCHUMER. Thank you, Mr. Chairman, and thank you, Mr. Nominee. And I appreciate—I will try to stick with my 10 minutes and get over to the vote.

I want to thank you for your years of service. I worked with you when you were Deputy Attorney General. I was impressed then, as I am now, with your integrity, your experience, your excellence. Much of the discussion leading up to your hearing has focused on the question of your independence. Will you be the people's lawyer or the President's lawyer? And I think this is absolutely and correctly at the heart of the matter, because every other day, it seems, another scathing report from the Inspector General hits us on the head like a hammer, reminding us that the likes of Alberto Gonzales and Bradley Schlozman sullied and demoralized a great legal institution, probably the finest civil service institution in the country, that they really dragged through the mud.

So we are in dire need of a less political and more independent Justice Department beginning at the very top, and I spent a lot of time in the last Congress, as you know, making this point.

Four years ago, moreover, the question of independence was my central consideration when Alberto Gonzales sat in the witness chair, that he was too close to the President, didn't understand the nature of the job of Attorney General. As I said when I voted against him at the time, "It is hard to be a straight shooter when you are a blind loyalist." And I think that in my entire Senate career, the vote against Alberto Gonzales may have been one of the most vindicated by subsequent history.

So some of my friends across the aisle are questioning your independence and making ludicrous comparisons to Mr. Gonzales, and they are cherrypicking a few episodes from your long and distinguished career and ignoring, conveniently, other more substantial actions you have taken that manifest a true independent streak in the best traditions of the Justice Department. My colleagues have mentioned them already. I am not a fan of either the Marc Rich pardon or the FALN. I disagree with your ultimate analysis on FALN—and on Marc Rich, I guess, although you certainly said that was a mistake. I was a critic then and I am a critic now.

The essential point, though, is that many who have criticized your role in those pardons, Democrat and Republican alike, recognize your entire career and vigorously support your nomination: Jim Comey, Louis Freeh, the Fraternal Order of Police. So if we are going to make an informed assessment about your independence, I think we have to look at the entire record. And as I look at your background and record, it is clear that you are less connected and less beholden to the new President than most Attorneys General in the last 50 years. Let's review for a moment. I have a few quick questions for you.

Have you ever been President-elect Obama's personal lawyer, like William French Smith had been for years for Ronald Reagan?

Mr. HOLDER. No, I have not.

Senator SCHUMER. Have you ever been a staffer to Barack Obama, like Ed Meese had been for President Reagan?

Mr. HOLDER. No, I have not, Senator.

Senator SCHUMER. Have you ever served as official counsel to Barack Obama, like Alberto Gonzales had been for George Bush?

Mr. HOLDER. No, I have not, Senator.

Senator SCHUMER. And, by the way, has Barack Obama ever dispatched you to the hospital room of a sick Government official to get him to authorize an illegal wiretap program? Yes, I didn't think so.

Mr. HOLDER. No, he has not.

[Laughter.]

Senator SCHUMER. All right. And I take it you are not a close relation to the new President, like Bobby Kennedy was to Jack Kennedy?

Mr. HOLDER. No, we are not related by blood, though people do say we look alike.

Senator SCHUMER. I don't think so.

[Laughter.]

Senator SCHUMER. Although you are both very handsome.

Mr. HOLDER. I have heard he is handsome, and I was going to try to draft on that.

Senator SCHUMER. Okay. Let me ask you this: Have you ever been a professional politician, like, say, John Ashcroft or Dick Thornburgh?

Mr. HOLDER. No, I have never run for office.

Senator SCHUMER. Okay. Before last year, at age 57 after 30 years as a lawyer, did you owe any paid job or Government appointment to Barack Obama?

Mr. HOLDER. No, I have not. I do not.

Senator SCHUMER. When did you first meet the President-elect?

Mr. HOLDER. After he was elected, but before he was sworn in as a Senator.

Senator SCHUMER. All right. What did the President-elect tell you about what kind of Attorney General he wanted you to be?

Mr. HOLDER. He said, "Eric, you have got to understand. You have got to be different. You know, we have a pretty good relationship. That is probably going to change as a result of your taking this position. I don't want you to do anything that you don't feel comfortable doing. You have got to be my counselor. You have got to tell me if I am going to get myself in any kind of trouble. I un-

derstand that the Justice Department is different. I understand that you are going to be different." He said he hoped that it wouldn't affect our relationship. But he says he understands that I have a different obligation than other people in the cabinet.

Senator SCHUMER. Well, that is refreshing, because I doubt that President Bush ever had that kind of conversation with Alberto Gonzales, and it is a refreshing change.

So when we talk about independence, we need to keep in mind the notion of independence is often a two-way street. I welcome your nomination not just because you will be a different kind of Attorney General, but because Barack Obama will be a different kind of President. So I really want to thank you. I believe that your nomination, should you be approved, will end the rancid politicization at the Department, because it will mean an end to waterboarding and other shameful forms of torture, and because it will mean a full return to the rule of law and our reputation around the world. I believe you, unlike some of your predecessors, will be the chief law enforcement officer of the land above all.

So I want to look forward, not backward. We should be focusing on how you will lead the Department and how you will change it. And so in that vein, I have some questions for you. Now, Senator Leahy touched on this, but I want to elaborate because I had questioned quite pointedly and carefully Mr. Schlozman. I thought then that he was not telling the truth, and, of course, the IG's report said he made false statements to Senator Leahy, Senator Feinstein, and several to me.

So last week—and I am not satisfied that the referral to the U.S. Attorney was just—you know, they said they are not going to prosecute without any explanation whatsoever. I wrote General Mukasey asking him that the matter of Schlozman be additionally referred to Nora Dannehy. She is the Acting U.S. Attorney for Connecticut. She has been made special prosecutor already to look into possible criminal activity in the Department's hiring and firing.

Do you see any problem with making such a referral, should you be selected—or approved as Attorney General?

Mr. HOLDER. Well, I would say that I have great respect for the lawyers who work in the U.S. Attorney's Office in D.C. That is the office that I had the great privilege of leading. There are good lawyers there, and the fact that if it is accurately reported that they had a chance to fully look at that matter and they declined prosecution, that would be significant for me.

On the other hand, I am very disturbed by what I read or have read about that is contained in the report where the Inspector General essentially makes a finding that false testimony was given before this Committee. And as I indicated to Senator Feinstein, I would like to myself review the determination that was made by the U.S. Attorney's Office in D.C.

Senator SCHUMER. At the very minimum, without disclosing any confidential grand jury or other information, could we at least get a report on why the U.S. Attorney in D.C. refused to prosecute? Was it that he disputed the lying to Congress terminology of the IG? Was it that he didn't think he could prove the case? Perjury cases and false statement cases are difficult. Would you at least be willing to commit to us to do that?

Mr. HOLDER. I will to the extent that I can share that information. I mean, grand jury secrecy frequently prevents a prosecutor from sharing all of the reasons why he or she has made a particular determination. But to the extent that we can, I will do that.

Senator SCHUMER. Good, because I am not asking for specific details of who said what before the grand jury, but just why the ultimate conclusion was made. And if you disagree with it, I presume you would refer it—you would look somewhere, and Ms. Dannehy's office is the right place to go.

Just one more on the Civil Rights Division—again, a crown jewel of this Justice Department. The report from the IG revealed in many ways it was more like a campaign headquarters than a hall of justice. The report luridly detailed the remarkable extent to which the Civil Rights Division—what a great tradition in that body through Democrat and Republican Presidents alike. Under George Bush the First, they took the Voting Rights Act to a greater extent in reapportionment and other cases than anybody else. And then from 2003 to 2006, one single appointee, political appointee—Schlozman—hired 63 lawyers, 20 percent of the lawyers working at OCR, on the basis of their conservative political leanings. It is a blatant violation. It would be a blatant violation if someone did the same—a Democrat did the same thing on the liberal side. And one supervisor saying to another that he took his coffee "Mary Frances Berry style—black and bitter." A type of overtly racist statement, all the more shocking when it is a supervisor at the Civil Rights Division who says this.

What are you going to do to make sure that this doesn't happen again? What are you going to do to sort of clean up and straighten out the Civil Rights Division with its great tradition?

Mr. HOLDER. Let me be very clear. The attempt to politicize the Department will not be tolerated, should I become Attorney General of the United States. It will be my intention to return that Division and the Department of Justice as a whole to its great traditions, and the great traditions that it had under Democratic and Republican Attorneys General and Presidents.

What we have seen revealed in these Inspector General reports is almost unbelievable to me. It is clearly abhorrent, and it is inconsistent with the way in which I would run the Department of Justice.

Senator SCHUMER. And do you expect a thorough cleaning up of the Civil Rights Division, setting it back on its civil service course, if you will?

Mr. HOLDER. It is my intention to devote a huge amount of time looking at the Civil Rights Division and restoring that Division, making sure that there is a sense of mission, there is a focus on the things that have made that, as I think you appropriately call it, one of the jewels in the Justice Department.

I see somebody sitting behind you, Bill Yeomans, who served in the Civil Rights Division very proudly. He is the kind of person who we need in the Division, and he is the kind of person who should be supervising people. He is the kind of person who should be teaching the young lawyers in the Civil Rights Division. That is what is my intention, to bring the Civil Rights Division back to the kind that existed when Bill Yeomans was there.

Senator SCHUMER. Well, thank you, Mr. Holder, and I am quite certain on your record and on the basis of the testimony today you will be confirmed and will be a really fine Attorney General.

We are adjourned until 2:15.

[Whereupon, at 12:36 p.m., the Committee recessed, to reconvene at 2:15 p.m., this same day.]

AFTER RECESS [2:19 p.m.]

Chairman LEAHY. Isn't it amazing, what a busy day this is in the Senate? Senators have been in and out. There've been numerous confirmation hearings going on. There have been farewell speeches given on the Senate floor, one by a man I've sat with on this Committee for over 30 years, Senator Joe Biden of Delaware, who is leaving to become Vice President. The other, a Senator of my neighbor State, from the State of New York, Senator Hillary Clinton. So, a number of Senators have left to be there for their farewell. I apologize to each one of them.

Obviously I've been here, as have other people chairing such hearings. They are now in the process of swearing in a new Senator from Illinois, who is no longer Senator-designee Burris, but now Senator Burris. So I'm going to go, next—speaking of elected, or appointed—the newly reelected—the newly reelected and senior Senator from South Carolina, Senator Graham. I mentioned the "senior Senator" because one of his predecessors, with whom I also served, Senator Hollings, served as junior Senator from South Carolina, for how many years, Lindsey, about 30?

Senator GRAHAM. Thirty-six.

Chairman LEAHY. Thirty-six years. He's the most senior junior Senator, ever. That's because Strom Thurmond, who came here with the first Congress, the Continental Congress——

[Laughter.]

Chairman LEAHY [continuing]. Was the senior Senator. But Lindsey Graham is the senior Senator from South Carolina. He has recently been in Afghanistan, Pakistan, Iraq, with Senator Biden.

We're glad to have you back. Go ahead.

Senator GRAHAM. Thank you. I enjoyed my trip with the Vice President-elect, and I did a lot of listening. It was fun.

[Laughter.]

Chairman LEAHY. That apparently is not the totally inside joke that you might have thought it was.

[Laughter.]

Senator GRAHAM. Thank you, Mr. Chairman. I can assure you, I'm genetically term limited, so I do have a tough act to follow in Thurmond and Hollings.

But the one thing I would like to say to our nominee, I cannot think of a more personal decision one could make than hiring a lawyer. You'll be the Nation's lawyer as the Attorney General. But my perspective on these matters is that the President of the United States deserves the ability, within reason, to pick a lawyer, an Attorney General, that he or she has great confidence in. The fact that this President has chosen you speaks well for you. Given your resume, even though we have probably a lot of political differences, I could understand why he has great confidence in you.

Having said that, as we move forward, one of the big issues facing this Nation, and the legal community within our Nation, is

what to do with detainees that are captured and what is called "the war on terror". It's complicated, it's emotional, but I think it's very important that we get it right.

Mr. Holder, is it fair to say that we're at war, in your opinion?

Mr. HOLDER. I don't think there's any question but that we are at war. And I think, to be honest, 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.

Senator GRAHAM. I'm almost ready to vote for you right now.

[Laughter.]

Mr. HOLDER. I'll stop.

[Laughter.]

Senator GRAHAM. I agree with you. We're at war. The enemy that we're at war with, would you agree, is an unconventional enemy?

Mr. HOLDER. No question about that. There is not going to be a surrender signing on the battleship *Missouri*. This war is not going to end in that way.

Senator GRAHAM. And the people, we're finding, they don't wear uniforms.

Mr. HOLDER. They do not, which creates a lot——

Senator GRAHAM. They operate outside the law of armed conflict.

Mr. HOLDER. They do.

Senator GRAHAM. Maybe some of the most vicious people our Nation has ever fought in our history.

Mr. HOLDER. I would agree with that.

Senator GRAHAM. If you were trying to explain to a civics class in the 9th grade the battlefield, where is the battlefield in this war? What makes up the battlefield?

Mr. HOLDER. That's a very interesting question, Senator. The battlefield—there are physical battlefields, certainly, in Afghanistan, but there are battlefields, potentially, you know, in our Nation. There are cyber battlefields that we're going to have to—where we're going to have to engage.

But there's also—and this sounds a little trite but I think it's real—there's a battlefield, if you want to call it that, with regard to the hearts and minds of the people in the Islamic world. We have to do things in a way, conduct ourselves in a way, that we win that battle as well, so that people there who might otherwise be well-intentioned do not end up on the wrong side and against us.

Senator GRAHAM. The way I put it, there's a high ground in every war, and there's physical high ground, and in this there's the moral high ground, which I think is essential to win this war, is for America to maintain the moral high ground. Do you agree with that?

Mr. HOLDER. Yes, I do.

Senator GRAHAM. Now, when you talk about the physical battlefield, if our intelligence agencies should capture someone in the Philippines that is suspected of financing Al Qaeda worldwide,

would you consider that person part of the battlefield, even though we're in the Philippines, if they were involved in Al Qaeda activity?

Mr. HOLDER. Yes, I would.

Senator GRAHAM. Okay.

Now, as we decide what forum to try people and how to interrogate them and how to detain them, the only thing I ask of this new administration is that we not criminalize the war. I'm not asking for the ability to be inhumane. Matter of fact, I am crying out for our country to realize that if we capture somebody in this war on terror, no matter how vicious the enemy may be, it becomes about us, not them. Once they're in our capture it's not about who they are or what they believe, it's about our values.

So as we close Guantánamo Bay, I would just urge you to sit down with military lawyers, people in both parties, and great legal minds and let's think through this process of how we can be at war with this enemy and protect ourselves and maintain the moral high ground that would be essential.

The hard case for me, and I think for the country at large, is that person that is captured in this war on terror, because of the sensitive nature of the information, may not be subject to the normal criminal process, whether it be a military trial or an Article 3 trial, but we know, based on competent evidence, that they will go back to the fight. Have you thought much about what to do with that group?

Mr. HOLDER. Struggled with that, and continue to struggle with that. These are extremely difficult questions, the ones that you have posed. It's one of the reasons why, in my opening remarks, I said it, and I meant it sincerely, that all of the knowledge and all of the good ideas does not reside in the executive branch. You are a person who has spent a lot of time thinking about these issues. We had a very interesting conversation when I came to visit you, and had, I thought, some very, very interesting perspectives and some good thoughts.

This Committee has been engaged in thinking about the very questions that you raise. We are going to have to come up with American solutions. These are truly not Republican and Democratic issues. I mean, we as a Nation, and this Committee in particular, I think, has to come up with a way in which we resolve those issues.

And the one that you have raised is one that has given me a great deal—I've given a great deal of thought to. How do we deal, in an appropriate way, with somebody who we know is a danger to this country, and yet be true to our values, and in that battle for the hearts and minds that I discussed, make it appear that we're treating this person, sworn to harm us, treat that person in a fair way, in a way that, frankly, they would not treat us.

Senator GRAHAM. Absolutely.

Mr. HOLDER. And how we resolve that issue, that particular issue, I think will say more about us as a Nation than almost anything.

Senator GRAHAM. Well, let me put on the record sort of a goal I think we all share, that if we hold someone in prison, in a military prison, it will not be because somebody in the executive branch said so. It has to be as a result of a process that would

allow independent checks and balances. I really believe that the Federal courts have a tremendous responsibility and role in answering the questions before that we're talking about now.

So my goal would be, is that if we hold somebody off the battlefield that we think is part of the enemy force, not subject to normal criminal trials, that it will be done with the process that people have confidence in, that the person will be held only after an independent judiciary agrees that the evidence is competent and that the executive branch collaborates with the Congress and other respected institutions in making that decision. I think that has sort of been lacking. If we can find that common ground, I think the country will be better off.

And when it comes to the trial of people suspected of committing a war crime, I hope you will look long and hard at our military justice system. I've been part of it for 25 years. I think you've seen, at Guantánamo Bay, some of the sentences show that the jurors, the panel members, are very reflective and they evaluate the evidence and they take their duty very responsibly.

I'd end on this note. Our allies are struggling with this problem. Every other Nation deals with this through the domestic criminal ends. As I understand it, there is no concept in domestic criminal law that would allow you to hold someone indefinitely without trial. Do you agree with that?

Mr. HOLDER. I think that's right.

Senator GRAHAM. And let me tell anyone who's listening: there should not be. No one should be held, in a domestic criminal environment, indefinitely without the right to a trial. But I do believe that every person who commits to going to war against America, or any other peaceful Nation, should be held off the battlefield as long as they are dangerous. Do you agree with that?

Mr. HOLDER. I do.

Senator GRAHAM. There is a difference between a warrior and a criminal. If you want to know that difference, go read the transcript of Khalid Sheik Muhammed as he testified before the Combat Status Review Tribunal. There is no doubt in my mind that he is at war with us, and that if he ever was released, he would go back to the fight. So there is a difference between a common criminal and a committed warrior. The military justice system is humane, is transparent, I think it's the right forum, and I look forward to working with you as we answer these hard questions.

So, God bless. Thank you for your willingness to serve your country in this capacity.

Mr. HOLDER. Thank you, Senator.

Chairman LEAHY. I might say, just for a moment, Mr. Holder, Senator Graham has discussed these issues with me—sometimes we've been on long trips, sometimes just privately. I've relied on his own experience in the Judge Advocate General's Corps. We have also had a number of military, as Senator Graham knows, come before us and testify, sometimes risking their own careers to say what they feel should be done. We've sat there with two- and three-star generals, testifying that way. They, Senator Graham, and others have been most instructive to the members of this Committee who have not been in the military about how the Uniform Code of Military Justice works.

I would suggest, should you be confirmed, as I fully expect you to be, that you may want to spend—we'll obviously have hearings on this subject, but you may want to spend some time in informal discussions with people like Senator Graham, myself, and others, both Republicans and Democrats on this Committee, maybe in an informal setting, who will at least let you know what our views are and have the kind of candid, off-the-record discussion that one should, because this is a major issue facing our country.

Mr. HOLDER. I think that's actually a very good idea. I referenced—didn't want to talk about the substance—the conversation that I had with Senator Graham. I spent probably half an hour, forty-five minutes with him. I left there thinking that this is a gentleman who's thought about these issues an awful lot.

I think what you say about our military system of justice is correct, not only in the sentences that have been handed down, but also the evidentiary rulings that judges have made there, things that I think a lot of people did not necessarily expect to see in that system. I think that what you're saying, Mr. Chairman, makes an awful lot of sense. There is—as I say, you all have grappled with these issues a lot longer than I have, quite frankly, and it would be foolish not to tap into the wisdom that resides in this Committee.

Chairman LEAHY. If there's no objection, I'm going to put into the record a letter of support from 10 retired generals and admirals. There's 10 retired generals and admirals that support you, Mr. Holder. They are experts on military issues, including military detention and interrogation, and they've reflected the conscience of the Nation in this area. They say, in their letters, to summarize them, that they feel you will keep America safe, while protecting our basic constitutional rights. I think that should be considered.

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

Chairman LEAHY. Now, when I first came on this Committee, I served with Senator Mathias of Maryland, a man who shows great conscience. I served for years with Senator Sarbanes of Maryland, a person I know and know well, also traveled with. His successor is now here, Senator Cardin, who carries on the tradition of thoughtful Senators from Maryland.

Senator Cardin, thank you for being here. The floor is yours.

Senator CARDIN. Thank you, Mr. Chairman. I have great mentors in Senator Mathias and Senator Sarbanes.

Mr. Holder, thank you. Thank you for being willing to serve your country again. I want to thank your family, because we know the sacrifices that they have to make and the long hours that you're going to need to put in as the Attorney General of the United States.

I want to talk a little bit about the Civil Rights Division. The Civil Rights Division has such an important function in our country. They're responsible for the enforcement of the Federal statutes against discrimination, the Civil Rights Acts, the Voting Rights Act, the Equal Credit Opportunity Act, Americans With Disabilities Act, the National Voter Registration Act, and Uniform and Overseas Citizens Absentee Voting Act, and the list goes on and on. It's a critically important division in the Department of Justice, and for the people of this country.

The record over the last eight years has been alarming. There have been so few important cases brought by the Civil Rights Division over the last eight years in just about every category. They have resisted being proactive and protecting the civil liberties and civil rights of the people of this country.

When you look at the allocation of resources that's been given to the Civil Rights Division, it's been reduced. We've already had several Senators comment about Bradley Schlossman's activities and his partisan politics, and the personnel decisions made in the Civil Rights Division—illegal activities, I might add.

I want to give you an opportunity to tell me your own personal commitment to the Civil Rights Division, if you are confirmed to be Attorney General, and how you will direct that division head as far as the historic role of the Civil Rights Division, and what you expect to see during the Obama administration.

Mr. HOLDER. Senator, I agree with you. It is—the Civil Rights Division is unique. It is, in some ways, the conscience of the Justice Department, and I think in some ways you can measure the success of an Attorney General's tenure by how the Civil Rights Division has done. The Civil Rights Division has not necessarily gotten the attention, the resources, the support that it has needed and requires over the last few years.

Should I become Attorney General, that would be my attention, to give it the resources that I have and the attention that the Division needs, and to revitalize a place that has really tons and tons of great lawyers, paralegals, and support staff, people who are dedicated to the mission of that Division, people who work hard and stay there, you know, extraordinary long periods of time through the course of their careers, when they could go and do other things and get paid far greater amounts of money. They're committed to the mission of the Division, and that, I think, has got to be one of the things I really focus on, should I become Attorney General.

One of the things we're going to have to do, as an initial matter, is to get a great Assistant Attorney General, a person who is steeped in civil rights law, a person who's respected, and a person who will understand that the job he or she is going to be given is going to be a tough one, and will be committed to revitalizing that great Division. I think we can do it. I think we'll also need the help of the members of this Committee in terms of resources, oversight. There are a whole variety of ways in which I think you could help us, but that will be a priority for me.

Senator CARDIN. I appreciate that.

I want to just mention one example, in voting rights cases. The record over the Bush administration, they brought zero cases on behalf of African Americans for voting rights between the years of 2001 and 2006, yet they were there to defend the Georgia draconian voter ID law that's been called the modern day poll tax.

In my campaign for the U.S. Senate in the 2006 elections, there were deceptive practices that took place in Maryland, and in other States around the Nation, that were aimed directly at reducing minority participation in the elections. We asked the Justice Department to take a look at those practices. Senator Schumer sent a letter in, asking for action. Then-Senator Obama filed legislation to

strengthen the deceptive practices laws to give the Justice Department additional tools, if they need those additional tools, to make it clear that we won't tolerate those who are using campaign tactics to suppress minority participation.

I would like you to review the laws that you have, the tools that you have today, and come back to us and let us know whether you have adequate tools available to you so that the Federal Government can be actively involved to make sure that those types of practices that took place in my State, and many other States around the Nation—such things as sending out letters in minority communities telling them that election day was the wrong day, to try to keep them from voting—that you have the tools to make sure that the full weight of the Attorney General, the Department of Justice, can be used to prevent those types of activities.

Mr. HOLDER. Senator, I appreciate that offer and, should I be confirmed, I will take you up on it. The needs are great in that Division. I hope the expectations are high, and I hope that we will meet those expectations. This is a President-elect who is committed to the very things that you're talking about. This is an Attorney General, or a person who could be the Attorney General, who shares the concerns that you have.

Senator CARDIN. Well, again, I thank you for that.

I'll mention one other area that I think shows a disparity, a racial disparity, in our country. We've had a lot of discussion about the crack cocaine issue. When you take a look at the statistics, African Americans now serve virtually as much time in prison for drug offenses as whites do for violent crimes; 37 percent of the people arrested for drug violations, 59 percent of the convictions and 74 percent of those sentenced for drug offenses are African American, even though they represent only 15 percent of the people.

My point is this. We know we have disparities in our laws, we know we have disparities in the way prosecution is centered, and it's very clear that's true in regards to crack cocaine. We need a strategy to make sure that we rid ourselves of those types of practices in this country. I don't want to be soft on those who are violating our criminal statutes. I want to make sure that we are tough.

Drugs are a huge menace to our society and I want to do everything I can to make sure we have effective laws, but let's make sure it is fairly applied in this country. I would like to have your commitment that you will work with us and come up with a strategy where we can have, I think, a fairer system of justice, and a tough system as well.

Mr. HOLDER. I think that's right. We have to be tough, we have to be smart, and we have to be fair. Our criminal justice system has to be fair. It has to be viewed as being fair. When I was a judge here in Washington, DC, I saw, in the people who served on juries here, a knowledge, a recognition that, at least in their minds, parts of the criminal justice system were not fair, and you saw it in some of the verdicts that I saw in cases that I presided over.

When I would speak to jurors afterwards and say, you know, why did you vote this way in a case where it seemed to me the government had all the evidence, that proved all the elements of the crime, and they talk about inadequacies in the criminal justice sys-

tem, disparate penalties, and say that, you know, I really am not going to be part of that. And so I think those are the kinds of attitudes that we have to recognize that are out there and come up with a system, as you say, that is tough, smart, and fair.

Senator CARDIN. I have time for one more question, so let me return to the issue of torture for one moment. Your answers were very strong, and I strongly support what you have said in regards to torture. But I want to call your attention to one other area which could be a concern, and that is the use of rendition, where the United States has custody of individuals and turns them over to other countries, where we know that they will, in fact, use torture as a means of interrogation.

The United States has entered into the Convention Against Torture. That convention provides that we should not expel, extradite, or otherwise effect the involuntary removal of any person to a country where there are substantial grounds for believing the person would be in danger of being subjected to torture. Can you just tell me, pretty clearly, that in your points about torture being illegal in this country, that it would be wrong for the United States to turn over custody of an individual that we have to a country where we have reason to believe that they will use torture against an individual that we transmit custody?

Mr. HOLDER. Let me try to state this as simply as I can: it simply should not be the policy or the practice of the United States of America to turn over a prisoner, a captured person, to a nation where we suspect or have reason to believe that that person will be tortured. I've engaged in, as a U.S. Attorney, renditions—ordered renditions, but this was to bring people from a foreign country to this country for trial.

If we are sending somebody to a place where—England, Canada, I don't know, some place where we have some basis to believe people will be adequately treated and fairly tried, we're in a fundamentally different situation than sending somebody to a country where we think they will be mistreated and will not be tried in a fair system, and that should not be the policy or practice of our great Nation.

Senator CARDIN. Again, I thank you for those clear answers. They're the ones that, at least, I wanted to hear.

And I just want to concur with Senator Graham and his comments in regards to the way that we treat the people that we detain, and I'd look forward to your confirmation as the next U.S. Attorney.

Mr. HOLDER. Thank you, Senator.

Senator CARDIN. The next Attorney General.

Chairman LEAHY. Thank you very much.

We also have a former Attorney General, former Supreme Court Justice, newly reelected Senator from Texas, who has been my partner on Freedom of Information Act legislation. And because no good deed goes unpunished, his caucus has now elected him to be head of the Republican Senatorial Campaign Committee. I'm glad you could have time, however, to be here. I recognize Senator Cornyn from Texas.

Senator CORNYN. Thank you, Mr. Chairman. I mentioned to—Mr. Holder, good afternoon.

Mr. HOLDER. Good afternoon.

Senator CORNYN. Good to see you.

I mentioned in our conversations, Mr. Chairman, Mr. Holder and I, about our shared commitment to open government issues and Freedom of Information Act reform. I believe he agreed that open government, more transparency produces greater public confidence in their government and more accountability among public servants, and I don't want to speak for you, Mr. Holder, but I think you agree that you would work with us to open up the government, to make it more transparent and more accountable. Did I represent that correctly?

Mr. HOLDER. I would hire you as my lawyer.

[Laughter.]

You did—yes, exactly right. That's consistent with our conversation.

Senator CORNYN. Senator Cardin did a good job asking about things like rendition. It's at the top of my list to think about. If we closed Guantánamo Bay and a military tribunal or some other tribunal determines that an individual is not guilty of a particular war crime with which they're charged and they're ordered released, if we closed Guantánamo Bay and put these detainees at Ft. Leavenworth, or somebody else, and their home country won't take them back, what do you propose we do with them?

Mr. HOLDER. That is a difficult question. It's one that, I guess, Senator Graham was talking about. At the end of the day, if we have a basis to determine that a person is dangerous and we have evidence that would demonstrate that that person is dangerous, I don't think that, given the Supreme Court decision in *Hamdi* and the responsibility that I have as Attorney General of the United States, should I be confirmed, for the safety of this Nation, that that is a person who we can release. Now——

Senator CORNYN. You're aware that according to the Department of Defense, about 61 detainees who've been released from Guantánamo Bay have rejoined the fight against the United States and our allies? And that would be the kind of danger that you would want to protect our country from. Is that correct?

Mr. HOLDER. Right. We want to try to minimize that possibility, while at the same time making sure that we are fair in making a determination that somebody is dangerous, and then having periodic reviews to make sure that that person remains dangerous. I think if you do that, we are within our rights, and within the law, to detain that person.

Senator CORNYN. Let me readdress—because of the nature of these, I've been in and out. Forgive me if this is territory you've covered before; it probably is. But as you know, on August 11, 1999, President Clinton extended offers of clemency to 16 terrorists who are committed to gaining Puerto Rico's independence by waging war on the United States. They had not shown remorse for their crime and they had not even applied for clemency, yet the clemency that was granted by President Clinton has been condemned overwhelmingly by both parties in both Houses of Congress.

I'm advised—and please, I'm asking this as a question. I was advised that, this morning, you called this clemency "reasonable". Could you explain why you think it's reasonable?

Mr. HOLDER. Yeah. I thought—what I said was, I thought that the President's determination was a reasonable one, given the fact that there was—that these people had served really extended periods of time in jail, given the fact that the nature of the offenses of which they were convicted, they did not directly harm anyone, they were not responsible directly for any murders.

But I think another factor is that we deal with a world now that is different than the one that existed then. That decision was made in a pre-9/11 context. I don't know what President Clinton would do now. I tend to think that I would probably view that case in a different way in a post-9/11 world.

Senator CORNYN. How about in a post-New York Trade Center bombing in 1993, attacks against our embassies in Africa, the bombing of the U.S.S. Cole. Would those have been sufficient to raise your concern about granting clemency, to acknowledge terrorists who did not even apply for clemency and who showed no remorse for their crimes?

Mr. HOLDER. As I was saying to Senator—I think it was Senator Graham—that I think we as a Nation didn't come to understand that we were at war soon enough, that we waited, perhaps, until the attacks in New York, Pennsylvania, and Washington on September the 11th.

And you know, hindsight is always 20/20. But I think that, looking at the incidents that you have referenced, those—again, I can't speak to the present, but those, I think, might have had an impact on—on my views.

Senator CORNYN. Did you recommend clemency for the FALN terrorist to President Clinton?

Mr. HOLDER. Yes.

Senator CORNYN. Was that a mistake?

Mr. HOLDER. I don't think it was a mistake.

Senator CORNYN. Well, let me rephrase that, in fairness to you. You said, after 9/11 you would have viewed it differently. Post-9/11, if you had it to do over again, would you do the same thing or would you have declined to recommend it to the President?

Mr. HOLDER. That's an interesting question. I think that I would have viewed it differently. I think that the recommendation that I might have made would have been different in this way. I think I would have said either this is something we shouldn't do, or to the extent you want—or to the extent that there's a desire to do something and you're asking what my opinion is, that the sentences should not be commuted to the extent that they were. I think that's where I probably would have ended up. I don't think I would have—I would not have ended up, I think, in the same place that I was when that happened.

Senator CORNYN. You would agree with me that I—I assume, after 9/11, the legally correct and appropriate way to address this novel attack against the United States, and the fact that we—I think you agreed with Senator Graham earlier that they should not be treated—terrorism should not be considered just a mere crime, but that the war against terror raised a number of novel legal

issues that really we had not had to struggle with since World War II, and even then it was far different than it is today.

I want to just ask you a hypothetical. Earlier, you condemned the use of waterboarding. But you're familiar with the ticking time bomb scenario, and I just want to pose a hypothetical for you. Let's say, as Attorney General, you find out that there are terrorists who have access to chemical, biological, or nuclear weapons and that you have a detainee who is in possession of information that, if disclosed, would prevent those weapons from being detonated in the United States, and thousands—maybe tens of thousands—of innocent people being killed.

You would still refuse to condone aggressive interrogation techniques like waterboarding to get that information which would, under my hypothetical, save, perhaps, tens of thousands of lives?

Mr. HOLDER. Well, I think there are a couple of ways in which I would look at that. One, I would not assume that because I would say waterboarding should not be done, that that's the only tool, the only mechanism that we would have in our arsenal to try to get that information from that person as quickly as we could.

I also think I'm not at all certain that waterboarding somebody, torturing somebody, whatever we want—whatever technique you want to use, is necessarily going to produce the results that we want. What I've heard from the experts is that people will say almost anything to avoid torture. They will give you whatever information they think you want to hear.

So, I'm not at all certain that, given the time sensitivity that I assume we have in your hypothetical, that waterboarding that person would necessarily give us the result that we want. And I think we also have to understand that we have other things in our arsenal that we could use, other techniques that we could use that would, I think, perhaps produce the result that we want.

Senator CORNYN. Well, of course, torture is illegal under international treaties and under our domestic laws. I've heard people talk about torture in expansive ways, where things like sleep deprivation, other techniques that maybe you would employ as an alternative are considered torture to them as well.

But under my hypothetical, if that were the only thing standing between you and the deaths of tens of thousands of Americans. You would decline to use that interrogation technique in order to save those lives, is that correct?

Mr. HOLDER. Again, I think your hypothetical assumes a premise that I'm not willing to accept.

Senator CORNYN. I know you don't like my hypothetical.

Mr. HOLDER. No, the hypothetical is fine. But the premise that underlies it, I'm not willing to accept, and that is that waterboarding is the only way in which I could get that information from those people.

Senator CORNYN. Assume that it was.

[Laughter.]

Mr. HOLDER. See, given the knowledge that I have about other techniques and what I've heard from retired admirals, generals, and FBI agents, there are other ways, in a timely fashion, that you can get information out of people that is accurate and will produce usable intelligence. And so it's hard for me to accept or to answer

your hypothetical without accepting your premise. I don't think I could do that.

Senator CORNYN. One last question, quickly. You're aware that some of the techniques that are used, aggressive questioning techniques, are used as a part of training by American military officers and enlisted men as part of their own survival training, are you not, sir?

Mr. HOLDER. Well, it's my understanding—and I might be wrong here—that we acquaint our people with those techniques so they can have some familiarity, some understanding of what it is they might face if they are captured by people who are far less—we'll put it out there—far less civilized, far less humane, far less conversant with the rules of law and war, so that they understand that. That is not necessarily because that's done, it's something that we are condoning. It's just to make them, to the extent we can, more resistant to the techniques that might be applied to them.

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

Chairman LEAHY. Thank you, Senator Cornyn.

Earlier today, the Assistant Democratic Leader from Illinois was the senior and junior Senator from that State. He is back again as just senior member. We noted here, Senator Durbin, in the hall earlier, that your new colleague has been sworn in. I would also note that he's the chair of our Human Rights Subcommittee. That's a subcommittee that was created because of Senator Durbin's longtime interest in this subject, and he's chaired it to great bipartisan praise.

Senator Durbin.

Senator DURBIN. Well, thank you, Mr. Chairman. That was very kind of you. I apologize for stepping out, but for the purpose noted, was to add another Democratic vote, which, as the Whip of the Democratic Caucus, I thought was a high priority for me, and for our future President.

Mr. HOLDER. I would not argue with that, Senator.

Senator DURBIN. You'd better not.

[Laughter.]

Mr. HOLDER. I am honored that you're here today. I was present for your opening statement. I reflected on it because I paid special attention to this issue of torture. At times it has been a source of torture politically for me, for some of the things I've said and questions I've raised. But I have felt from the outset that it really struck at the fundamentals of who we are as Americans.

Arthur Schlessinger, Jr., the late historian, said that "No position taken has done more damage to the American reputation in the world, ever, than on the torture policy of this outgoing administration." It led me to vote against Attorney General Alberto Gonzales, as well as his successor, Attorney General Michael Mukasey. I felt that they were equivocal and, in the case of Gonzales, had been involved in the formulation of that policy.

I listened to your opening statement, and in three words—in three words—the world changed, as far as I'm concerned, because you stated, without hesitation: "waterboarding is torture". I can't tell you how many times Senator Whitehouse and I asked that of the current Attorney General and we could never, ever get a

straight declarative sentence. I think it's important, important for our country, important for our position in the world. I understand Senator Cornyn's questions. I think they are questions that everyone who watches Jack Bauer in 24 would ask. Most Americans do; I have. It's a different scenario.

When we're going to draw values, principles, and laws, we have to really be cognizant of the fact that you can always construct a scenario that will challenge the foundation of any legal principle. I think it is far better for us to stand by standards that have guided our Nation for generations and return to them now with this new administration.

The Judge Advocates General are the top military justice lawyers in America. I've asked them about the techniques other than waterboarding: painful stress positions, threatening detainees with dogs, forced nudity, mock execution. They told me that each of those techniques is illegal and violates Common Article 3 of the Geneva Conventions.

When I asked Attorney Generals Gonzales and Mukasey the same question, they refused to respond. I think it's only fair that I ask you that question. Let me ask you that question directly: do you agree with the Judge Advocates Generals, would it be illegal for enemy forces to subject an American detainee to painful stress positions, threatening detainees with dogs, forced nudity, or mock execution?

Mr. HOLDER. I am not as conversant with those techniques as I am with waterboarding. It's something I really kind of focused my attention on. And so I would not go so far as to say that those constitute torture. I don't know enough about them. On the other hand, Common Article 3 requires that people—prisoners—be treated in a humane fashion, and so I would agree that the techniques that you have described—I would agree that the folks in the Judge Advocate General Corps are in fact correct, that those techniques violate Common Article 3.

Senator DURBIN. So in your mind they cross that threshold and become inhumane?

Mr. HOLDER. I believe that's right.

Senator Durbin. I was interested in the questions asked earlier about rendition. I won't return to that issue.

I'm sorry that our colleague—we're all sorry that our colleague, Senator Kennedy, cannot be with us today, and when the new organizational chart comes out, for the first time in 46 years, he won't be on the Senate Judiciary Committee, and we're going to miss him.

One of the issues that he cared about dearly, and I shared his concern, was the issue of immigration. I'd like to ask you a question or two about that.

We've had decisions made, policies implemented by this administration about the legal rights of those who are charged with being in this country illegally. The so-called streamlining regulations of this administration drastically reduced the time that immigration judges devote to each case, increasing the number of decisions issued with no written opinion and resulting in a huge backlog of cases in the Federal appeals courts.

Now, Richard Posner is a judge I know in Chicago; you probably know Judge Richard Posner as well as I do. He is probably as conservative as they come. He and I get together for lunch once a year and we talk about the issues before us, and he was unequivocal in what he said about what's happened as a result of these new policies.

He issued an opinion in which he concluded, "The adjudication of immigration cases at the administrative level has fallen below the minimum standards of legal justice." That's a quote from Judge Posner.

What are your views on these questions about the streamlining regulations, the administrative reviews, the delays, and the backlogs? Do you believe that they have compromised the basic standards of justice in America?

Mr. HOLDER. I believe that in any proceeding in which the United States is a participant, we have to be fair and we have to be perceived as being fair, whether it is a criminal proceeding where death is a possibility as an option for a convicted defendant, or we're making a determination about what the immigration status is of somebody.

We have to make sure that people are given, if not a technical legal due process—all the technical legal due process that somebody might get in a—in a trial, we have to make sure that, using that word—that phrase expansively, that everybody gets due process. We are true to ourselves, true to our Nation, true to who we are as a people if we do that. We cannot hold ourselves out as better than other Nations, and I think we are, unless we do those kinds of things and commit ourselves to doing it. It's not easy. It necessarily means an expenditure of resources.

This is a difficult time for us, trying to figure out where limited resources are going to go, and yet that in some ways is the ultimate test. It's an easy thing to adhere to your values in times that are non-stressful, where the money is flowing. This is really the test, when we are at war in a couple of places around the world, when we have budgetary concerns. This is the test for America: are you really who you say you are? I believe we are, and I believe with the appropriate leadership, we can handle and deal with the issues that you're talking about.

Senator DURBIN. I trust that you will consider reviewing the policies and regulations that led to this current situation involving the review of immigration cases.

Mr. HOLDER. I'll certainly do that. But more than that, what I'd like to do is work with the members of this Committee to come up with ways in which we are true to ourselves, true to our values, and come up with the necessary resources so that we are able to do that.

Senator DURBIN. I know Mr. Schumer asked you earlier about this Mr. Schlossman, Bradley Schlossman, in terms of people he hired in the Civil Rights Division of the Department of Justice. I know he asked you the question of whether he was subject to prosecution.

I'd like to ask you, I guess, a more practical question. According to the Inspector General's report, Mr. Schlossman hired 63 career attorneys into the Civil Rights Division who had demonstrably con-

servative or Republican Party credentials. He hired only two career attorneys who were identifiable as Democrats. He clearly was applying some sort of ideological litmus test, in clear violation of the Civil Service Reform Act.

So those 63 career attorneys in the Civil Rights Division comprise almost 20 percent of the entire workforce in that Division, so they technically have Civil Service protection. They were appointed to these positions, apparently in contravention of the Civil Service Reform Act. What's the recourse here? Are you forced to accept those 63?

Mr. HOLDER. I'm not sure what the recourse is. But I don't think we should paint with too wide a brush who these people are, these 63 lawyers at the Justice Department in the Civil Rights Division. I don't know who they are. They could be very well-intentioned people, dedicated to the mission of the Civil Rights Division. It doesn't mean, because they are conservative, because they are Republican, that they should not have the jobs that they now hold. I think the focus really ought to be on the mechanism that was used to get them into the Department.

Senator DURBIN. I agree with that.

Mr. HOLDER. And what he did is deplorable. What he apparently did in front of this Committee, according to the Inspector General, by not telling the truth, is also deplorable. And as I indicated, I think it was to Senator Feinstein, should I be confirmed as Attorney General, I'm going to review the decision—determination made by the U.S. Attorney's Office here in DC—again, that I have great respect for, but I'm going to review that determination to make sure that their decision to decline prosecution was an appropriate one.

Senator DURBIN. Thank you very much, Mr. Holder. Mr. Chairman, I yield.

Chairman LEAHY. Thank you very much. I would recognize our friend from Oklahoma, Senator Coburn. Good to have you here. You have waited here very, very patiently.

Senator COBURN. Happy to do it, Mr. Chairman.

Chairman LEAHY. Glad to have you here. Please, the floor is yours.

Senator COBURN. Thank you.

Well, welcome, again. I'm sure we're going to be here awhile.

A couple of things. I handed you a list of supposed wastes and problems within the Justice Department that totals nearly $10 billion, and the reason I gave it to you is, is one of the things that we worked on this past year, but was not funded, but the Justice Department did have was a cold case initiative on unsolved civil rights crimes. I'm just going to ask you for a commitment today, whether we fund that or not, will you commit to make sure that the intent of the Emmett Till Unsolved Civil Rights Crimes are fulfilled?

You have plenty of money there to do it, even if we don't fund it. I'm looking for a commitment that that will become a priority under your management of the Justice Department, whether we do a good job of funding it or not. I think there's plenty of money for you to move around, both in terms of grants to States, and I'd like a response on that.

Mr. HOLDER. The fact that that initiative exists, that this Committee, that this Congress thought it important enough to devote its attention to it, is an indication of this Committee, our government, at its best. I actually believe that. Those are crimes committed a long time ago that, without the perserverence and the conscience that I think this Committee demonstrated, could have been forgotten. They are stains on our Nation's history. There are still raw feelings about what happened. And so, yes, you do have my commitment.

Senator COBURN. Okay.

Mr. HOLDER. And I'll figure out ways to try to move money around.

Senator COBURN. Well, the commitment's in the name of the board, the Emmett Till board, and one gentleman in particular, Alvin Sykes. We owe a great deal of gratitude to him. I tried to make that a more efficient bill. I wasn't able to do it. We all sent out press releases, but it still isn't funded and it still isn't happening. What needs to happen, is it needs to happen; whether we fund it or not, there's plenty of move in there.

I want to go back to FALN, for a minute. Being from Oklahoma and the tremendous tragedy we had there, and I've heard your statements in terms of the reasonabless, why did not the weight of the prosecutors and the victims' families bear more on your decision in terms of thinking that that was a reasonable part? Tell me how you came to this idea that it's possibly reasonable.

Mr. HOLDER. I mean, I did factor that in to my determination. You had two U.S. Attorneys who weighed in against it. Law enforcement was against it. There are obviously the feelings that victims had, and we took those into—I took—let's talk about me. I took those into account and balanced that against the people who were advocating for it, an impressive group of people.

Also looked at the nature of the crimes, the duration of the sentences that they had served, and it seemed to me that on balance—on balance. It was a difficult decision, but on balance—in a pre-9/11 world, that the sentences that they had, substantial sentences up to 19 years—16, 19 years, that that was—that was appropriate, that the clemency petitions were appropriate. That was what—those are the—those are the factors I considered.

Senator COBURN. So when we had our conversation together in the office, which I enjoyed very much, you admitted to a couple mistakes of judgment. But you would tell this Committee now, you don't think that was one of them?

Mr. HOLDER. No. I think we can certainly have a difference of opinion about that, but I don't think that what I did there was a mistake in the same way that I would describe what I did in the pardon—the Rich pardon matter as a mistake.

Senator COBURN. Yes. I just have to kind of think back and the fact that if Terry Nichols were to get clemency right now, what would the people of Oklahoma think? You know, here's the co-conspirator in the Oklahoma City bombing, and under the same circumstances, you know—which, granted, there is some differences in the case, but there's not a whole lot of difference; one is aiding and abetting versus commission of an act. So that is still worrisome to me.

I want to spend some time—I talked with you about the *Heller* decision in my office. I believe the Second Amendment right—I believe the Supreme Court got it right. And I know your position on it, and I know you have publicly stated that that's the law of the land now in terms of our individual right to hold and own a gun.

Post-*Heller*, can you kind of give me what your position is now? You know, there's a lot of publicity out there in terms of written statements and previous comments about what you believe on the Second Amendment. Tell me where you sit today, and more specifically with that thought, as Attorney General of the United States, what you would do with that.

Mr. HOLDER. Well, I think that post-*Heller*, the options that we have in terms of regulating the possession of firearms has—has been narrowed. I don't think that it has been eliminated, and I think that reasonable restrictions are—are still possible. But any time that we think about interact—or interfering with what the Supreme Court has said is a personal right that has to be factored in now, the *Heller* decision, and the Supreme Court's view of the Second Amendment. I don't think that that means that we should turn away from the efforts that we have made to make this Nation more safe, to be responsible about—about guns and who has them, how they are used.

I mean, our effort, for instance, to go after felons in possession of weapons, I mean, should be as strong now as it was, you know, pre-*Heller*. But I think that there is certainly—we're in a different world. I think we operated, for a good many years, with the assumption that the Second Amendment referred to a collective right. We now know that that is not the case. So we are still, I think, going to have to grapple with that and understand what that means, but I think it is a huge factor. It's a major difference.

Senator COBURN. Let me ask you specifically. Much of your statements in the past had to do with guns as far as sporting events. Do you believe there's any assurance given by *Heller* that, outside of sporting use, there's a right to own and hold a gun?

Mr. HOLDER. Outside of——

Senator COBURN. Utilization for sport, for hunting, for skeet shooting, for target practice. Do you believe that there's a right to own a gun for other than hunting or sportsmen's purposes?

Mr. HOLDER. I think, post-*Heller*, absolutely. That's one of the things we're dealing with in Washington, DC now.

Senator COBURN. What kind of common-sense gun regulations would you like to see enacted?

Mr. HOLDER. Well, I agree with President-elect Obama, you know, closing the gun show loophole, banning the sale of cop-killer bullets, things of that nature. Those are, I think, the things that we need to focus on. Those are the things I think have a law enforcement component to them. Those are the—those are the things that I think are—are still viable in a post-*Heller* world.

Senator COBURN. Do you find any irony in the fact that you can serve your country in the military at 18, but in some places we would want to limit your ability to own a weapon until you're 21?

Mr. HOLDER. Well, I don't—well, I guess there is—there's a bit of dissonance there. These decisions are made on a, I guess, a State-by-State basis. I guess there is some dissonance there.

Senator COBURN. Okay.

As Attorney General, will you make a commitment to defend *Heller's* holding that the Second Amendment protects an individual's right to bear arms?

Mr. HOLDER. Sure. That is the law, as the Supreme Court has given it to me.

Senator COBURN. Would you do so if the Supreme Court granted cert in a case affecting or revisiting *Heller*?

Mr. HOLDER. I'm sorry. Would I?

Senator COBURN. Would you also defend *Heller* if the Supreme Court were to grant cert in a case affecting or revisiting *Heller*?

Mr. HOLDER. Oh, I see what you mean. Well, I mean, you have to examine the facts of the particular case and understand how those facts fit under the *Heller* determination. But *Heller*——

Senator COBURN. Well, let's assume it does.

Mr. HOLDER. Okay. Well, I mean, we follow—I'm a lawyer who follows, you know, the doctrine of stare decisis. The Supreme Court has spoken and, in viewing these new facts, one would have to take into account, in a very substantial way because it is the ultimate—the ultimate arbiter has said what the Second Amendment means—have to take that into account in deciding what position the Justice Department would take. I mean, *Heller* is a significant, significant opinion.

Senator COBURN. I'm sorry. I didn't hear the last part of that.

Mr. HOLDER. I said *Heller* was a very significant opinion.

Senator COBURN. Yes, it is. It's one I'm very happy about, as a Second Amendment advocate and as somebody from Oklahoma.

If the court were to change, and yet *Heller* still holds and it was challenged again, as the chief law enforcement officer of the country, you would be obligated to defend the stare decisis of *Heller*. Is that true?

Mr. HOLDER. Sure. That would have to be something that would take—that I'd have to take into consideration in determining what the Justice Department's position was on a new case, a new set of—a new set of facts. That would be a factor. Stare decisis would tell the Solicitor General—me—that you have to take into consideration the fact of the *Heller* decision.

Senator COBURN. Right. I'm out of time. Thank you very much. We'll come back to this.

Mr. HOLDER. Thank you.

Chairman LEAHY. Incidentally, I do want to compliment the Senator from Oklahoma for his rendition of "Rocket Man".

Senator COBURN. Thank you.

Chairman LEAHY. You will probably not move Elton John from the charts, but you carried the tune better than the Chairman did.

Senator COBURN. Well, actually I'm a Beach Boy generation, so it was a little hard for me to move to the other genre.

Chairman LEAHY. We'll do "Margaritaville" next time.

[Laughter.]

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Mr. Holder, welcome to the Committee. I'm pretty much at the tail end of a long and thorough, at least, first round of questioning. I'd like to cycle back, first, to the beginning, just because of my re-

spect and affection for the man, to remark on how pleased I was that Senator Warner, who served here for so long and with such distinction, for his first, I guess you could call it, official return to the body that he served, really as an embodiment of both independence and dignity, two characteristics you share with him, chose to do so to support your candidacy and to call all of us to the better angels of our nature. I was touched and impressed. I know he's not here any longer, but I would like to say that for the record anyway.

On a more personal note, I want to say how impressed I am with your kids. This has been a long episode for them. It is a lot less exciting for them than it is for you to be here, and it's a sign of what a wonderful upbringing they've had at the hands of their mom and grandmother, that they've represented your family so well here today.

Mr. HOLDER. We will take into account the fact that they might otherwise be at school right now.

[Laughter.]

Senator WHITEHOUSE. That's right.

Chairman LEAHY. And I should note that, at some point after the next break—well, obviously you do whatever you want to do, and I should say I'll certainly give you extra time for this, I mentioned to your mother that it's part of the Constitution few of us understand, that grandparents are required to spoil grandchildren, and then the parents can deal with it afterwards.

Senator Whitehouse.

Mr. HOLDER. She's a very constitutional—she's a good constitutional lawyer. She follows the Constitution quite well.

Senator WHITEHOUSE. We in the Senate have the good fortune and privilege to be present at occasionally extraordinary moments. One, for instance, was Senator Kennedy, who I'm thinking of today—he's not with us, but other people have mentioned him—and his return to the Senator for the critical Medicare vote, where he made such a difference after his diagnosis.

The year before, it was probably Senator Schumer's hearing in this Committee that brought Deputy Attorney General Comey before us to tell an appalling, an astonishing tale of the mission to Attorney General Ashcroft's beside. Deputy Attorney General Comey and FBI Director Mueller, with their lights on, racing to the hospital, pounding up the stairs to try to get there.

The FBI Director calling ahead to the agents by the stricken Attorney General's bedside, to tell them, whatever you do, don't leave this man alone in the room with the White House counsel and Chief of Staff to the President. Don't let them throw Comey out of the room. Then after that, we've learned about the eyeball-to-eyeball confrontation between the Department of Justice and the White House.

Jim Comey's testimony was remarkable. I know he is a supporter of yours, that he supports your nomination, and that he's written to us on your behalf.

What struck me was the personal nature of some of his discussion of how lonely and exposed it felt to be that far out, under that much pressure, standing on that principle.

I know you have been there as well. As a U.S. Attorney, you were there when you indicted and convicted the Democratic chair-

man of the House Ways and Means Committee, probably one of the handful of most powerful men in this town. You were there again as Deputy Attorney General when you cleared a special prosecutor to go after a member of the cabinet of the President who appointed you, and you were certainly there when you cleared the expansion of the investigation of the President himself who had appointed you.

If you don't mind me asking you a personal question, can you tell us a little bit about what you were feeling at those moments? And in those moments if it was lonely, as I suspect it was, what were your touchstones that gave you the courage and confidence to go forward and continue with those difficult decisions?

Mr. HOLDER. Well, I appreciate the question, Senator Whitehouse, and I'm sure you have felt those moments as well, having been U.S. Attorney and having had to make those lonely decisions.

I think you go back to the beginning and why you took—why we took—those jobs: you wanted to do the right thing. We swore to an oath to uphold the law. If you're going to be a good prosecutor, you have to treat the facts that come before you, irrespective of the political party of the person who might be involved, the connection they might have to you, personal or otherwise, the impact that it's going to have on the administration that you serve.

That is why the Attorney General is different and has to be in some ways distant from the cabinet, even from the President that the Attorney General serves. Personally, those were not necessarily difficult decisions because it's what I expected of myself and what people who mean something to me would expect of me, not difficult in that sense, but they were nevertheless ones that, after made, I think you reflect on and you have feelings about the impact of those decisions on the lives of people who you admire, people who you have worked with.

It doesn't give you any—any great sense of joy to have done them, and yet it is what you're called on to do. It is what I will do if I am fortunate enough to become the next Attorney General of the United States, to make those kinds of decisions in the way that I have in the past, lonely ones, as you've described them, but the right decision. I think I've shown a capacity to do it in the past, and a determination to do it in the future.

Senator WHITEHOUSE. Thank you.

Let me rattle off a few quick questions. The Bush administration knocked down the firewall between the Department of Justice and the White House, it limited conversations on cases to a very, very small number of officials. I have many disagreements with Attorney General Mukasey, but to his credit, he did rebuild that firewall. Will you pledge to us to maintain it?

Mr. HOLDER. I will. I've been presumptuous enough that we have actually started working on that, in anticipation for whoever might be Attorney General—I'm not going to be so presumptuous there—so that the communication between the White House and the Justice Department reflects that which Judge Mukasey—Attorney General Mukasey has put in place and is consistent with what existed during the Clinton administration.

Senator WHITEHOUSE. The tainting—some would even say corruption—of the Department of Justice during the course of this ad-

ministration has been both pervasive and systematic. It is my view that, frankly, if we went down this Committee and everybody listed something that bothered them that had happened, and you had that whole list assembled, there would still be more.

In that regard, what process do you think is appropriate, coming on—to use a sailing metaphor—as the new captain of the ship to do a damage assessment, see what needs to be fixed, and that way you can move on to other business, but you will know as the commander of the Department that there is a process in place to make sure that whatever has been left undone, that ought to have been done, or whatever has been done that ought not to have been done, is set right?

Mr. HOLDER. Well, I think you've set it out: an assessment has to be done, and that assessment has already begun in the transition effort that is ongoing. Attorney General Mukasey, Deputy Attorney General Phillip have been most generous in sharing information with us, been honest with us, very frank with us in pointing out places that they think need special attention. I have to say about those two gentlemen, that the only thing we were not given was the luxury of time. I think that, given more time, they would have done more.

But we're going to have time. Hopefully I will be one of the people who have that time. It is incumbent upon those who will run the Justice Department to do that damage assessment, what is—given what has happened, where does the damage still exist, and then come up with mechanisms to try to repair that. A lot of it will be inspirational. There are a lot of people who are still down in the Department. So, there—there has to be that kind of connection and I think it's going to have to be a personal connection.

I think, should I be confirmed, I'm going to have to spend a lot of time walking the halls, getting on airplanes, and talking to people in the field at the various U.S. Attorney's offices and making them feel a sense of mission, that the Justice Department is back in the way that it traditional has been, as I said previously, under Republican and Democratic Attorneys General and Presidents.

Senator WHITEHOUSE. Our distinguished Chairman was courteous enough to say I could have a little more time, so let me trespass on his indulgence with one final question. There has been some discussion about the prosecution of false statements to Congress. In addition to the recent OIG report about false statements by Department of Justice officials to Congress, I have referred a matter involving the EPA Administrator to the Department of Justice regarding false statements made to the Environment and Public Works Committee. I think that, frankly, it's been something of a recurring problem.

In addition to asking you to review the District of Columbia U.S. Attorney's Office determination, I would ask you if you would consider working with us on what might be appropriate prosecution guidelines for such offenses, and what might be appropriate notice or training to people who come before us about the obligation that they take on when they testify, because I think people tend to forget that they're here under oath. I think I've heard stuff that's everything from simply slipshod to outright, cold-blooded lies.

Mr. HOLDER. Well, I think there's certainly an obligation on the part of those of us in the executive branch to make sure that those who testify on behalf of the agencies, that we lead, or could lead, that there armed with all the tools that they need so that they can acquit themselves in a way that we would expect them to. I think that the point you make about training—testifying is not necessarily something that comes to people naturally.

I've done this more than a few times, and I've got to tell you that this process has still frightened me. And to put younger people who have not done it before, you know, Senators, Congressmen like yourselves without training them, without making them understand the significance of what it is they are doing, without making them understand what's on the line, reflects poorly on people who run those—run those agencies. So I will take that suggestion as a good one and try to work with the people in the Department so that what we have seen in the recent past is not replicated in the Justice Department that we will have.

Senator WHITEHOUSE. I thank you, and I thank the distinguished Chairman.

Chairman LEAHY. I thank you.

My friend, the Senator from Kansas, Senator Brownback, is here. I'm going to yield to him. Then after his questions, we'll take a break and give everybody a chance to stretch. If the members of the Obama family want to run hollering up and down the halls, feel free. It'll probably get on the evening news, though.

Senator Brownback.

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

The nominee——

Chairman LEAHY. I meant the Holder family. I'm sorry.

Senator BROWNBACK. Mr. Holder, congratulations on the nomination. I do have a number of questions to ask you, but I want to congratulate you and your family——

Mr. HOLDER. Thank you, Senator.

Senator BROWNBACK [continuing].—For an extraordinary American journey, and it has been that.

I want to start off on Guantánamo Bay. One of the places that people have talked about moving the Guantánamo Bay detainees, is Ft. Leavenworth, Kansas, which is in my State.

Ft. Leavenworth does not want these detainees. If I could put it any clearer to you, I would, but they do not want these detainees. The reason they don't want these detainees, is that it really gets in the way of their primary mission, which is education. This is the Command and General Staff College of the military. It's at Ft. Leavenworth. It's a small base. It also has a disciplinary brig.

But it's eight miles—an eight square mile base. It has no perimeter fence. It's bordered on the Missouri River. It has a train that regularly goes through about every 15 minutes. It has major sources of terrorist target points that they could go at. But that's only one piece of it. The primary mission of Ft. Leavenworth is to train the next generation of army and military leaders, and the Command and General Staff College—Secretary Powell went through this facility.

I just checked today and I'm looking at these numbers. We currently have 111 students from 91 different countries at Ft. Leaven-

worth today. We have heard from students from Egypt, Jordan, Saudi Arabia, and Pakistan, that they will leave the school if the detainees come to Ft. Leavenworth. The point is, a number of Islamic countries don't think these detainees should be held anywhere.

Then if you hold them at the same place that they're training their next generation of army and military leaders, they're saying we're out of here, we're gone. And so the people there on the base are saying you are really messing with the primary mission, and on top of that the relationships are built there often between army officers, our army officers and ones from Pakistan, Saudi Arabia, Kuwait, key relationships in the ongoing war on terrorism. If you hurt that by moving detainees to a place at Leavenworth that's not fit anyway to move this, this is a big hit.

I would just plead with you really to look at the specifics. I heard your clear statement earlier that you're closing Guantánamo, but the physical plant doesn't fit and the mission is significantly harmed if these detainees are moved to Ft. Leavenworth. I would hope you would conduct an open and a very clear process before any are moved anywhere, particularly looking at a place like Ft. Leavenworth.

Mr. HOLDER. Senator, I will pledge to do that. There is a review now that is under way to try to figure out what might happen with whatever the number of people are who might have to—have to be moved once that assessment of what the population at Guantánamo looks like. You have raised some very, very important points. The inability to—to have people from Islamic countries leave and then cut short that interaction that they might have with our military, is really something that, over the long term, could harm the interests of our Nation. So, that factor will be one that I will take back to the discussions that we are having. I think that is a—that's an extreme—that's—not that it's not something I'd heard before, but I think that is a very important point.

Senator BROWNBACK. It's a big issue for them. I've spoken to Secretary Gates and the Chairman of the Joint Chiefs about this as well.

Last Congress, Senator Kennedy and I successfully worked to pass a Prenatally and Postnatally Diagnosed Conditions Act, and there's no reason I would expect you to know about that bill. But what it was targeted at, was to provide an adoption list for children born with Down Syndrome. Right now, if you do the in-utero test for Down Syndrome, 80 percent of the children are aborted. Both Senator Kennedy and I thought that was a real tragedy. What we need to do, is to try to figure systems to try to encourage that they be born. This is a very tough situation. If you can't handle it, there are people that want to do this rather than killing the child.

Then we also put in that there would be current information put forward about life expectancy of Down Syndrome children conditions for early treatment. We're both very proud that we could get this on through. The Kennedy family has been great on working with people with disabilities, and I was delighted to partner with him on it.

The thing I find extraordinary is that the Americans With Disabilities Act, part of which Justice Department will be enforcing,

applies and protects people with disabilities, yet we tend to not apply it but at a certain point of life, and the children tend to be killed before it gets applied to them.

I would hope you would review within the Department of Justice when you would apply the ADA, the Americans With Disabilities Act. I know there are other agencies that have jurisdiction, and maybe primary jurisdiction ever this, but that you would look at, when do we apply the ADA? I don't know if you're familiar with that or if you could make a point of view on it.

Mr. HOLDER. I think the—at core, what you're talking about are very personal, difficult decisions that people have to make.

Senator BROWNBACK. I'd say a very legal question on your part.

Mr. HOLDER. But I think the legal determination is based on what the Supreme Court has said. In essence, our personal decision is tied to the right to privacy. I think that the legislation that you described, that you worked on with Senator Kennedy, is admirable, the possibility of adopting Down's children, that's obviously a wonderful thing.

The application of the statute that you mentioned, in a—I guess a prenatal sense, I just don't know what the impact of that would be on——

Senator BROWNBACK. Can you see the disconnect here? If that child gets here, it's protected and has the ADA apply. If it doesn't, 60 to 80 percent are killed. I would hope you would look at that and say that this should be applied at an earlier point, because clearly the intent is to protect this child, not to kill it.

Finally, I want to get into this, and I hope we can get into it more in the second round. I look at your background, and much of it which I find very impressive and admirable. The Marc Rich case really bothers me. I look at this, and a guy that renounced his U.S. citizenship and works with Iran in weaponry that maybe even is being used against our allies in the Middle East and is a fugitive, and then you allow this to move on forward.

I just—that one just seems to me to be really extraordinary. When I go through the factual setting of it—and you're a thorough lawyer. You wouldn't be where you are today if you weren't a thorough lawyer. This case just screams out at something that it seems like you would push back aggressively against. And then it has the political connections to it as well.

One of the things I've been very troubled about lately is the number of political corruption cases we've had going on in the United States, and you've had several recently. Then this one has a connection where his former wife is giving money to the President's library, where this is going through at the last minute. I just think it undermines confidence in the overall system. I haven't heard yet really a satisfactory explanation to me from you about how you let that one go through, given the nature of this case.

I ask, Mr. Chairman, for the record that the letter dated January 12th of this year from the—this is detailing what the House committee had put forward, sent by Congressman Dan Burton, be entered into the record, that goes through some of the specific dates and the hearing—the lengthy hearing that the House did on this. I just, I look at all those things and that just—that one seems to be really out of stream, given the thoroughness that you've oper-

ated with in the past, and it seems to have a lot of political connections to it and it really troubles me.

Mr. HOLDER. Well, as I indicated in my opening statement, and I think in response to questions put to me by Senators Specter and Hatch, I made mistakes in that matter. One thing I want to make clear though, with regard to this notion of political connections, I was not aware at that time about these contributions or the ties that existed between Mr. Rich's wife and other people in the Democratic Party, things of that nature.

With regard to questions about the facts, and some of the ones that you have mentioned, that was one of the mistakes I made. I did not acquaint myself in a way that I should have about all that existed in the files about—about Mr. Rich. I think if I had done that, I would have come up with a different determination.

But that is one of the things that I have said consistently during Mr. Burton—Congressman Burton's hearings, in interviews that I've done, and before this Committee today, that that was one of the mistakes that I made. I think, as I've also said, that my record should be viewed in its entirety as you make your determination as to whether you think I'm fit to serve as Attorney General.

This matter in which I made mistakes, I think, should be contrasted with a whole host of other decisions that I've had to make where I think I got it right, which is not to minimize. I don't mean to do that. I'm not minimizing the mistakes that I made there. But I do think that—I will hope—that will be placed in the appropriate context.

Chairman LEAHY. The Senator from Kansas had asked consent for a letter to be introduced in the record. I apologize, I didn't hear that, and of course it will be introduced in the record.

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

Chairman LEAHY. Senator Hatch, you wanted to say something before we recess?

Senator HATCH. I'll be very short, Mr. Chairman.

Mr. Holder, you've acquitted yourself well. First of all, I support you and believe that you should be supported. But let me just make this one comment. And I won't make it in the form of a question, I just want to see what you think.

First, as you may have heard today, the FISA Court of Review released its earlier decision that the Protect America Act of 2007, which allows warrantless foreign intelligence surveillance, is constitutional. I know hat everyone will have to study the decision, but I wanted to note with particularity the court's holding: "We hold that a foreign intelligence exception to the Fourth Amendment's warrant requirement exists when surveillance is conducted to obtain foreign intelligence for national security purposes and is directed against foreign powers or agents of foreign powers reasonably believed to be located outside the United States."

Now, this is a very significant decision. Mr. Chairman—and your answers to me earlier seemed to be consistent with this decision, that you're willing to be bound by the Constitution, and I knew you would be and I appreciate you saying that.

Mr. Chairman, I ask consent that an article from today's *New York Times*, written by Eric Littwell, about this decision entitled

"Intelligence Court Rules Wire—Tapping Power Legal", be put in the record at this point.

Chairman LEAHY. Without objection, it will be.

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

Senator HATCH. And Mr. Chairman, if I could just add one other thing. This is difficult for you to go through, but it's important. I just want you to know that I've been carefully monitoring this; I've been here part of the time and not here part of the time. But I look forward to you being confirmed and serving in this really, really important position. I hope that you'll do it in a nonpartisan way, which I think you will. I hope that the mistakes of the past will have influenced you even further towards being a great Attorney General, and that's what I'm expecting of you.

Thank you, Mr. Chairman. I said I'd be less than a minute, and I'm sorry if I went over.

Chairman LEAHY. I thank you, Senator Hatch, for your comment. We've worked together on these matters for many years. One of the things that was said while you were out following discussion by Senator Graham, is Mr. Holder's willingness to sit not just in formal meetings, but to have some informal gatherings on some of these issues with both Republicans and Democrats.

I've always felt that law enforcement should not be a matter—you don't look at law enforcement and say that a crime is a Republican crime or a Democratic crime. If you've got a crime and a victim you don't ask what their political parties are, you ask how you go about helping the victims and catching the criminal. Both Republicans and Democrats, I've been told, after your comments, have said to me they intend to take you up on that.

We'll stand in recess subject to the call of the Chair.

[Whereupon, at 3:45 p.m. the hearing was recessed.]

AFTER RECESS [4:07 p.m.]

Chairman LEAHY. Thank you, all.

Again, one of the things I've heard universally out here, Mr. Holder, is how great your children have been. I'm glad to see you've mercifully given them a break.

We have a longstanding and valued member of this Committee, who's the senior Senator from Iowa, and he's justifiably proud to have been the person who authored the False Claims Act, the modern version of it. I know you've worked in that same area, Mr. Holder.

You have not had your first round, is that correct?

Senator GRASSLEY. That's right.

Chairman LEAHY. It seems like it was so long ago that we started. But go ahead. I'll yield to the senior Senator from Iowa so he can have his first round.

Senator GRASSLEY. Mr. Holder, first of all, obviously I haven't given your Department the attention I should today and been here all the time, because I'm Ranking Member on the Senate Finance Committee and we had four hours of discussion before we passed out a bill dealing with the Children's Health Insurance bill. So that's where I've been. I'm senior Republican there and I had to be there, so I'm sorry I missed. I hope I'm not repetitive, but if I am, please forgive me.

The *L.A. Times* recently reported that you urged pardon attorney Roger Adams to change his recommendation against clemency for Puerto Rico terrorists to a recommendation in favor of clemency for at least some of them. Then after Roger Adams resisted, you directed him to draft a neutral options memo. I'd like to show you an FBI surveillance video secretly recorded in a Chicago apartment and ask you some questions. This chilling video shows Edwin Cortez and Alejandro Torres.

These were two of the terrorists who received clemency from President Clinton after you directed that the Justice Department change its recommendations. The video shows Cortez and Torres in the process of building a bomb. Were the two terrorists in this video in the group that you asked the pardon attorney to draft a positive recommendation for?

Mr. HOLDER. Senator, I can't answer that question. I don't have the records in front of me. I don't know the names of the people who were among that group of 15, I guess. I don't know the answer to that.

Senator GRASSLEY. Okay. Well, as I said, their names were Edwin Cortez and Alejandro Torres.

At the time you directed the pardon attorney to draft a neutral options memo, had you ever seen this video before?

Mr. HOLDER. No. I've not seen this video before.

Senator GRASSLEY. And you were aware that the video existed?

Mr. HOLDER. I think I've seen it in some news accounts in the recent past, like in the last week or so, something like that.

Senator GRASSLEY. Were you aware that after this video was taken, a search of the apartment led to the seizure of 24 pounds of dynamite, 24 blasting caps, weapons, disguises, false identification, and thousands of rounds of ammunition?

Mr. HOLDER. I can't say that I'm aware of that specific fact. I did know that the people who were a part of that group, for lack of a better term, had access to, had been captured with, explosives. I don't know the amounts or whether it was in connection with this particular thing.

Senator GRASSLEY. Were you aware that the FAL and terrorists threatened to kill the judge at their sentencing hearing?

Mr. HOLDER. That one, I'm not—I'm not aware of that.

Senator GRASSLEY. Okay. Well, these are facts that I believe. So let me ask you this: if you don't think that before the President decides to overturn the sentences of people like those in this video that were doing the things that I said they were doing, that the Justice Department ought to make sure that he is aware of the important facts like these?

Mr. HOLDER. I'm sorry. The question was?

Senator GRASSLEY. Yes. The question is, don't you think that before the President—a President, in this case, President Clinton—decides to overturn the sentences of people like those in the video that we just showed doing what I said that they were doing, that the Justice Department ought to make sure that the President is aware of the important facts like these that I just stated?

Mr. HOLDER. Yes. If the pardon process, the clemency process is working well, the President should have before him all of the rel-

evant facts so that he can make an appropriate determination, using the power that he has, fully informed.

Senator GRASSLEY. Yes. Well, then let me get on this case to what I believe you said and how you characterized it. In light of all that we've discussed here, did you believe that it is fair to characterize Cortez and Torres as "non-violent" and therefore deserving of clemency?

Mr. HOLDER. I'm not sure I ever described them as non-violent. What I said before was that—and I'm not —I don't know if these two are the individuals who are part of that 15 of that group. What I said is that—said with regard to the group of 15, none of them had, themselves, been directly linked to a murder or directly linked to a crime that involved an injury to somebody. Crimes of violence can be defined in a whole variety of ways that don't necessarily involve injury to a person. Some drug offenses are considered crimes of violence, even though a person has not been hurt. So the distinction I made was the way in which I phrased it at the beginning of the day, I guess, and throughout the day.

Senator GRASSLEY. Yes. Well, earlier today you said, in response to a question from Senator Sessions, that the people who received clemency didn't actually hurt anyone, and that you thought that granting them clemency was reasonable. But isn't it true that the only reason that the people in the video didn't hurt anyone is because the FBI caught them before they got a chance to do their damage?

Mr. HOLDER. Yeah, that might be so, but that is, nevertheless—you know, it's a difference between, let's hypothetically say, between murder and attempted murder. If some—there's an intervening act that stops the person from committing the crime that they wanted to do, the person's intent is certainly nefarious and worthy of punishment, but the ultimate crimes are fundamentally different ones.

Senator GRASSLEY. On another pardon, I know that Senator Specter has gone through the Rich pardon, but I have some details that I'd like to ask as well. In addition to being an unrepentant fugitive who had renounced his U.S. citizenship to avoid justice, Marc Rich was also a billionaire tax cheat. Speaking as Ranking Member of the Finance Committee where we talk an awful lot about tax gap and make sure that the tax laws are effective, it bothers me that giving Rich a "get out of jail free" card happens, and that's especially offensive to me.

You have admitted to poor judgment in your handling of this case. However, it is hard for many people to accept a general statement of regret because Rich was so obviously undeserving, and because all that money that his ex-wife gave to political leaders just before the pardon made it look like it was a very corrupt operation.

I'd like to hear what you have to say to those people who think "I made a mistake and I'm sorry" just isn't enough. What specific facts or legal considerations led you to be "neutral leaning favorable" to the Rich pardon? Was it a decision you made on fact, the law, or political considerations?

Mr. HOLDER. The mistakes that I made in the Rich matter, as I—I think I said earlier, all involved the fact that—a variety of things. Among them, I should have been more informed about Marc

Rich and—and his case. I was not. I should have kept the people who were involved in the prosecution in the Southern District of New York—good lawyers—and people at main Justice who were involved in the pardon process—I should have kept them involved. I assumed that they were. I found out later that they were not.

With regard to the political stuff and the money going back and forth between, I guess, Rich's wife or supporters, whatever, that, I did not know about. That did not enter into the decision or the actions that I took. With regard to the question of what my recommendation was, when I said "neutral", as I've testified, I guess, eight, nine years ago at this point, neutral was an unartful way of saying I don't know enough about this case. I should have used different words, I suppose.

When it's—you talk about leaning towards favorable, what people frequently do not put to the end of that phrase is what I said, was neutral leaning towards favorable if there was a foreign policy benefit that might be gained, and that was on the basis of the Prime Minister of Israel weighing in and supporting the pardon. I didn't say that I'm saying we should do this pardon. I said, look, if there is a foreign policy benefit, that somebody else will have to make the determination. If there is that, then that might be something that would make me think that this is something we ought to consider.

Senator GRASSLEY. If the attorney for Rich had been someone that you had no relationship with rather than former White House counsel Jack Quinn, would you have been as sympathetic to his case as you were?

Mr. HOLDER. I wasn't sympathetic to the case. All I did with regard to Mr. Quinn, as I've done for any number of lawyers, initially was to try to set up a meeting that he wanted to have with people in the Southern District of New York to review his case. The lawyers in the Southern District of New York refused to do that, and that was the end of it. I didn't pressure anybody, I didn't question their judgment. I might have done it differently, but it was their case. They made the decision not to do it.

When it came to the pardon component of this, I had, I think, two conversations with Mr. Quinn, one in November, another one on that last night in January. I wasn't particularly sympathetic. I didn't do anything to try to make this—this pardon happen. I certainly didn't perform as well, I think, as I should have, and had I performed as well as I was capable of doing, I might have done something more. I think I would have done more to try to prevent it, but I didn't do anything affirmatively to try to make the pardon happen.

Senator GRASSLEY. Well, I think maybe you just stated a partial answer to this next question, so let me—but let me ask it anyway. What do you think was your biggest mistake in the handling of the Rich pardon? And please be very specific about what you think you should have done differently.

Mr. HOLDER. Yeah. I should have made sure that I was better informed, that I knew more about the facts, about the underlying case, about the history of Mr. Rich. I should not have spoken to the White House and made the statements that I made without having had all of that knowledge. I should have ensured that the involved

lawyers were actually a part of the process instead of assuming that they were. I think those are the mistakes that I made in connection with the Rich matter.

Senator GRASSLEY. Yes.

Chairman LEAHY. Thank you.

Senator GRASSLEY. Did we get 10 minutes or 2 minutes?

Chairman LEAHY. Yes. You had 10.

Senator GRASSLEY. Well, it started out—if I had 10 then I had 10, and I'll quit. But I thought it was five. Five registered.

Chairman LEAHY. In the second round it'll be five minutes each. I'll begin the second round. I've been told there are some that wanted—did you have another short question you wanted to ask? I'll try and accommodate you.

Senator GRASSLEY. No. I think if he finished answering this question, you looked at me and I looked away from him. But if you finished answering the question——

Mr. HOLDER. I was done.

Senator GRASSLEY. Okay. Then I'll put it in the record.

Chairman LEAHY. Okay. Thank you.

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

Chairman LEAHY. The Freedom of Information Act, or FOIA, something that Senator Cornyn and I have worked on, establishes a statutory presumptive disclosure of information in the possession of the Federal Government. Actually, it places a burden on the government to justify if they're going to withhold anything from the American public. When requesters think they've been wrongly denied, of course they can sue and the Justice Department defends agencies in those lawsuits.

Now, each new Attorney General traditionally establishes what the ground rules are going to be on FOIA. Attorney General Reno urged departments to disclose, err on the side of disclosing, unless there was foreseeable harm. The current policy we're using now was issued by then-Attorney General John Ashcroft, reversed the presumption of disclosure to non-disclosure, by telling Federal departments and agencies the Justice Department would defend their action in not disclosing it. They could make any kind of a—legal argument.

Will you review the FOIA policies and practices, and if you do review them, will you do it at least with the consideration to reopening the kind of openness—or to reestablish the kind of openness that FOIA was intended?

Mr. HOLDER. I will pledge to do that. I don't know exactly how the administration is going to be structured and what traps I would have to run through in order to actually promulgate the policy, but that which Attorney General Reno—her policy, I think, is the way—the place where we ought to be, and that would be what I would be working towards. My thought would be, my guess would be, that the administration will—would support that.

Chairman LEAHY. Much of the legislation I've worked on, in a bipartisan way, I might say, has been to improve the criminal justice system, improve and increase DNA testing, for example. The Justice For All Act, passed in 2004, included the Innocence Protection Act. I worked with former Republican Congressman Ray LaHood,

Democratic Congressman Bill Delahunt in the House, both former prosecutors.

A key part was the Curt Bloodsworth post-conviction DNA testing grant program, the idea being we didn't want an innocent person in prison or on death's row, but at the same time, as former prosecutors, we didn't want to see an innocent person go to jail, knowing that that meant the guilty person is still out loose and could commit the same crime over again.

The Justice Department has been slow, ineffective, and sometimes obstructionist in implementing these programs. They put up barriers. They resisted funding key programs. The fact of the matter is, it's something that works well for both prosecution and defense. Will you work with me and others in the Congress in both parties to see that the key DNA testing programs are effectively funded and implemented?

Mr. HOLDER. I look forward to that, Senator. The Justice Department—we in the Justice Department have not only a responsibility for trying to solve crimes and convict people who committed them. The Justice Department, unlike maybe the responsibility that I think defense attorneys have, they have a more unique function, we have—and especially those of us who potentially are in charge of the Department—have a responsibility to the system.

And to the extent we can have tools that are made available to acquit people, exonerate people, as well as find them guilty, those things should be supported. I was—that's what I was talking about, I think, earlier with Senator Kyl. I agree with what he said and what you're saying, that there is a need for technology.

Chairman LEAHY. We also have the Debbie Smith DNA backlog reduction program to reduce the backlog of untested rape kits and all. These are all things that we should work on. It'll make law enforcement go better. It'll also not only will keep innocent people from going to jail, but it'll make it more effective and we'll get the actual person who committed the crime so they're not out there where they might commit the crime again.

Just like enforcement of the Violence Against Women Act. Will you make enforcement of this a priority, including enforcement in Indian country?

Mr. HOLDER. Yes, I will. It has been something that has been of importance to me since I was the U.S. Attorney here in Washington, DC. I started a domestic violence unit in the U.S. Attorney's Office in DC, having witnessed the crimes and the assaults that—and the unique problems that these cases present while I was a judge here in Washington, DC. I took the concerns that I saw, that were generated by what I saw as a judge, into the U.S. Attorney's Office and started a domestic violence unit. And so I would be more than happy to work with you on that.

Chairman LEAHY. And lastly, many of us in both parties worked very, very hard to reauthorize the Voting Rights Act. We do it for everybody, black, white, Hispanic, whatever they might be, poor, rich, to make sure that the right to vote in this country is given to everybody. Now there's a direct appeal to the Supreme Court on that. I remember standing proudly—Senator Specter and I both stood proudly—with President Bush when he signed the reauthorization.

Will you, if you are Attorney General, defend the constitutionality of the Voting Rights Act reauthorization before the U.S. Supreme Court?

Mr. HOLDER. Yes. The Justice Department has as a matter of policy the obligation to defend Federal statues. I can't think of a statute that my Department of Justice, should I be confirmed, would be more proud to stand behind.

Chairman LEAHY. Thank you.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

With only a five-minute round, I'll try to be brief on the questions and I'd appreciate your being brief on the responses.

You testified, Mr. Holder, that you were not intimately involved, only a passing familiarity, with the Marc Rich case, yet the record shows that you met or talked to Quinn on October 22nd, 1999, November 8th, 1999, January 18th, 2000, February 28th, 2000, November 17th, 2000, November 21st, 2000. Do you stand by that testimony, that you were not intimately involved, only had a passing familiarity with that matter?

Mr. HOLDER. Yes. The conversations that I had with him dealt with—I think, certainly the beginning part of it—the question of whether or not he was going to get a meeting with the U.S. Attorney's Office in the Southern District of New York. When it came to the actual pardon, I think I had two contacts with him: one in November, one in January. I never had a detailed conversation with Mr. Quinn about the facts of the case, and I have said that that is a mistake, that I had—you know, I should have either had that conversation with him, or independently I should have acquired sufficient knowledge so that I could have acted in a better way.

Senator SPECTER. Well, that doesn't sound like a passing familiarity to me, but we'll let that stand.

We came to the point as to whether you made any inquiry. According to the testimony of Roger Adams, the pardon attorney, he called you at 1:00 a.m. on January 20th because he was concerned that a pardon might be given to Marc Rich. You testified this morning, when I asked you about all of these sordid details about Marc Rich, about trading with the Iranians during the hostage crisis, oil for arms, hand-held rockets, dealing with the Soviet Union and Namibia and apartheid government in South Africa in exchange for Namibian uranium.

That was certainly an opportunity, when Roger Adams, the pardon attorney, called you—he opposed the commutation of Rich—the pardon of Rich—to find out what the facts were. When he called you at 1:00 a.m., wasn't that a pretty clear-cut signal that he was very concerned to have called you at home in the middle of the night, and an occasion for you to say, well, what's up here, Mr. Adams? What are you so concerned about? And then you would have found out about all of these facts.

Mr. HOLDER. Well, I suppose that could have happened. The call—as I remember, the call with Roger at that time was to inform me—he might have actually called me at 11:00 in addition to that. I'm not sure. I think he might have. But the call from Roger, I

think, was to tell me that the Rich pardon had gone through, or that Rich and Pinkus Green were on the list.

The way I viewed those calls at that point, I thought we were dealing with a fait accompli, that the President of the United States, on the last day in office at 11:00 at night, or whenever it was I got that call, had made up his mind and that the decision was a final one. I didn't expect that I would have the capacity to turn President Clinton's mind around that late in the administration. I mean, this was the last night of his administration.

Senator SPECTER. But you were on the record as saying "neutral leaning favorable." There has been a waiver of privilege on these pardon matters, according to a letter from David Kendall to Congressman Dan Burton.

Did President Clinton talk to you about the Rich pardon?

Mr. HOLDER. I never spoke to President Clinton about the Rich—Rich pardon.

Senator SPECTER. You've been questioned extensively about the FALN, and in the context of your testimony that you have tried to follow—respect career professionals. On the FAL matter, according to the *L.A. Times*, January 9th, 2009, Mr. Holder instructed the Pardon Attorney's Office to "effectively replace the Department's original report recommending against any commutation with one that favored clemency for at least half the prisoners." Mr. Adams told the *L.A. Times* that he responded to Mr. Holder "of his strong opposition to any clemency in several internals memos of a draft report recommending denial and in at least one face-to-face meeting, but each time Holder wasn't satisfied."

Well, Mr. Holder, if you wanted to make a recommendation of clemency, why didn't you have the directness to do so on your own without seeking the cover of the pardon attorney, who had told you he was against it? Why submit a second request for a report after there has been opposition registered?

Mr. HOLDER. All I asked Roger Adams to do was his job. The responsibility was—what I asked him to do was to draft a memo that went from me. The memo did not go from Roger Adams or from anybody else. The name that is on the memo is mine. It is a routine thing for the Deputy Attorney General to ask people who work for him to prepare memoranda——

Senator SPECTER. But he had told you he was opposed to it and you go back to him and say change it, I want you to recommend clemency for at least half of these people. Why do you place the burden on him to give you cover if you want to make a recommendation of clemency?

Chairman LEAHY. The Senator's time is up, but go ahead and answer the question.

Mr. HOLDER. Well, I'm not asking for cover, I'm asking him, as I said, to do his job. And I would not get cover, given the fact that the memorandum went from me. My name is on that memorandum so that anybody can look at that and say, well, now, who made this crazy decision? You look at it, it says from the Deputy Attorney General to the President. Eric Holder's name is on it. Roger Adams' name is not.

Senator SPECTER. Okay. One more? One more, Mr. Chairman?

Chairman LEAHY. Senator Kohl wanted to ask his five minutes and then go to vote. As soon as he finishes that, if you want to ask one more question, go ahead.

Senator Kohl.

Senator KOHL. Mr. Holder, if confirmed, you'll be responsible for a budget of nearly $26 billion. As you know, your allocation of that budget will provide us with some insight into your priorities.

Over the past years, we saw a concerted effort by this administration to sharply reduce Federal funding for local law enforcement, something that deeply troubled many of us. Funding for proven, effective programs like COPS, Byrne, and juvenile justice have been decimated. Last year, the President's budget requested a 60 percent reduction for State and local law enforcement programs, which was below its already inadequate levels of prior years.

As a result, vital services to our communities have been cut, police departments have had to down-size, local prosecutors have been laid off, drug task forces have been eliminated, and prevention and intervention programs have had to scale back their services or even close their doors.

Given your support for these programs in the past, can we expect to see a real change here? Will restoring these programs to their funding levels of prior years before the Bush administration be a top priority of yours?

Mr. HOLDER. Yes, Senator Kohl. This is one of my top priorities. One of the three things I mentioned on the day of my announcement was a need to increase support of our State and local partners, not only because of what they traditionally do in helping us fight violent crime, but because also when it comes to the national security component that is now such a big part of what the Justice Department does, they are, in essence, I guess what we've come to call force multipliers. They can help us on the national security side by looking at that car that has somebody in it that doesn't look quite right if they have tools that they can use to analyze data, information. They can help us not only in the traditional way in which we've thought of them, they can also help us on the national security side. So, I think this has to be a priority for us.

Senator KOHL. Thank you.

Mr. Holder, I was very disappointed with the sharp cut-back of antitrust enforcement at the Justice Department during the eight years of the Bush administration. When we conducted an antitrust oversight hearing in 2007, we found sharp declines in the numbers of antitrust investigations initiated by the Department. Many mergers among direct competitors in highly concentrated industries passed review without any modifications, including the XM-Sirius, Whirlpool-Maytag, and AT&T-Bell South mergers, to name just a few. This serious decline in antitrust enforcement has been very disturbing. Vigorous and aggressive enforcement of our Nation's antitrust laws is essential to ensuring that consumers pay the lowest prices and gain the highest quality goods and services.

What's your view with respect to the importance of strong antitrust enforcement?

Mr. HOLDER. It's a critical part of what the Justice Department does. It's especially true now where consumers in this Nation are

beset upon by so many different things, the economic downturn, our economic condition more generally. I think we have to make sure that we do all that we can to ensure that the American people, the consumers of this Nation, have a system that is designed to be free, to be competitive. And so antitrust enforcement will be something that we will devote a lot of attention to. We'll get an Assistant Attorney General who understands the mission of that division, the historic mission of that division, and I expect that we'll be more active.

Senator KOHL. One last question on resale price maintenance, Mr. Holder. For nearly a century, it was a basic rule of antitrust law that a manufacturer could not set a minimum price for a retailer to sell its product. This rule allowed discounting to flourish and greatly enhanced competition for dozens of consumer products, everything from electronics to clothes.

However, in 2007 a 5–4 decision of the Supreme Court in the *Legion* case overturned this rule and held that vertical price fixing was no longer banned in every case. I believe that this decision is very dangerous to consumers' ability to purchase products at discount prices and harmful to retail competition.

Do you agree with me on this principle, that manufacturers setting retail prices should be banned? Can we expect you to support that and provide a letter for us with respect to your position on this issue?

Mr. HOLDER. This is something that we talked about in our meeting, Senator. I have to say that that decision disturbs me. I'm not at all certain that—again, hearkening back to our desire to protect the American consumer, to make the market as open, as free as we can—that that decision by the Supreme Court is necessarily a good one, and so I would want to work with you to try to figure out ways in which we can bring the competitiveness back that I think perhaps the Supreme Court in that decision has removed from the system. I'm very concerned, very disturbed by—by that decision and the implications and what flows from it, so I look forward to working with you on that.

Senator KOHL. I thank you very much.

Chairman LEAHY. Thank you.

Senator, you wanted to finish a question?

Senator SPECTER. Now I have two yes or no questions, no explanation. Did you talk to President Clinton about the FALN pardon?

Mr. HOLDER. No, I did not.

Senator SPECTER. Would you make available to me the paper you referred to with respect to the request to Roger Adams on the Rich issue? We haven't been able to get a hold of a copy of that paper.

Mr. HOLDER. I'm not sure I understand.

Senator SPECTER. It's the FALN paper.

Mr. HOLDER. I'm sorry?

Senator SPECTER. Would you make available to me a copy of the FALN paper you referred to?

Mr. HOLDER. That is a document that belongs to the Justice Department. It is not, from my understanding, mine to give.

Senator SPECTER. Well, you referred to it in your testimony.

Mr. HOLDER. Yes. I have seen the document, but it is not my document. It belongs to the Justice Department.

Senator SPECTER. Do you have the document?

Mr. HOLDER. I have the document, but I have to give it back to the Justice Department. I signed an agreement that I will let no one see the document, including the people who had worked with me. The only person who is allowed to see that document is me, and I am supposed to give it back to them when I'm done with it.

Senator SPECTER. Well, I'll ask the Justice Department for it. Would you ask them, too?

Chairman LEAHY. I think we've gotten—we're into five of your two questions.

Senator SPECTER. Oh, no. I have some more.

Chairman LEAHY. Okay. We'll stand in recess, subject to the call of the Chair. We have a vote on.

[Whereupon, at 4:40 p.m. the hearing was recessed.]

AFTER RECESS [5:05 p.m.]

Chairman LEAHY. Thank you. We gave a little extra time to Senator Specter, and now we'd go back to Senator Feinstein. I'm going to try to keep the order the way it's supposed to be. I'll go, in about five minutes, to Senator Grassley.

Senator GRASSLEY. Right now?

Chairman LEAHY. Yes.

Senator GRASSLEY. Okay. Thank you. I'll continue where I left off.

Senator FEINSTEIN. Mr. Chairman, it is difficult to hear. I don't know whether I'm a dead zone or what, but I just can't hear.

Chairman LEAHY. Having been in hearings with the Senator from California I know she's not getting deaf, so it must be a dead zone.

Senator GRASSLEY. Okay.

Chairman LEAHY. Is it on?

Senator GRASSLEY. Mine is on, yes.

Can I go ahead?

Chairman LEAHY. Yes.

Senator GRASSLEY. Okay.

On the night before the pardons were issued, January the 19th, Quinn's notes reflect a telephone call with you in which you said you had "no personal problem with a pardon", but that you expected a "howl from the Southern District" once prosecutors there found out about it. Mr. Chairman, I'd like to place some telephone notes in the record at this point.

Chairman LEAHY. Without objection.

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

Senator GRASSLEY. And then I have a chart that has these calls on them that you can look at.

You testified before the House that you did not remember saying you had no problem with a pardon. Do you remember a comment about "howl from the Southern District"?

Mr. HOLDER. At this point, Senator, I mean, we're talking about something that happened, what, 2001? So that's eight years ago. I don't remember that, though I—though I find that comment interesting because if I said that, that in some ways indicates that I'm working under the assumption the Southern District knows about this. I see quotes around only part of it, and then something that says "when they find out", which appears not to be from—I guess,

from this piece of paper that I was—I was just handed. So, I don't—I don't remember.

Senator GRASSLEY. Okay.

As a prosecutor, wouldn't you agree that notes like these, taken at a time or just after a conversation, are much more reliable evidence than somebody's memory on the conversation months or years later?

Mr. HOLDER. As a general matter, I'd say that that's true. I wouldn't say that that's true of the particular piece of paper that I have in front of me. I'd want to know exactly what were the circumstances under which this was generated, what were the conditions. I mean, there's a lot of questions I'd want to know about this piece of paper. I would agree with you, generally.

Senator GRASSLEY. Okay.

Well, would you have in your possession any notes that would support a different account of the conversation?

Mr. HOLDER. No. I didn't take any notes of any of the conversations that I had. I don't—I'm not in the habit of taking notes of conversations I have.

Senator GRASSLEY. Do you have any explanation why Mr. Quinn would have written these notes if they weren't true?

Mr. HOLDER. No.

Senator GRASSLEY. Okay.

Mr. HOLDER. I take—on the other hand, I don't know why he would have taken these notes. But one thing that sticks in my mind is this one that he—he took the note that said, supposedly I said "go straight to the White House". I know I did not say that, and that appears in a piece of paper, a note that he took, which gives me some pause with regard then to other things that he perhaps wrote. I'm not saying he's making things up. Maybe he misinterpreted things. But that one, I know I did not say. This, I simply don't remember.

Senator GRASSLEY. Well, could I assume that based upon the notes, that you did say something to Quinn on the night before the pardon about the prosecutors in the Southern District howling that seems to suggest that you knew that they were unaware that the pardon was being considered and that they would complain loudly if they knew? After all, if they knew, the prosecutors would have been already out there yelling about it.

Yet, you testified before the House that you didn't ask to see the pardon petitions when Quinn first mentioned it because "my belief was that any pardon petition filed with the White House ultimately would be sent to the Justice Department". It's hard to believe that you assumed the Justice Department had been reviewing the petition since November 2000, but by January 2001 that prosecutors were not yet howling about it. Isn't it true that you knew, on the night before the pardon, that the prosecutors did not have a chance to weigh in, and doesn't that contradict your testimony that you believe the White House would forward the petition to the Justice Department?

Mr. HOLDER. No. Actually, I think, as I said earlier—again, I'm not—I've not seen this, you know, for some time. And I'm—I think that the fact that you say Holder says, there's only part of that that's in quotes, "howl from the Southern District". Again, I don't

remember saying that, but if in fact I said that, I think that actually points the other way. It shows that there is an expectation assumption on my part that the people in the Southern District, in fact, know about this. I don't—now, the part that says "when they find out" does not have quotes around it, so I don't know where that comes from.

Senator GRASSLEY. Okay. My time is just about up. Mr. Holder, during the House pardon hearings you said repeatedly that you believed all along the President was extremely unlikely to grant the pardon. According to your testimony, that's why you failed to make sure the President heard both sides of the story.

Essentially, you didn't think Justice Department input was necessary to stop it because Rich was a fugitive, and that would disqualify him. However, less than a year earlier you had successfully supported the position for another fugitive, Preston King. Mr. King's case is very different from Marc Rich, but they were fugitives and President Clinton had just pardoned King. In light of the recent history, why would you say that you thought merely being a fugitive would disqualify Rich?

Mr. HOLDER. Well, because the King case was really fundamentally different. That involved a person, an African American, who had been discriminated against. I don't remember. I don't—I think it was a Selective Service case, or something. I don't remember exactly what the facts were, but that had the indicia of something of a wrong that needed to be righted.

Mr. King being a fugitive was not in the same category of fugitive as—as Mr. Rich. They were just fundamentally different types of cases. I don't remember all the facts, but I do remember it was something about a racial injustice that had happened to Mr. King. I think it had something to do with a draft case, but I'm not sure about that.

Chairman LEAHY. Thank you.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much.

Mr. Holder, when my time was used up in the morning we were talking about the use of independent contractors that the CIA utilizes to carry out interrogation techniques. I mentioned that I wrote a letter to Mr. Mukasey in February of last year, asking as to why this does not satisfy the inherently governmental strictures that must be used. The FBI uses its own people, its own agents for interrogation, the military uses their own agents for interrogation, or soldiers for interrogation, but the CIA uses, wholly, contractors. It seems to me that the interrogation of detainees in a war fought by the United States is an inherently governmental function. I'd like to ask that you commit to re-review those decisions, and I have the letters here which we will forward to you.

Mr. HOLDER. Fine. I'd be glad—we'd be glad to, Senator Feinstein.

Senator FEINSTEIN. Thank you very much.

Let me ask this question. It seems that one of the issues surrounding closure of Guantánamo is what to do with the 80 or so detainees that likely will not be tried, but have been adjudged to be unlawful combatants and a threat to U.S. security. Do you believe that there are international treaties, and specially the law of

armed conflict, that would allow the detention of an enemy combatant for the duration of the conflict?

Mr. HOLDER. I think—I can't refer to something specific, but I think that's a generally accepted rule of war, that during the course of a conflict a person who's captured by the other side can be detained for the duration of that—of the conflict. But there are safeguards for that person, there are ways in which that person has to be treated, but I believe that is the general state of the law.

Senator FEINSTEIN. Well, if you assume, as I do, that the law of armed conflict would cover this and that this is an unusual, asymmetric war that's going to go on, that there should be some form of regular Federal review of the case. Do you have any thoughts on that? Should that be an annual review, which I would think would make sense to have a judge look at the case outside, thereby provide some element of due process?

Mr. HOLDER. Yes. That's one of the things I'd like to work this Committee on, and one of the things I discussed with Senator Graham. I think that there has to be fairness in two spots, one, in making a determination that the person is an enemy combatant, is dangerous, and then, two, a review of that decision on some periodic basis. I think a year is probably pretty reasonable. Because if we get to the point where we conclude that the person is not dangerous, then I think we need to go to the other phase, which is to try to repatriate the person, take the person to some other country. Given the fact that this is a war that may go on for an extended period of time, I think that kind of review has to be a part of what we—what we do.

Senator FEINSTEIN. One more quick question, and I thank you for that.

The FBI is in the jurisdiction of this Committee, as well as the Intelligence Committee, for its work on counter-terrorism and intelligence-related activities. The Senate Intelligence Committee received, last week, the answers to questions from one of its open hearings that was held in January of 2007. Now, that's two years to get a response and we've had to fight to get the response.

The FBI regularly tells both this Committee and the Intelligence Committee that it can't respond quickly because all information provided to Congress has to be vetted through the DOJ, and that causes delays. Similarly, the DOJ prevents the FBI from answering questions from Congress on its domestic intelligence and counterterrorism questions.

Now, we are not looking to get into the details of an investigation. We are looking to carry out our oversight responsibility, and therefore I would like to ask you if you would review this oversight, because I think it's been a way to stymie oversight rather than prompt, quick review which allows the committees to do their work.

Mr. HOLDER. I'll commit to doing that. A two-year response is obviously unacceptable. I'll work with Director Mueller and the folks in the Justice Department to see if there's a way in which we can decrease that amount of time. Two years is simply unacceptable. Even—I don't know exactly what's going on in the—in the Justice Department. We can certainly do better, way better, than that.

Senator FEINSTEIN. Thank you very much.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Feinstein. Thank you for coming back. I know that you have the additional burden, as the outgoing chair of the Rules Committee, to coordinate the inauguration on the 20th. So, I know that you've been doing double and triple duty today, as well as taking over Intelligence. So, thank you very much.

And of those who have double and triple duty, Senator Kyl, of course, is the Assistant Republican Leader for the Senate, and has also been in other committees today. So, Senator Kyl, I appreciate you coming back. I yield to you.

Senator KYL. Thank you, Mr. Chairman. There seems to be an inordinate number of members of this Committee and the Finance Committee that serve together, and we had a big mark-up in that, so I apologize for the way that the questions here are perhaps a little bit broken up.

We talked this morning about many of the matters that you and I discussed when we met in my office. There was one other matter that we hadn't gotten to yet, and I want to bring that up, first. It was the problem of Internet gambling. Without going through all of the different things that we discussed, we talked about the potential for fraud, money laundering, and organized crime.

Again, I won't go through all of that. But the question that I would ask, and want to just get confirmed for the record, is that you indicated that under your leadership the Department of Justice would continue to aggressively enforce the law against the forms of Internet gambling that DOJ considers illegal.

Mr. HOLDER. That is correct, Senator.

Senator KYL. Then we discussed the regulations that were issued recently by—actually, jointly by the Federal Reserve Board and the Treasury Department, in consultation with the Attorney General. The regulations primarily try to go at the problem by thwarting the payments for unlawful Internet gambling—in other words, to shut off the cash flow.

I mentioned the fact that they were already beginning to spend millions of dollars in an effort to try to undo these regulations somehow, and hope that you would—and you indicate you would—oppose efforts to modify or to stop those regulations, and, of course, continue to be vigilant in enforcing those regulations to shut off the flow of cash from this illegal activity. Is that your intent?

Mr. HOLDER. Yes, that is my position. That's what I will do.

Senator KYL. Yes. Thank you. I appreciate that very much. We could talk a lot more about the pernicious nature of Internet gambling, but in view of the time here, let me move on.

One thing we did not talk about, but I understand—in fact, I know you were asked by Senator Leahy—I've forgotten who it was, someone earlier, about the liability protection for the telecommunications companies under the FISA law.

My understanding is that you answered the question, saying that you would honor the certificate issued by Attorney General Mukasey that allowed the companies to claim the liability protections, unless there were compelling circumstances. Is that approximately correct?

Mr. HOLDER. That's, I think, correct. Yes.

Senator KYL. Okay.

Now, the certification by General Mukasey was based on an investigation of the previous conduct of the telephone communications—telecommunications—companies prior to the revisions in the law in order to determine whether they were entitled to receive retroactive immunity. In other words, the lawsuits had been filed based upon their earlier conduct. The new law provides explicitly protection for conduct prospectively. So the question obviously that arises then, is what conceivable, compelling circumstances could you conceive of that would relate to this previous investigation that caused General Mukasey to issue the certification?

Mr. HOLDER. Senator, I'm not sure that I can come up with what those compelling circumstances might be. I guess maybe I was being a little too lawyerly in trying to give myself some wiggle room. I can't imagine what set of circumstances there would be that would have us go back and undo those certifications. I can't imagine it. I don't know.

Senator KYL. And you are aware that the Department of Justice, of course, has taken a position in the litigation involving AT&T in support of the liability protections that have been invoked by AT&T?

Mr. HOLDER. Yep.

Senator KYL. And it would be quite unusual, where constitutional issues are involved, for the Department, just because of a change in administration, to take a different position?

Mr. HOLDER. Yeah. It would certainly not happen as a result of the change in administration. That would not be a compelling circumstance. And I—if you——

Senator KYL. I didn't mean to suggest that either.

Mr. HOLDER. No, no, no. No. I'm just saying that if you—you know, put me to the task to say, all right, Mr. Holder, tell me what the compelling circumstance might be, I don't think I could answer that question.

Senator KYL. I hope you'll consider this question not out of bounds. We also discussed the speech you made, and you talked about activities before the Congress acted. I had one question to ask in that regard, but we hadn't discussed this. You were Deputy Attorney General during the Clinton administration when the Department of Justice authorized the warrantless served of Aldred Ames, the spy, who is a U.S. citizen, of course. This was in 1993. Were you involved in that authorization, by any means or to your recollection?

Mr. HOLDER. I don't remember.

Senator KYL. Do you have any reason to believe that it was unconstitutional?

Mr. HOLDER. No. Actually——

Senator KYL. Even though it was warrantless?

Mr. HOLDER. No. I was talking to a member of my staff. As I understand it—now, as I understand what he relayed to me, there is a national security exception not covered by FISA that would have made that search appropriate, legal, I think.

Senator KYL. Yeah. FISA was not involved in that.

Mr. HOLDER. Right. I think that's what was relayed to me.

Senator KYL. Okay. My time is up for this round, so I'll——

Chairman LEAHY. I thank you very much, Senator.

Senator Feingold.

Senator FEINGOLD. Thank you.

Again, Mr. Holder, among the last-minute administrative actions taken by the outgoing Attorney General was to approve major changes to the Attorney General guidelines governing domestic FBI investigations, changes that went into effect on December 1st. As you may recall, I and a number of other Senators on this Committee repeatedly raised concerns about these new guidelines, with the way that Congress was supposedly consulted, with the decision to push these through during the lame duck period, and also with the substance of the changes.

Will you take a close look at these guidelines early in your tenure and consider whether changes need to be made, and will you engage in real consultation with Congress as you do so?

Mr. HOLDER. The guidelines—I will do that, Senator. The guidelines are necessary because the FBI is changing its—its—its mission, going from a pure investigative agency to one that deals with national security matters. I understand the concerns that you have expressed. I think the thing to do would be to see how these guidelines work in operation, but then to take—ask some serious questions, and whether or not the concerns that you and others have raised have been borne out by the way in which these things have been used in practice. So, yes, I would commit to doing that.

Senator FEINGOLD. Thank you. I think these concerns are really quite serious. I appreciate that. And this is related to it. The FBI has developed a policy document that is hundreds of pages long to implement these new guidelines. I asked FBI Director Mueller back in September whether those policies would be made public to the greatest extent possible. He said yes. I understand from a letter we recently received from the FBI General Counsel that a process is under way to consider what portion of those policies can be made public.

As Attorney General, will you support efforts to make as much of those FBI policies as public as possible?

Mr. HOLDER. Yes. I think that helps the FBI, it helps our overall law enforcement effort to be as transparent as we can, understanding there are certain things that we cannot share. But to the extent that we can, we are helped by doing that.

Senator FEINGOLD. Thank you.

In his first State of the Union address, President Bush said of racial profiling: "It's wrong and we'll end it in America." Not long after that, Representative John Conyers and I introduced the End Racial Profiling Act. Senator Barack Obama was a co-sponsor of the bill in the last two Congresses. Will you support the enactment of this or similar legislation to end racial profiling in America?

Mr. HOLDER. I'm not familiar with the bill. I apologize for that. But I think that we have to do something to end that practice. It's not good law enforcement. You make assumptions on the basis of the way a person appears and you either put somebody in the ambit of suspicion, or you miss somebody because you're looking at that other person. There are a whole variety of reasons why we shouldn't be doing that, so I am against, in every way, racial profiling.

Senator FEINGOLD. Well, my question was whether you'd support legislation, because there have been some things done by the Justice Department and the administration in this regard. Do you agree that there's a need for legislation in this area?

Mr. HOLDER. I'd like to work with you and see what the legislation says and see if there are deficiencies in what the Department has done, and get a sense—this is not an issue I focused on very recently—and get a sense of whether ore not legislation, as opposed to something else, might be the better way to do it. I'm not saying that I'm opposed to legislation, I simply don't have a factual basis at this point.

Senator FEINGOLD. Fair enough. I do think there's a strong need for legislation, a law of the land, making it very clear from a legislative, legal point of view that this is not tolerable.

On the death penalty, as you know, in 2000 when you were the Deputy Attorney General, the Justice Department publicly issued a nearly 400-page report with every conceivable piece of data about Federal death-eligible cases, down to the District level, covering the time since the Federal death penalty was reinstated in 1988. This comprehensive report was extremely helpful in understanding how the Federal death penalty has been implemented.

In the past two years, I have repeatedly asked Justice Department officials whether they would prepare a similar report covering the time period since 2000. And while the Department provided some statistical information in connection with an oversight hearing I held in June 2007, it never agreed to prepare a detailed report similar to the one Attorney General Reno issued.

Will you commit to making this information publicly available, if you are confirmed, just as you and Attorney General Reno did in 2000?

Mr. HOLDER. Yeah. That report was done by lawyers in my office and I thought it was a very useful examination of the system and raised some very disturbing questions about not only the racial identity of people who were in the death system—in the Federal death system, but also the geographic distribution of those people. So this is an issue that I think needs to be revisited. It's been about, as you say, eight years or so, and it might be, I think, an appropriate time to do another—another study, and then share the results as we did in that first—in that first study.

Senator FEINGOLD. Thank you for that.

Finally, I was encouraged by your testimony that the DOJ should "reinvigorate its efforts to protect the public in areas such as food and drug safety and consumer product safety." As you know, private lawsuits play a significant role in protecting the public, but the outgoing administration has pursued a far-reaching policy of trying to preempt State tort law through Federal regulatory action.

What is your view of this trend toward so-called regulatory preemption, and do you think the position of the Federal Government in such cases needs to be changed to restore common-law legal rights of injured citizens?

Mr. HOLDER. Well, I'm not an expert in that—in that field of the law, but I think what we need to do is approach that from a pro-consumer perspective. I think we need to always be doing that, protecting the American people, but I think that's especially true now,

given the economic hardships that so many of our fellow citizens are facing.

Senator FEINGOLD. Thank you, Mr. Holder.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Holder, when you are confirmed to be the Attorney General of the United States, one of your principal responsibilities is to make sure that access to our legal system is available to all of our citizens.

Last year, this Committee held a hearing on access to civil legal services. We looked at the Legal Services Corporation. The last study was done in 2005 that showed that, of those people who are eligible for legal services and apply for legal services, about 50 percent are turned away. Over a million cases a year were denied because of a lack of resources to have access to our system. That denies justice to the people who could not get those services.

When we look at this circumstance, we find that we can do a lot better. I guess my question to you is this. Congress should have been appropriating more money. We're at about 50 percent of what we said was the minimum level for appropriations, so Congress hasn't provided the money. We haven't had a reauthorization Legal Services Corporation for a long time. My question to you is, I hope this will become a priority. I understand the difficulty of getting legislation passed in Congress in this area. It's not going to be easy. The jurisdiction rests primarily with the HELP Committee.

This Committee has the responsibility of access to the legal system, but I would hope that we could find a way to bridge this gap, working together with the Department of Justice, and take advantage of an opportunity. Even though we're in tough economic times, the circumstances are even more difficult for people who are seeking help through our legal system.

Mr. HOLDER. Yeah. I think one of the responsibilities that the Attorney General has, in addition to a few other people, is a systemic responsibility, not only to do the things that concern the Department of Justice directly, but also to take care of a system of justice, on the criminal side as well as the civil side.

I was one of the co-chairs of President Clinton's effort of lawyers for One America, where we tried to stress the need for representation in civil matters. The statistics are appalling and consistent with what you say, the number of people—usually poor and disproportionately women—who are not represented in civil proceedings and they are not getting justice as a result of that.

Senator CARDIN. I want to bring up a matter that you initiated when you were the U.S. Attorney for the District of Columbia, and that is Community Prosecution Project, where you worked with the community to get a better understanding of what you're doing, and also a better understanding of the community needs. The goal was to reduce crime, to increase neighborhood safety, and get better cooperation between the community and the prosecutor so that you could be more effective.

My question is whether we could use that as a model and try to develop smarter ways that we can involve communities so that we can keep our communities safer.

Mr. HOLDER. I think it is a model and I think it is something that we should experiment with in other parts of the country. We have seen the success of community policing, and it was our thought that community prosecution would also work. I think that we saw positive results from what we tried in Washington, DC, and we tried it in other places in demonstration projects. Funding for it didn't continue into the new administration. I think it is something that is worthwhile and worthy of looking at, and potentially expanding.

Senator CARDIN. We're working on some legislation with some other members of the Committee to try to allow some discretion in setting up these types of programs in other parts of the country. We urge you to work together with us to see whether we can't get some legislation passed in that area.

Let me ask just one more question dealing with the Juvenile Justice and Delinquency Prevention Act. I want to talk about one of the four core requirements, which is the deinstitutionalization of status offenders. Status offenders are those who are truant, or minor issues. In the 1980s, we enacted a valid court order exception, which was supposed to be an exceptional circumstance where you could put a juvenile in a facility in order to rotect that juvenile. It was never meant to undermine the purpose of the Act, to deinstitutionalize status offenders. The number of use of these orders have increased dramatically over time.

I would urge, as we look at the reauthorization of this Act, to make sure that the core requirements that were intended are now carried out and we have a realistic schedule so that we can phase out the need for this exception.

Mr. HOLDER. I agree with you, Senator. We don't want to have a situation where we have status—juvenile status offenders who are made a part of the juvenile system. It does not do them well. It doesn't—we have limited space in the juvenile system. In any case, we shouldn't be using that space for status offenders. There has to be an alternative way in which we deal with them. And again, it's a question of who we are as a Nation. We can be—we have to be, you know, smart, up front.

If we deal with these kids who have these status offense problems in a constructive way, it's much less likely that we're going to have to deal with them either as juveniles later on in the system, or as adults in the criminal justice system. But it all requires focusing attention on those kids when they're not really in serious trouble.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Senator Coburn.

Senator COBURN. Thank you. First of all, I'd like unanimous consent to put into the record evidence of self-defense from gun ownership, various articles.

Chairman LEAHY. Without objection.

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

Senator COBURN. Since I only have five minutes, I want to go back to guns just for a minute. Do you have any plans to issue regulations or seek a change in the concealed carry laws of the States or have a Federal regulation that might impact those?

Mr. HOLDER. That has not—that has not been something that I have discussed with anybody in the administration. It's nothing that I have contemplated.

Senator COBURN. It's nothing you're contemplating?

Mr. HOLDER. No.

Senator COBURN. And I understand President-elect Obama does have an opinion on "assault weapons". Can you tell me what your plans are and how you view that, and whether or not you think that ban ought to be reinstituted?

Mr. HOLDER. Yeah. I think you had asked me earlier about the regulations that I thought might still exist post-*Heller*, and I had mentioned, I think, closing the gun show loophole, the banning of cop-killer bullets, and I also think that making the assault weapons ban permanent would be something that would be permitted under *Heller*, and I also think would be good from a law enforcement perspective.

Senator COBURN. Okay. Thank you.

I want to move just to another area that hasn't been covered. I also want to say, I'm still troubled about the FALN decision, with that. As I kind of do some more equivalency with the Oklahoma City bombing and the people who were in the conspiracy but yet didn't actually commit the acts that took the lives, I just have to tell you, I'm still troubled with your viewpoint on that and the fact that you don't believe it was a mistake in judgment.

I want to ask you about Governor Blagojevich. In the answer to the questions of the Committee, you failed to mention what evidently was a very short-lived and early relationship in doing some legal work for them. On December 17, 2008 in a letter to Senator Specter, you said you never did substantive work on the Illinois gaming matter, and that the engagement never materialized. Mr. Chairman, I have a copy of the letter which I'd like included in the record, if I might.

However, in response to an FOIA request to the Illinois Gaming Board, it appears that from an April 2, 2004 letter, that you had at least done enough research to submit a detailed first request for documents from the Gaming Board, and that you had at least one telephone conversation with the chairman of the Illinois Gaming Board. I would like this document placed in the record as well, which I will submit.

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

Senator COBURN. But tell me how that is not substantive work.

Mr. HOLDER. Yes. I was going to say, the letter was drafted by an associate who I worked with, a very capable young man, and really only is of preliminary nature. We're asking for very preliminary documents. We did not receive any documents in response to that letter.

The call that we had was, again, of a preliminary nature. That was something that we were trying to get things set up in terms of acquiring documents, figuring out what our jurisdiction was going to be, figuring out who we were going to report to, dealing

with a conflict that existed between the State and my law firm. None of those things were ultimately resolved. We never got any of the material that we sought. We were never paid for any of the work that we did, and that's why we have described it in the way that we did.

Senator COBURN. Okay. It's a reasonable explanation.

Did you all ever send a bill for the hours worked by your associate?

Mr. HOLDER. No, we did not.

Senator COBURN. I want to go to one of the things that's troubled me tremendously, and that is that we have rules on our veterans who come back who—and I'm actually asking for a commitment, because we have a rule that says a veteran who is incapable at this time of not handling his affairs is adjudicated mentally defective and cannot own a gun. There's no trial that goes through for that, there's no true protection of his rights. This is through—not through statute, this is through regulation.

And the current law prohibits individuals who are adjudicated as mentally defective from possessing a firearm. I don't have any problem with that, but by regulation, "adjudicated as mentally defective" is defined as "a person who is either a danger to himself or others", which I don't have any problem with, or who lacks the mental capacity to contract or manage his own affairs. We have a lot of veterans coming back with closed head injuries who get better, but they ended up losing the rights to go hunting with their kids or their grandfather when they come back.

Do you believe that this definition that is used in regulation is appropriate?

Mr. HOLDER. I'm not familiar with this area of the law or that definition. What you've described, though, is a bit troubling. Of course, I think you're right: people can get well. To the extent that they do and have an ability, I suppose, to demonstrate that they are well, rights, then, I think, maybe perhaps ought to flow back to them. What I'd like to do is perhaps work with you on this.

Senator COBURN. I'd be happy to send you a letter stating this out much more thoroughly and ask for your opinion and response to that, if we could get that.

Mr. HOLDER. But I think you raise an issue that could be a legitimate one.

Chairman LEAHY. Thank you, Senator Coburn.

Senator COBURN. I will yield back.

Chairman LEAHY. Did you have another question?

Senator COBURN. Well, I have some but——

Chairman LEAHY. We're about to go into our—well, once Senator Whitehouse is over, we're going to go into our third, and final, round. But if you want, if you have one more question, I'm trying to give flexibility.

Senator COBURN. Actually, I'm doing fine, Mr. Chairman.

Chairman LEAHY. Okay.

Senator COBURN. Thank you for your graciousness.

Chairman LEAHY. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thanks, Mr. Chairman.

Mr. Holder, I just want to touch on one thing briefly, because there's been so much discussion in this room about whether President Clinton's decision in the FALN matter was reasonable. At the time in the pre-9/11 environment that prevailed then, there was substantial support for this, was there not?

Mr. HOLDER. Yes, there was. The——

Senator WHITEHOUSE. I'm looking at a list here which is—it's described as a partial list of the supporters, and it's 15 pages long. And if I could just mention some of the names that are on it: former President Jimmy Carter; there are 11 members of the U.S. Congress; there are 5 members of the New York City council, which is interesting when you consider that the most grievous offense that the FALN committed was two bombings in 1975 and 1977 in New York; numerous members of the New York legislature; the former mayor of the City of New York, David Dinkins; a formal resolution actually on behalf of the city council of New York.

From the religious community, the United Church of Christ supported this in, it looks like one, two, three general synods, so they repeatedly did this. The General Conference of the United Methodist Church supported it. The Baptist Peace Fellowship of Northern America supported it. Back to New York City again, the presiding bishop of the Episcopal Church of New York City supported it. The General Secretary of the American Baptist Churches of America supported it. The Ecumenical Officer and President of the Council of Bishops of the African Methodist Episcopal Church supported it. The Puerto Rican Bishops Conference supported it. The President of the World Council of Churches supported it. The General Secretary of the World Council of Churches supported it.The Deputy General Secretary of the Young Women's Christian Association supported it.

I count five Nobel Peace Prize award recipients who supported it, and one Nobel prize for medicine recipient who supported it; two organizations that had received the Nobel Peace Prize, Amnesty International and Physicians Against Nuclear Weapons; and two family members of deceased Nobel Peace Prize winners, including—particularly relevant to all of us—Coretta Scott King, of the United States.

The President of the National Lawyers Guild. In fact, the National Lawyers Guild, by resolution, supported it, and on and on we go. So I just wanted to put those names in the record. We can all agree or disagree about this, but I think in context it's important to recognize some of the leading legal civil rights, Christian, and governmental organizations who were in support at the time.

The other thing I wanted to touch on, is the Chairman had a wonderful hearing recently with some of the police chiefs. There's been a real conflict, I think, between homeland security and hometown security. Homeland security has had buckets of money and people have been able to buy, you know, scuba equipment, underwater vehicles, and train up for every possible thing you can think of, all of which is, you know, a good thing, but a lot of it has come at the expense of hometown security, cuts in police coverage, reductions of community policing. I ran a Community Prosecutor's Office when I was the Attorney General.

I'd love to hear you—and the police officials who were present said that it had become very unbalanced, that in terms of the public safety effect in their own community, the people whose safety they were responsible for, they felt that they had a lot of resources for a very small risk with respect to homeland security, and very small resources for current, present, under the Bush administration, increasing violent crime risk in their communities, and that it was extremely disproportionate. From a sort of policy point of view, how would you propose to address that question? Do you see it as an unbalanced situation right now?

Mr. HOLDER. Well, that's something that I'd want to work with the committee on and see whether or not, in fact, that imbalance exists. I don't want to get on the bad side of our my—our former colleague, Janet Napolitano.

Senator WHITEHOUSE. That's right. We can't get you in trouble with Janet Napolitano now.

Mr. HOLDER. Who was a U.S. Attorney with the two of—with the two of us, and you know I don't want that to happen. But we really do need to put our money where there is the greatest harm, or potential harm. Obviously, defending our Nation and keeping our citizens safe is our primary objective, but that has a couple of components to it.

We not only have to worry about criminals and terrorists from—from foreign shores, we also have to worry about criminals who are here and among us. And we cannot lose the progress that we made during the '90s, when we worked with you when you were Attorney General in Rhode Island, to see those crime rates really come down. We can't afford to see those crime rates creep back up. We have to do what we can to make sure that we maintain a lid on the crime that we started in the '90s, but at the same time protect us from—from terrorists.

I think we can do both, but it really is a question, with the limited amount of money that we have, making sure that we're spending it in the appropriate places. And I would like to work with this Committee, and with Janet—Secretary Napolitano—in figuring that out. She and I are going to have a meeting, actually, I think next week, an informal meeting just to talk about that—those kinds of issues. I don't—I don't know she'll be as generous as she seemed to indicate in the conversation that we were having when we started talking about actual money, but we'll see. But maybe as a former colleague you might help me, Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Holder.

Thank you, Mr. Chairman.

Chairman LEAHY. I see these former U.S. Attorneys getting together.

Now, for those who want to know the schedule, we're going to begin our third, and final, round. I'll reserve my time for the moment and I will begin with Senator Specter. After we finish this round, this third and final round, we will have completed our time with Judge Holder, and then we will set a time—I haven't—I was going to consult with Senator Specter before we do. We'll set a time for the panel tomorrow, which will be the completion of the hearing. Judge Holder will not have to come back, obviously, for that.

Depending on what time we finish tonight, Senator Specter and I will consult and set a time for the morning.

Senator Specter.

Senator SPECTER. Mr. Chairman, I understand your interest in concluding tonight and I'm agreeable to that, but not if it's going to cut us short on questions. You and I had discussed this for a few moments a minute ago. In the Attorney General hearings on Alberto Gonzales, which I chaired, Senator Kennedy had a total of 57 minutes. He had two 10-minute rounds. He wanted a third round, which was 22 minutes. He wanted a fourth round, which was 15 minutes. And so far, there have been 15 minutes, 10 and 5. You're talking about another five, where you may extend it a little. That is insufficient for the questions I have on this confirmation.

Chairman LEAHY. Well, if Senator Kennedy comes back we'll give him extra time, but the——

Senator SPECTER. I don't think it's funny, Mr. Chairman. I don't think it's funny.

Chairman LEAHY. I was at the Ashcroft—I have the chair. I was at the Ashcroft hearing, the Gonzales hearing, and the Mukasey hearing. The Mukasey hearing, we only had—the last hearing we had, we only—we had two full rounds. The only third round was just you and I. In the Gonzales hearing, there were three rounds, which we're having now. In the Ashcroft hearing, there were two rounds. Only you and I had a third round. Now, we're not going to have a different system because it's a Democratic administration than we had with a Republican administration. You are recognized for your third round.

Senator SPECTER. Well, Senator Leahy, the Gonzales hearing was a Republican administration. That's exactly the same thing. A Republican was chairman of the Committee. There were requests for more questions and I acceded to those requests. I have other serious, important questions to ask and so does Senator Kyl, and so do others. I would like to find out from the Senators who are here. Senator Kyl, how many more questions do you have? How much more time do you need?

Senator KYL. Thank you, Senator Specter, for yielding. I would just suggest to the Chair, I have several more questions. I'm trying to go through them right now to get it down to the bare minimum. We can finish tonight. I have no intention of dragging this out. But I would ask for the same consideration that Democrats were given during the Gonzales hearing, nothing more than that. I think if we stop talking about this and just get on with the questions, we can finish, but we will need a little bit of additional time.

Senator SPECTER. How much more time do you need, Senator Grassley.

Senator GRASSLEY. I don't know how to say how much time. I don't think it's—it's surely not as much time as I've used, but I do have the issues of congressional oversight, the False Claims Act, and whistle-blowers that I'd like to discuss with the Attorney General.

Senator SPECTER. Senator Sessions.

Senator SESSIONS. Well, I had thought we'd probably go into a third round, so I had expected to have two more opportunities. I

didn't expect to finish tonight. There are some things I wanted to work on overnight. But the Ranking Member, I know, has been on top of this from the beginning.

Senator SPECTER. Do you have an estimate of how much time you need?

Senator SESSIONS. Fifteen minutes.

Senator SPECTER. If everybody could do that, there would be some parameter and we could be more precise.

Senator SESSIONS. Fifteen minutes.

Senator SPECTER. how much more time do you need to finish?

Senator COBURN. Well, Mr. Chairman, my suggestion is that you allocate, at a minimum, 15 minutes more for each Senator.

Chairman LEAHY. Why doesn't the Senator from Pennsylvania begin his questions? Let's hear where we go. A number of questions have been asked two or three times already. We can sit here all night long and ask the same question over and over and over and over again, which doesn't seem to accomplish anything for anybody. The—I would suggest the Senator from Pennsylvania begin his questions and let's see how we go.

Senator SPECTER. Mr. Holder, turning to the issue of the request for independent counsel to investigate Vice President Gore on allegations that he had raised hard money from the White House in violation of Federal law during the tenure of Attorney General Reno when you were Deputy Attorney General, there was a strong recommendation by FBI Director Louis Freeh, Charles LaBella, designated by Attorney General Reno to make an independent evaluation as to whether there ought to be independent counsel, and a third attorney, Robert Conrad, who came in for the same purpose. All three of those made strong recommendations for the appointment of independent counsel.

There were four witnesses who testified that Vice President Gore was at a meeting where there were discussions about raising hard money. Leon Panetta, who was one of the four witnesses, said, "The purpose of the meeting was to make sure that he", Gore, "knew what the hell was going on."

Attorney General Reno discounted the testimony of one witness, David Strauss, who was Chief of Staff for Vice President Gore, who had a notation of 65 percent soft, 35 percent hard. Couldn't remember what was said, Attorney General Reno did not acknowledge that as competent evidence, which it was under the hearsay exception of "prior recollection recorded", which is different from "prior recollection refreshed". He didn't qualify for "prior recollection refreshed", but he did for "prior recollection recorded".

There were 13 memorandum from Harold Icches to the Vice President from August of 1995 to July of 1996 containing divisions as to hard money and soft money, also, the Federal contributions, which is the equivalent of hard money contributions.

Vice President Gore testified that "the subject matter of the memorandums would have already been discussed in his and the President's presence". The Vice President further acknowledged that he "had been a candidate for 16 years and had a good understanding of the hard money".

Now, the applicable law states that where there is a preliminary investigation which determines there are reasonable grounds to be-

lieve that further investigation is warranted, it seems to me, as it seemed to FBI Director Freeh, Charles LaBella, and Robert Conrad, that independent counsel should have been appointed. Independent counsel was not appointed.

I chaired the subcommittee hearings that went into this issue in great detail, and it seemed obvious that Vice President Gore was being favored. If it hadn't been the Vice President, the superior, that independent counsel would have been appointed. Shouldn't independent counsel have been appointed in that matter?

Mr. HOLDER. No, I don't believe so, Senator Specter. Louis Freeh, Chuck LaBella, are very good lawyers and people who I respect and people who, coincidentally, are supporting my nomination to be Attorney General. There were—they had their view of that matter. We had career lawyers at the Public Integrity section who had a contrary view. Attorney General Reno and I looked at those conflicting recommendations or conflicting views of the case and made the determination that we thought that which was expressed by the Public Integrity Section was stronger, was more reflective of both the facts and the existing law, which is not in any way to take away from—from Louis Freeh and Chuck LaBella.

These are people who are friends of mine who are great lawyers, and I certainly respected the opinions that they shared with us. In fact, that gave me pause. The fact that we had those kinds of recommendations coming from people that I respected, it made me think twice about where we were going. But ultimately, our determination was that the Public Integrity Section lawyers made the better call.

Chairman LEAHY. Well, the time of the Senator from Pennsylvania has expired. Certainly feel free to continue. I just want to make sure I understood one thing. Mr. LaBella and Judge Freeh are both supporting you as Attorney General, is that correct?

Mr. HOLDER. That's correct. Mr. Freeh, I think, is going to be testifying tomorrow, and both have submitted letters.

Chairman LEAHY. Please go ahead, Senator.

Senator SPECTER. Mr. Chairman, I would appreciate it if my line of questioning was not interrupted.

Mr. HOLDER. I'm sorry, Senator. I didn't——

Senator SPECTER. You didn't interrupt it.

Mr. HOLDER. Oh.

Senator SPECTER. I'm not talking to you. I'm talking to him.

Chairman LEAHY. I think the only reason I interrupted is because your time had run out and I was trying to give you a little extra time.

Senator SPECTER. Well, you could have accomplished that without bringing up collateral matters to interrupt the train of the inquiry. There's no doubt that the Chairman would have had other time to make any comments he wanted. He runs the place.

Do I understand you to say that you think that was a proper decision, Mr. Holder, not to appoint independent counsel, and if you're confirmed and a similar situation arises, that you would not appoint a special prosecutor? We don't have an independent counsel status, but we have the equivalent of a special prosecutor. Are you saying that if you're confirmed you'll stand by that kind of a judgment?

Mr. HOLDER. I'm saying that I will stand by the judgment that I made then, and also assure you and the American people that I'll look at the law, the facts, and make the appropriate determination. And if an independent counsel, a special prosecutor is warranted, I will do that.

Just for some perspective, one of the things that people talk about is perhaps we were trying to favor Al Gore. Well, we certainly didn't favor Al Gore when we decided to make that rescue of Elian Gonzalez in Florida, a critical state, as it turned out. Vice President Gore criticized the decision to make that—to do that operation. Maybe that cost him the State, I don't know. But Attorney General Reno and I certainly did not show him any favoritism then, and we certainly didn't show him any favoritism with regard to the matter that we are talking about here. Our determination was based really on the facts and the law.

Senator SPECTER. Well, you have your judgment which you've expressed, and you stand by it, and I have my judgment. I don't think it's a closed question. I don't think that, on the basis of that evidence, if it hadn't been the Vice President, if it hadn't been a superior, somebody to favor, been John Doe, independent counsel would have been appointed. I think it's so clear, that it raises a question in my mind as to your fitness for the job.

Mr. HOLDER. With all due respect——

Senator SPECTER. Let the record——

Mr. HOLDER. With all due respect, Senator, you are a good lawyer. I'd like to think of myself as a good lawyer. Good lawyers frequently disagree about these kinds of things. I don't question your integrity, veracity. I respect your opinion in the way that I would hope that you would respect mine. It was not done for any reason other than what I would consider a neutral assessment of the material that we had in front of us.

Senator SPECTER. You are an excellent lawyer, Mr. Holder, if you wouldn't—if you weren't such a good lawyer, I wouldn't be so surprised. If you were a poor lawyer, an inexperienced lawyer, not a real professional, I could say, well, he doesn't know any better. But my evaluation is that a man in your position knew better. That's the whole point. But you've expressed yourself and I've expressed myself.

Mr. HOLDER. Senator, we're getting close to a line here. I will certainly understand a difference of opinion, but you're getting close to questioning my integrity, and that—that is not appropriate. That's not fair. That's not fair, and I will not accept that.

Senator SPECTER. What's not fair?

Mr. HOLDER. To suggest that the decision that I made in the case, along with Attorney General Reno, supported by career lawyers from the Public Integrity Section, was anything other than a call on the facts and the law. There was never any attempt on the part of any of those people, those career people, the Attorney General, or this Deputy Attorney General to do something that was inappropriate or that favored Vice President Al Gore. That was not the case.

Senator SPECTER. Well, you're telling me what you think about it.

Mr. HOLDER. That's fine.

Senator SPECTER. And I'm telling you what I think about it.

Mr. HOLDER. That's fine.

Senator SPECTER. And when I look at Marc Rich and the circumstances surrounding that, you gave a pardon to that guy who was a fugitive with that terrible record. And you have Roger Adams calling you at 1:00 a.m. It looks to me like there's favoritism to give cover to President Clinton. We talk about FALN. That's inexplicable to me. We all have been over all the facts as to how you have the professionals opposing clemency. They give you a report opposed to clemency. Then you want them to change their report in order for you to have cover. So I have to make a determination on my vote looking at the totality of your record, which overall we appreciate.

Mr. Chairman, may the record show that it is 5 minutes and 27 seconds, so that I have now had——

Chairman LEAHY. Actually, it is 10 minutes and 31 seconds, because that is 5 minutes plus your 5 minutes.

Senator SPECTER. May the record show that it is 25 minutes, 25½ minutes, so that on the Kennedy standard, I only have 21½ minutes left.

Thank you, Mr. Chairman.

Chairman LEAHY. If the Senator is finished his time, then Senator Grassley. You are on your third and final round, and I appreciate the——

Senator GRASSLEY. You missed——

Chairman LEAHY. No. Senator Specter wants to make sure you are all given extra time, and that is what I am doing, as I did for Senator Specter. I appreciate your taking only the 10 minutes instead of——

Senator SPECTER. Well, Mr. Chairman, I am not finished yet.

Chairman LEAHY. Well, then finish your questions within a reasonable amount of time. You are now on the third round of 5 minutes each. You have gone 10 minutes into it. Do you want more time in your third round? Because there will not be more than three rounds.

Senator SPECTER. Mr. Holder, when you came to see me for the so-called courtesy call, I showed you a letter which I had written to Attorney General-designate Gonzales, and I have written a similar letter to you and handed it to you. But you had a chance to see it at that time, and I gave you notice about it.

This is the parameter and the scope of congressional oversight, and the essence of the letter is a conclusion by a Congressional Research report about the scope of appropriate congressional oversight. And it says in part that DOJ consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration at DOJ or elsewhere. In the majority of instances reviewed the testimony of subordinate DOJ employees such as line attorneys and FBI field agents was taken formally or informally and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, sum-

maries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations in the surveillance and arrest of suspects and documents presented to grand juries not protected from disclosure by Rule 6(e).

Do you accept that as the appropriate legal standard for congressional oversight?

Mr. HOLDER. Well, I would say this, Senator. Congressional oversight of Justice Department activities is obviously very important, and I will respect Congress' role. In general, I will work to keep the Committee fully informed of the Department's policies and programs.

Now, there are limits, I think, to what we can say about ongoing law enforcement matters, including grand jury testimony that might jeopardize an investigation. That would be a concern I would have, and also a concern about the impact of revealing that kind of information and the chilling effect it might have on line lawyers, but will work to cooperate with you to make sure that you have access to the materials that you need so that the oversight that you conduct would be meaningful.

Senator SPECTER. Well, I take that to be a "no" answer.

Mr. HOLDER. Well, I am not—this seems a bit broad to me.

Senator SPECTER. Well, Mr. Holder, may I suggest this: that you take a look at it, study it more fully, and give me a response in writing as to whether you would accept that as the appropriate range of congressional oversight? Or if you disagree with any part of it, tell me which part you disagree with that?

Mr. HOLDER. I would be glad to do that, Senator.

Senator SPECTER. Mr. Holder there have been suggestions for a revival of the so-called fairness doctrine, and my question to you is: Do you think that as a matter of public policy, the so-called fairness doctrine ought to be reinstated?

Mr. HOLDER. Senator, that is a topic I have not given an awful lot of thought to. If I could perhaps submit an answer to you in writing after I have had an opportunity to think about that.

Senator SPECTER. That would be fine.

Mr. HOLDER. I wouldn't want to commit myself to something and not give you the benefit of what is my best thinking on that.

Senator SPECTER. Well, this is a subject which I did not take up when we had our so-called courtesy call, so that would be fine. I will propound some questions to you in writing on that because I want you to answer also the constitutional question, if you would.

Mr. HOLDER. Sure, that is fine. You have been very generous in sharing with me, both at the meeting and in the address you did on the floor, with laying out for me, I think in a very generous fashion, the things that I could expect at the hearing. And I called you to say that I appreciated that.

Senator SPECTER. Senator Leahy asked you about a reporter's shield. You said you would be willing to consider it. We had a reporter held in jail for 85 days on the allegation that a source was not disclosed. At all times, the special prosecutor in the case knew where the leak came from. I would appreciate it if you would be

a little more definitive in your response. I do not want to protract the discussion now.

Mr. HOLDER. That is fine.

Senator SPECTER. Because I want to give my colleagues plenty of time, so——

Mr. HOLDER. Well, let me just say this, Senator. Maybe I wasn't as clear as I could have been. I actually favor such a measure. All I was saying was that I would want to work on what it would actually look like. There is a piece of legislation, I understand. There are going to be concerns, I can tell you, I am sure, within the Department. I would want to work with you on that. But my position is that I think something can be crafted to deal with the issues that you have raised and the concerns I know I am going to hear at the Justice Department. But I am in favor of a shield law.

Senator SPECTER. Well, the critical question is the national security issue. If you would take a look at that and give me and us your judgment, I would appreciate it.

Mr. HOLDER. Okay.

Senator SPECTER. The issue of—which is the topic that we started with, we started with you. And my sense is that there are two fundamental principles involved here. One is the right to counsel, Sixth Amendment right to counsel, and an integral, indispensable part of that is freedom of communications to a lawyer. The second principle is the State or the Commonwealth, which I used to represent, has the obligation of the burden of proof. And it seems to me that the prosecutor ought never to try to prove his case out of the mouth of the defendant. And I don't know if you anticipated where your memorandum would lead, but it has led to some pretty tough situations with the Southern District case denying counsel fees and finding by the district Federal judge a violation of Sixth Amendment rights upheld by the Second Circuit.

I would like you to respond to that in writing, too, as opposed to an extensive dialogue here.

Mr. HOLDER. Sure. I would be glad to, although I will note that I think the progress that we have made in this area, in walking it back from what I think people in the field have done, was largely as a result of the work that you and Chairman Leahy did in expressing concerns about positions the Justice Department was taking that, frankly, I think were inconsistent with that initial memo of mine. So I would be glad to respond to the questions that you will propound to me.

Senator SPECTER. Thank you, Mr. Holder, for being a patient witness.

Mr. HOLDER. Thank you.

Senator SPECTER. A witness with a lot of stamina. It is an important attribute for this job. Thank you, Mr. Chairman.

Mr. HOLDER. Thank you, sir.

Chairman LEAHY. Are you finished your questions? I am not going to cut you off. This is your last round.

So you are you done?

Senator SPECTER. Yes. I understood the parameters.

Chairman LEAHY. Okay. I just wanted to make sure you felt you had enough time.

Senator SPECTER. This is the last tango. I will have some more questions in writing, but that is——

Chairman LEAHY. Senator Grassley.

Senator SPECTER. Oh, Mr. Chairman, I want to put into the record with unanimous consent as a pro forma matter a whole series of documents, and also the editorials, without taking the time to enumerate them.

Chairman LEAHY. Of course. Of course. Also, we have an enormous number of letters in favor of the nominee. We have some opposed to the nominee. They will all be put in the record.

Yes, go ahead, Senator Grassley.

Senator GRASSLEY. Mr. Holder, when we met several weeks ago—and I thank you for coming and visiting with me for a long period of time, I talked to you at length about my congressional oversight efforts and how I take this constitutional responsibility very seriously. Oversight help makes Government more transparent. The taxpayers have a right to know whether the taxpayers' money is being appropriately spent. We have got waste, fraud, and abuse rampant in any administration. In my opinion, oversight is a particularly important issue for any nominee in your position because of the critical work that your Department does in its support of law enforcement agencies, particularly the FBI.

So I hope you appreciate the role that Congress has in conducting oversight over the activities of the executive branch, including your Department. Over the years, I have made congressional oversight a top priority regardless of which political party is in the White House. I have requested documents, information, access to DOJ personnel for interviews, and I have learned that oversight works best when the agency fully cooperates with Congress. Unfortunately, agencies are all too often untimely in responding to Congress, and in the worst cases totally unresponsive. This is unacceptable and I hope you agree.

Mr. Holder, I expect that you will be responsive to my oversight work and that my questions and document requests will be taken seriously and answered in a timely and complete way. I hope that I have your assurance that, if you are confirmed, you will assist me with oversight activities, be responsive to my requests, help me make the Justice Department as accountable in this coming administration as I have attempted to make it accountable in previous administrations, both Republican and Democrat. But the idea is to make it more accountable to the American people.

That is an expectation on my part. You can respond if you want to. But would you pledge to be responsive to all congressional requests for information and provide this information to Congress in a timely manner? And before you answer that, I would like to point out a particular problem that I have had over a period of years. Would you work—and this is specifically in your position as Attorney General, being over everything in the Department, including the FBI. Would you ensure that responses are not held up due to lengthy what they call "clearance processes" at subordinate agencies such as the FBI?

Mr. HOLDER. Senator, I will, in response to, I guess, the general assertion, try to do all that we can to make sure that we respond fully and in a timely fashion to the very legitimate questions that

I know that you have propounded to the Department. And to the extent that there is a problem with our internal processes, I will look at those and try to make sure that we make them work better.

What I would hope that we would have is a relationship where, if you are not getting something in what you consider a timely fashion, that you will feel free to give me a call, pick up the phone, and say, you know, with regard to subject matter A, I sent this whenever, I have not received a response, so that you are not upset by our lack of response, at least give me an opportunity to check on the internal workings of the Department to make sure that we are doing it as quickly as we can. And if we are not, if I can't give it to you, at least I can give you an explanation.

Senator GRASSLEY. Then in that regard, you will remember I gave you a notebook of things that were unanswered, and I would hope you would help us clear those up so that you, taking over a Department in a new administration, have a clear slate and, you know, 6 months from now there is no question what you are responsible for or what the previous administration was responsible for.

On the issue of whistleblowers, as you might know—or at least I think I have told you—I have been an advocate for whistleblowers because I value candid, unfiltered information they provide to Congress about the executive branch activities. And, quite frankly, most of the time they come to Congress as a last resort. They probably don't even know about whistleblower protection, but something is bad. They tend to be very patriotic people, for the most part, want Government to do just what is right.

Anyway, many whistleblowers who often come forward, they face tremendous retaliations in agencies, and that retaliation may be as straightforward as being terminated. It could be cloaked as a reassignment or shifting in duties. Either way, retaliation is exactly why we passed the Whistleblower Protection Act and countless other laws. These laws are a vital tool to ensure that whistleblowers are protected, but oftentimes that does not mean that the wrongdoers are disciplined by their agency. This is especially true in law enforcement agencies like the FBI, I have found out.

So, you know, I just ask you to take a look at that. Take it seriously. They deserve the same protection and consideration whether in the FBI or anyplace else. Whistleblowers who raise concerns with management or who bring concerns to Congress and cooperate with congressional oversight efforts should be protected, not retaliated against.

So can you give me a commitment that you will not retaliate against Justice Department whistleblowers and instead work with them to address concerns that they raise? Will you commit to ensuring that every whistleblower is treated fairly and that those who retaliate against whistleblowers are held accountable? And particularly on that last point, there are so many times that injustice has been done, the people that did it to them have never been held accountable.

Mr. HOLDER. Yes, I can make those pledges both to ensure that people are given the opportunity to blow the whistle and they will not be retaliated against, and then to hold accountable anybody who would attempt to do that. I have worked with people, whistle-

blowers, both in Government and more recently in private practice, and I have seen their utility, their worth, and, frankly, the amount of money that they return to the Federal Government. And they serve a very, very useful purpose.

Senator GRASSLEY. Can you give me—since you have been in Government in the past, just as an example, how have you dealt with whistleblowers, and particularly if they didn't agree with maybe a policy or something, or a position on a particular matter with you, if you have ever—or maybe you have not dealt with whistleblowers.

Mr. HOLDER. I have dealt with whistleblowers. I don't think that I have ever dealt with a whistleblower who has had a problem with a particular policy. I have not had that kind of interaction where somebody was complaining about something. The relationships and interactions that I have had with whistleblowers have generally been pretty positive, even, as I was saying, in the work that I have done in private practice, dealing with the lawyers who are representing the whistleblowers. I tried to represent my clients as zealously as I could, but I could understand what they were doing, and I could see the worth to the Federal Government by the actions that they had taken.

Senator GRASSLEY. I had a couple other questions there, and I just hope that you would take some sort of positive approach, a statement or something like that, early on in your taking over the Department to make sure that there is a friendly atmosphere. I wish a President of the United States, previous and this one coming up, would have done that, because I think at the highest level of Government, it would send a signal, you know, that if something is wrong, we want to find out about it. After all, the public's business ought to be made public. And if it takes a whistleblower to get it done, do it.

I am not going to ask questions about the False Claims Act, but I think I expressed to you in my office, as author of that legislation, it has brought in $20 billion that maybe would not have been found without people in Government knowing about it and bringing cases themselves, some of them with the help of the Justice Department. And it has had some problems. I have got some legislation I am going to show you that would correct some things that have, in a sense, weakened it from original intent, that I think I have got broad bipartisan support to get passed, and I would surely appreciate very much your considerations of those. And anything specific I have on False Claims, I will submit along with a lot of other things for a response in writing.

But just so you know, I think the False Claims Act, originally in defense and now in health care, has been a very, very important tool for us to root out fraudulent use of taxpayers' money and gaming the system for personal benefit. And so I hope you will use it, help people that use it, move cases forward, you know, things of that nature.

Mr. HOLDER. Yes, I will do that, Senator. You and I have worked together before on False Claims Act matters, and I will continue to have that level of cooperation with you. You raise good points.

Senator GRASSLEY. I believe I am done, totally done, Mr. Chairman.

Chairman LEAHY. Thank you, and I appreciate you giving that time. As I said, I have tried to arrange it, and I know, Senator Kyl, you have some more questions.

Senator KYL. Thank you, Mr. Chairman.

Chairman LEAHY. I would appreciate your effort to keep them within a——

Senator KYL. I have really whittled them down here.

Senator Specter raised the question of compelling testimony for reporters. The Department of Justice guidelines relating to subpoenas for reporters have been around about 28 years, to my knowledge, and they were used when you were at the Department of Justice, were they not?

Mr. HOLDER. Yes, they were.

Senator KYL. Among the people who have written about this, U.S. Attorney Patrick Fitzgerald has written, and I quote, that "The Justice Department operates under rigorous regulations restricting the issuance of subpoenas to journalists." Do you know of any serious problems with the Department of Justice guidelines?

Mr. HOLDER. With regard to the subpoenaing of reporters?

Senator KYL. Yes.

Mr. HOLDER. Nothing that comes to mind.

Senator KYL. And just so you will know, I am not trying to trap you on it. This is a very controversial matter, and some of us believe that the Department of Justice guidelines have served us very well. I am not aware of any serious problems with them either, but there are proponents of the legislation who would obviously go beyond them.

We received several letters last year from members of the administration expressing concerns. I am going to boil this down, but Attorney General Mukasey and Director of National Intelligence McConnell wrote a couple of those letters. Their views in the letter expressed, and I am quoting here, "serious concerns, especially with regard to the bill's effect on our ability to protect the national security and investigate and prosecute the perpetrators of serious crimes." That was April 22nd of last year.

I am just going to read one other slightly longer paragraph. They say, "We oppose this bill because it will undermine our ability to protect intelligence sources and methods and could seriously impede national security investigations. Indeed, this bill only encourages and facilitates further degradation of the tools used to protect the Nation. We have been joined by the Secretary of Defense, the Secretary of Energy, the Secretary of Homeland Security, the Secretary of Treasury, and every senior intelligence community leader in expressing the belief, based on decades of experience, that by undermining the investigation and deterrence of unauthorized leaks of national security information to the media, this legislation will gravely damage our ability to protect the Nation's security."

I am not going to go into all of the issues. As I said, I boiled it down a little bit. But let me ask you about just some that they have raised.

One problem they raised—I don't know whether this is inadvertent or not, but the bill applies only prospectively. It does not apply to investigations once the harm has occurred. So you could

get into investigations pre-9/11, but on 9/12 you would not be able to require testimony for acts that have already occurred.

Would you agree that a media shield bill should allow the Government to investigate serious harm both prospectively and with regard to harm that has already occurred?

Mr. HOLDER. Well, Senator Kyl, you have raised a series of concerns that I think have to be taken seriously. What I was trying to say earlier was that I think that a bill can be constructed that would handle or deal with the concerns you have raised, and perhaps others that you are going to raise, and still deal with what I think are the salutary parts of the legislation. There is a value on—the concerns you raise are legitimate ones. On the other side, the notion of having a free press and protecting reporters and their sources I think is something that also has to be put in the mix, which I am not saying that what you are saying is not substantial, and it must be dealt with. Concerns about prosecuting people who leak national security matters, the concern about intelligence—all of those things have to be dealt with, from my perspective, before I would sign off on a particular bill.

What I was saying is that I think the concept is a good one, and I think there is a way in which we can find a good bill ourselves.

Senator KYL. And I appreciate the Department of Justice guidelines recognize a concept. The question is whether you go beyond that. I am just trying to get your view on a few specific matters: One, whether there should be any difference between a prospective or investigation into something—trying to get information or investigate a terrorist act, for example, that has not occurred yet versus investigating one that has already occurred, from which, of course, you might get very good information.

As a general proposition, can you think of a reason why there should be a distinction between the two? It is one of the problems in the draft of the bill that I believe exist, and General Mukasey and Director McConnell identified as well.

Mr. HOLDER. Okay. I would want to look at that and understand it a little better.

Senator KYL. Okay. You have discussed already the need to try to protect as much as possible classified information. One of the concerns is the requirement that a media shield bill should deal with classified information in camera; that is to say, if it is going to be involved, at least protect it because it is classified. Can you think of any reason why that general principle should not be applied to legislation like this?

Mr. HOLDER. Again, I would want to look at the provisions of the bill, understand the concern, which sounds like a very legitimate one, the ones you have now raised, and try to understand why that perhaps was not included in the bill, or just understand how the bill treats the concern you have just raised.

Senator KYL. I gather it is safe to say that some of—we have been working on specifics of this bill for some time. You haven't. And it is going to be difficult for you to express a view about some of the specific issues that have arisen. That is the reason for your general reluctance to be too specific, correct?

Mr. HOLDER. That is correct.

Senator KYL. Let me try just with respect to a couple of other general principles. One of the things that General Mukasey and Director McConnell say in their letter is that the bill leaves out—I am quoting now—"leaves out key non-FISA tools that are essential to the protection of national security: the wiretapping provisions of Title III, pen register trap-and-trace authority, and national security letters. All of these tools are important," they say.

Just as a general proposition, can you think of any reason why they wouldn't be allowed to be used?

Mr. HOLDER. Again, speaking very generally——

Senator KYL. Excuse me. Why a media shield law would preclude our law enforcement from using those tools.

Mr. HOLDER. Again, not having had the experience with the bill or in this area that you have, I am not sure I would want to commit myself. But, again, that sounds like an issue that is very worthy of consideration.

Senator KYL. Rather than trying to pursue more specifics here, let me ask a couple of general questions.

Would you work to address the concerns raised in this letter and the other letters that have been written, as well as the views letters expressing the concerns of the Department of Justice?

Mr. HOLDER. Yes, absolutely. I mean, I don't want you to leave here thinking that you have got some press crazy here as potentially Attorney General.

Senator KYL. No, I do not believe that at all. Just these are really important.

Mr. HOLDER. They are.

Senator KYL. And the career people at the Department have really been expressing a lot of views to us. Would you tell us that you will talk not just to the political appointees but to the career people in the Department who have really worked with these issues for a long time?

Mr. HOLDER. Absolutely. But beyond that, Senator, I want to talk to you and to people who have worked on this bill and who might have a contrary view of it.

As I said before, I guess in my opening statement, you know, knowledge doesn't reside only in the executive branch. The experience that you have had with this, the obvious knowledge that you have of these issues are the kinds of things that I need to be educated about. It may change my mind, frankly.

Senator KYL. One thing just in that regard that would be very useful—I mean, I presume eventually if this legislation is introduced and goes somewhere, we will have a hearing on it. And I would request and would hope that you would be willing to testify. Hopefully your views will have been crystallized. I mean, we should not act on this until you have had an opportunity to study it, to get your views crystallized, and that you would be willing to testify in a hearing relating to the subject on such a bill.

Mr. HOLDER. I would be glad to.

Senator KYL. I mentioned Secretary Gates' letter. It is a separate letter, actually. Actually, he has written two separate letters, and I will not go into any of the those details. He simply talks about past investigations of unauthorized disclosures that have gravely damaged our national security. He talks about circumstances in

which the bill would permit this kind of activity to occur. He says the restrictions—the limitations of the bill remain far too restrictive, and he also criticizes the fact that the definition would extend the protection to leaks publicized to individuals who are not even journalists as that concept is normally understood, to quote him in here.

Secretary Gates will continue to serve in the Obama administration, and I would hope that you would seek his views and address his concerns as well, would you not?

Mr. HOLDER. I am sure he will be asking me about this at the next—at a Cabinet meeting, should I be confirmed. He will be wanting to know why am I in a fundamentally different place than he is. But I will have that conversation with him.

Senator KYL. I am sorry. I guess I did not understand the preamble to what you——

Mr. HOLDER. I was saying that on the basis of what you have just said about the concerns raised by Secretary Gates, and should I be confirmed, I might expect to hear from him at a Cabinet meeting about why I was in the position that I was in.

Senator KYL. Okay. And, finally—and I don't know—I gather Director Mueller will be around for a while, but he, too, has weighed in, along with 11 other senior members of the intelligence community. And, again, I will not quote from his letter. He expresses strong opposition. But I would just ask you to agree to be sure and speak with him about the concerns he has and to try to address the concerns that he has specifically talked about—national security and foreign intelligence. Would you be willing to do that?

Mr. HOLDER. Yes. As I said——

Senator KYL. As we say in depositions, you need to give an audible answer to the question.

Mr. HOLDER. Thank you.

Senator KYL. The last question I have on this subject—and it will be the last question I have for you—I mentioned U.S. Attorney Patrick Fitzgerald before. He has written on this, and one of the things he noted—and he is exactly right, in my view. He said, "A threshold question lawmakers should ask is whether reporters will obey the law if it is enacted." In other words, if you are trying to do a favor there, then that should set out the guidelines by which people conduct themselves. "They"—meaning lawmakers—"should ask, because the Reporters Committee for Freedom of the Press calls for a shield law, while urging journalists to defy the law when a court upholds a subpoena for source information." So here is the solution to it, and I am going to ask you if you think this would work.

His view is that any shield bill should require that a person seeking its protection first provide the subpoenas information under seal to the court to be released only if the court orders the information disclosed. That way the individual gets both the protection of the law, but also would—his part of the bargain is if the court should rule that the law still does not apply, then he has to disgorge the information that the public would, therefore, have the benefit—or not the public, but that the law would, therefore, have the benefit of that information, if that is the way the court ruled.

Do you think it is sensible to have such a requirement in such a bill?

Mr. HOLDER. Well, again, I am not as steeped in this as I will be and should be, but that does strike me as somewhat reasonable. But I say that with the understanding that perhaps I would have a chance to just become more familiar with the law, the response of that reporters group that you have mentioned, and see whether that would have an impact on my thinking.

Senator KYL. There is no reason that you should be as steeped in this as some of us who have been working on it for a long time. But, certainly, it is a very serious matter, as all of these individuals have indicated. It will require some attention on your part, and I commend, assuming you are confirmed, to you that you begin studying up on this so that, should it be considered here, we would have the benefit of your views on that, and I look forward to conversations with you about how to approach this subject.

Thank you.

Mr. HOLDER. Thank you, Senator.

Chairman LEAHY. Is that it? And I am not suggesting you ask more.

Senator KYL. I narrowed it down to the best of my ability. There is much more. If I have anything else, I will ask the question in writing or just——

Chairman LEAHY. I appreciate your cutting it down like that.

Senator Sessions, I think you said you had one or two more? He said hopefully.

Senator SESSIONS. And you said see if I can do better. I can't speak as fast as Senator Kyl, though. We Southerners are a little slower.

In an April 2004 speech to the American Constitution Society, a liberal group, you asked the audience what it could do to bring about a liberal renaissance, which is a legitimate political effort to promote your beliefs, and you singled out the media and criticized them for impeding liberal views and said, "In the short term, this will not be an easy task with the mainstream media somewhat cowered by conservative critics and the conservative media disseminating the news in anything but a fair and balanced manner. And you know what I mean there. The means to reach the greatest number of people is not easily accessible."

So we do have this discussion of the fairness doctrine. Do you think the Government has the ability to interject itself in the free market of ideas and direct somehow that there be a balance between one view and another view on the airways?

Mr. HOLDER. Well, the views I was expressing there were views that I had as a private citizen, would not reflect what I would do if I were confirmed as Attorney General. What I had said in response to the question that had been raised earlier about the fairness doctrine is that I just needed to know more about it before I could intelligently respond to the question. But I did not mean to implicate the fairness doctrine in that speech.

Senator SESSIONS. That is important, I think. I just think that is a trail that is doomed to failure for some Government bureaucrat trying to state what somebody can say on the public airways.

Also before the American Constitution Society, you spoke about the Boumediene decision that for the first time granted habeas corpus rights to detainees, prisoners of war, or illegal combatants that were being held at Guantánamo Bay. Justice Scalia, I would note, in dissent said, "It would almost certainly"—this decision "will almost certainly cause more Americans to be killed."

You said this: "The very recent Supreme Court decision, by only a 5–4 vote, concerning habeas corpus and Guantánamo is an important first step, but we must go much further."

I thought that this decision was really a radical departure from precedent. Never in the history of England, where we inherited habeas corpus rights, or in the United States have prisoners of war ever been given habeas rights. But the Supreme Court held that.

What do you mean, "we must go much further"? Do you have ideas that you would like to impose, apparently not required by the Constitution, but that would further constrict our ability to hold those who are at war with the United States?

Mr. HOLDER. No, I guess when I said "go further" there, that was, I think—2004? I am not sure. I think 2004.

Senator SESSIONS. 2008. That was a June 2008 speech, I have.

Mr. HOLDER. Okay.

Senator SESSIONS. It would not be 2004 because the decision was after 2004.

Mr. HOLDER. Oh, after Boumediene, okay. Well, I am not sure what I had in mind there other than the concern generally that was expressed throughout the course of that speech about our Government making sure that, however bad the people were we had in Guantánamo, in the same way, I guess, that Senator Graham had mentioned earlier, that these people were treated in a way that was consistent with our values. So I might have been referring to that. I am just not sure.

Senator SESSIONS. Well, just in my view, it is unthinkable that prisoners of war, particularly those who do not comply with the rules of warfare and violate the Geneva Conventions, would be given the same rights as an American citizen accused of a crime. It had never been done until this decision, and we have tried to—it was based on statutes, I think, rather than the Constitution, and we are trying to wrestle with that and maybe make that situation better.

Let me ask this. I asked you earlier about your commitment to your statement where you said that you planned to "work to strengthen the activities of the Federal Government that protect the American people from terrorism." You pledged "to use every available tactic to defeat our adversaries."

In his book—which is a very important book, I think—Jack Goldsmith, "The Terror Presidency," who, as I said, has been in the Department of Justice. He left President Bush's Department of Justice. He opposed some of the things that they did, but not all. He described the situation about where the Department of Justice refused to authorize a CIA covert operation to kill Osama bin Laden in 1998 when you were in the Department of Justice as the Deputy Attorney General. He wrote this: "The White House and Justice Department lawyers opposed an unrestricted lethal operation against bin Laden and would authorize his killing only if it were

necessary for self-defense in the course of legitimately attempting to arrest him." That is page 95.

He also noted at this time the CIA "had bin Laden in its sights," and he discusses how this works. And what he said was, after previous hearings and complaints about covert activities, that the CIA and their agents had become conditioned to read their authorizations very carefully, and that George Tenet, then CIA Director, and other managers were insisting that these kind of operations be approved with unambiguous language. And according to his book, the Office of Legal Counsel—that is, the Department of Justice's Office of Legal Counsel—agreed that the legal prohibition against assassinations did not apply to a military target like bin Laden, who posed an imminent threat to the United States—and who had openly declared war on the United States, I would add. So far, so good, Mr. Goldsmith writes.

But then the ambiguities appeared. "White House and Justice Department lawyers opposed an unrestricted lethal operation against bin Laden." And that is when he said we only authorized the killing in the course of a legitimate arrest. And part of this whole thing was how agents have become intimidated and fearful of being prosecuted or having their careers ruined for conducting what they think is accurate policy. That is a danger that we deal with.

So I guess my question to you is: To what extent were you involved in those decisions? And is this accurate? And did the White House and other Department of Justice lawyers basically put additional controls on OLC's opinion?

Mr. HOLDER. Senator, I guess I am a little disturbed—I read that book, and I was a little disturbed to read that portion of the book. I am not at all certain it was appropriate. I don't know—I am sure he got that cleared. I mean, I don't know. But I am not very comfortable talking about that operation in this forum, in this setting. I was certainly aware of it. I didn't have the lead on the Justice Department's role in that. Maybe let's transition.

I would say that there is clearly a need for people in the field to have clear direction, and we have to be aggressive. We have to understand the nature of the foe that we face. No one should take from any of the statements that I have made today a notion that we are going to retreat from being aggressive and seeking out and getting people before they would get us. I don't mean to say that at all. What I have said is that I think we can do that in a way that is consistent with our concern about civil liberties. There is not a tension between those two. We can be very aggressive using all the appropriate tools that we have, that we would get, that we now have, or additional tools that we might seek from Congress, and at the same time be true to our values. I am not saying that—so that is the point that I was trying to make in my earlier testimony.

Senator SESSIONS. Well, I am sure that is true, but these are concrete situations, and I guess it appears from the book that OLC felt there was a legitimate basis. I would just note, on his website bin Laden had declared war on the United States. This is not a normal thug on the streets of Manhattan or something. This is a person who declared war on the United States, and they concluded the

United States is legitimate in defending itself. But the final decision that came down said that you could only utilize lethal force in the course of an arrest.

Did you support that decision or the OLC opinion?

Chairman LEAHY. I am not trying to stop you from answering. Obviously, answer the way you feel free. Part of that—we are getting into an area that many of us have been briefed on in a very classified nature, and I don't want to put Mr. Holder in a difficult position of having to answer something that may go into a classified area. He obviously is used to handling classified material, and I will let him make his own judgment. I am not trying to put words in your mouth at all. But I would just caution Senators to be careful in what areas they go into.

Having said that, I will yield the floor back to Senator Sessions and Mr. Holder.

Mr. HOLDER. Senator, as I said earlier, I am a little reluctant—I would be glad to answer your question in what I would consider—in a more appropriate forum. Maybe I am being overly cautious here. I don't know. But we are talking about something—I mean, it is out there—that was a covert operation, that required the highest-level clearances.

Frankly, maybe I am free to talk about that now. I don't know. I am just not feeling very comfortable responding to that question. But I will be more than glad to find out what ability I do have to talk about that and would be more than glad to share with you whatever I can.

Senator SESSIONS. I would like that either in a closed fashion or in public if you can do so, and I think we need to know that. The problem is that we have created a climate for intelligence agents, military officers, law officers who are out serving the country in some very difficult things, in which they get ambiguous leadership and then are not able to act. And, apparently, bin Laden was in the sights of the United States Government, and we were prepared to act, waiting only for legal clearance. And we get back one of these "cover your rear end" ambiguous things, and the CIA guys, or whoever was involved in this, say they are not acting on it. And I think that is a danger and a weakness that could leave us more vulnerable than we need to be in the future.

With regard to the closed testimony matters, this Committee has savaged anybody that even tried to investigate leaks. The New York Times can print anything, and members of our—as long as it embarrassed George Bush, and we want to get after—get after anybody that would suggest it was a breach of security.

So I think it odd, but I will leave this question as it is. I do not want to ask you to say something you should not.

Chairman LEAHY. And, Senator Sessions, I appreciate that. I also don't want to get into a debate. We also could go into the whole debate about what happened when we took our troops out of Afghanistan to go into Iraq when they had bin Laden cornered. I mean, these are all debates of mistakes—some mistakes, some maybe not—in the past. I am more concerned about what kind of an Attorney General would Eric Holder be, and the concerns about what he is talking about, what are his plans if he is Attorney General? How will he run the Department? What is his philosophy?

What would he do? Because that is ultimately what 100 Senators have to vote on.

Senator SESSIONS. Well, that is what I am trying to get at. You have interrupted me and used some of my time. That is what I was getting at. The OLC—what would you do in the future? OLC, according to this, had felt that it was justified. I think it was justified. Somewhere in the White House it said—and Justice Department lawyers—that you were privy to these discussions, sent an ambiguous message, and it makes me worry about the future. That is what I am asking about.

Mr. HOLDER. And all I would say, Senator, is that I agree with you that there has to be, to the extent possible, unambiguous direction given to our people in the field. And it means that lawyers who are involved in that process have to understand that the words that they use, the direction that they give, has to be as precise as possible so that there is not that degree of ambiguity in those directions and might somehow have an inhibiting influence on the people in the field. They have got to understand what it is they can do, what it is they can't do, and that is incumbent upon the people who are making those decisions, the people at OLC or in other parts of the Justice Department.

So I understand. I hear the concern that you express, and I understand that.

Senator SESSIONS. The Washington Post asked that the Senate Judiciary Committee should press you on the rationale for supporting pardons that occurred, and I have asked you a little bit about that previously, and we sort of ran out of time. You did indicate you thought the President's decision on the FALN was reasonable, and I was a United States Attorney for 12 years, Assistant United States Attorney for 2½, Attorney General for 2. In my opinion, it is not reasonable, it is not close. I mean, that is all I can tell you. And I do not believe it was a close question, and it worries me that you say that was a reasonable decision.

In one article, a letter by Deborah Devaney, one of the Assistant United States Attorneys who prosecuted that case, and published in the Wall Street Journal in 1990, writes, "As one of the FALN prosecutors, I know too much. I know the chilling evidence that convicted the petitioners, the violence and vehemence with which they conspired to wage war on all of us."

She goes on to say, "In the first prosecution, some of the petitioners were captured in the back of a van with weapons used to commit armed robberies." Then she goes on to say, "Yet the President"—perhaps you did not know your role at that time. "Yet the President has seen fit to reward these conspirators simply because they were unsuccessful in their murderous attempts."

Well, it goes on. It was opposed by the prosecutors in the case. The pardon attorneys—Margaret Love had rejected it previously. Roger Adams gave you the opinion you wanted in the first paragraph, but then spent four pages explaining why this was a very problematic decision, and one could read that as his personal objection to it, and I think he conveyed that to you.

The FBI Director, Mr. Freeh, opposed it, and he had labeled FALN one of the three greatest domestic terrorist threats to the

United States in 1998. And Mr. Adams did tell you, did he not, the pardon attorney, of Mr. Freeh's view on that?

Mr. HOLDER. I was aware of the FBI's view on that matter.

Senator SESSIONS. They had killed six people. One of the persons offered the commutation of sentence had planned an elaborate escape attempt using a helicopter and got an extra 15 years for that, which is certainly not excessive for this kind of violent offender. There were over 130 groups and dozens of people injured, six people killed. And then there was no contrition. The defendants were so unrepentant that two of them, two of the 16, who were given clemency refused to accept it because they had to promise not to continue to be violent. So to me this is really a pretty august statement that this was reasonable.

I would also note that the—15, it says on mine.

Chairman LEAHY. It is 5 minutes, plus 15 on there. For a 5-minute round, you are now into 20 minutes. I was just wondering.

Senator SESSIONS. Well, you asked how——

Chairman LEAHY. I am trying to be fair.

Senator SESSIONS. I know. You asked me how much time, and I said 15. I will try—I will wrap up.

Chairman LEAHY. It is 5 plus the 15 that shows on here. It was 5 minutes to begin with. Now it is 15 minutes beyond that 5. It has been 20 minutes.

Senator SESSIONS. I believe you are right, Mr. Chairman, as usual. I believe you are right. I apologize. I was looking at the time, but incorrectly.

And the Sentencing Commission did an evaluation of what the sentencing would have been for these people had they been sentenced under the more recent Sentencing Guidelines, and without parole, they were 30-year-plus sentences. And that is without parole, whereas these people were sentenced—some—up to—one or two at 90.

Tell me again, was this your personal view that this would be appropriate? And is that what you conveyed to the President?

Mr. HOLDER. I looked at the situation, took into account the fact that these people were not directly involved in incidents that led to death or injuries, took into account the body of people—I guess Senator Whitehouse, he mentioned at least a few of them—people who were weighing in in favor of the clemency; the conditions that were put on it, that is, they had to renounce violence and some travel restrictions; weighed what the view was in law enforcement from the U.S. Attorneys, from the investigative agencies, and obviously took into consideration what the pardon attorneys were saying, both of them. And it seemed to me that the clemency—and also took into account significantly the length of the sentences that these people had already served and the sentences that had been imposed by the trial judge initially—or trial judges initially.

It seemed to me that the clemency grant, taking all that into consideration, was appropriate, and that was what I conveyed to the President.

Senator SESSIONS. Well, thank you, Mr. Chairman. I do think—and I particularly find the Rich pardon that you acquiesced in and leaned toward to be problematic in light of the tremendous controversy this one caused about a year or so before. And it had to

go before hearings. A resolution of the Senate found it deplorable, and I would have hoped that you would have been more forceful with the President on the Rich pardon. And if you had done so, you would have helped protect him and his legacy, which was besmirched by this. Richard Cohen, his ally, opposed your confirmation because you didn't resist that pardon effectively, and it just troubles me.

Thank you, Mr. Chairman.

Chairman LEAHY. I think I would note parenthetically that tens of millions, some would say hundreds of millions of dollars of a Republican-controlled Congress went on for 6 years to try to besmirch President Clinton's reputation in a number of areas. I would also note that I do wish that President Obama had some of the advantages coming in that President Bush did when President Clinton left President Bush the largest surplus in America's history, paying down the national debt, and creating an enormous number of jobs. President Obama will inherit the largest deficit of any nation on Earth in history, and the largest deficit and a tripling of the national debt.

I realize that part of that cost was all these hearings that might be besmirching President Clinton's decision and legacy, but the fact is, I think all of us, Republicans and Democrats, wish we were inheriting the economic situation that President Clinton left to his successor rather than the one that is being left to President Obama.

I am not going to take the 20 minutes that everybody has been taking of their 5 minutes here, but just a couple of quick points.

Am I correct that as Deputy Attorney General you had no final decisionmaking power to grant clemency or pardons? Is that correct?

Mr. HOLDER. That is correct.

Chairman LEAHY. And am I correct that your memo—I am talking about FALN now. Your memo to the White House made no recommendation on clemency for the prisoners, but rather, provided an analysis with multiple options for each prisoner. Am I correct?

Mr. HOLDER. That is all I have been able to find, the options memo, which lays out the whole range of possibilities that the President could consider. But I have to say, Mr. Chairman, I do think that in some form or fashion I conveyed a recommendation to him. I just don't—I can't find it.

Chairman LEAHY. Am I correct that none of the FALN members offered clemency by President Clinton were present when individuals were killed or injured?

Mr. HOLDER. That is correct.

Chairman LEAHY. And am I correct that the prisoners were released under strict supervision of Federal probation authorities and none have caused any future harm?

Mr. HOLDER. That is my understanding.

Chairman LEAHY. Am I correct that the clemency offers were conditioned on the prisoners' willingness to renounce violence and each of them had already served either 16—somewhere from 16 to 19 years in prison? Am I correct?

Mr. HOLDER. That is correct. And two of the—as Senator Sessions noted, two of the individuals who were offered clemency

would not accede to that demand, that is, to renounce violence, and they, therefore, did not get out of prison.

Chairman LEAHY. They stayed in prison.

Mr. HOLDER. They stayed.

Chairman LEAHY. And the clemency provided by President Clinton was supported by various Members of Congress, numerous religious, human rights, labor, Hispanic, civic, and community groups, including former President Carter, Archbishop Desmond Tutu, and Coretta Scott King. Am I correct?

Mr. HOLDER. That is correct.

Chairman LEAHY. And am I also correct that your nomination to be Attorney General has been enthusiastically endorsed by the Nation's top law enforcement organizations and numerous law enforcement officials, including many who were among the biggest critics of the FALN clemency? Am I correct in that?

Mr. HOLDER. I think the Fraternal Order of Police testified in the hearings that were held and criticized the FALN pardons, and the Fraternal Order of Police has endorsed my nomination.

Chairman LEAHY. And we have put into the record their endorsement of your nomination, and, of course, we will have, among others, former Director of the FBI Louis Freeh, no shrinking violet he when it comes to law enforcement matters, who enthusiastically and strongly supports you.

Senator Coburn.

Senator COBURN. Thank you, Mr. Chairman——

Senator SESSIONS. Mr. Chairman, since we kind of have a little—you took a personal privilege there. May I have just 2 minutes? One minute?

Chairman LEAHY. One minute.

Senator SESSIONS. One minute.

Chairman LEAHY. Start the clock.

Senator SESSIONS. I think it is true that President Clinton did cite your recommendation in his later basis for granting the pardon, number one.

Mr. HOLDER. I am sorry. Which pardon, Senator? The——

Senator SESSIONS. The FALN—no, the Marc Rich pardon.

Mr. HOLDER. Rich pardon, yes.

Senator SESSIONS. That is right. Excuse me. And Osama bin Laden and Khalid Sheikh Mohammed weren't directly involved in the murders. They were conspirators to that, and they probably and morally are more accountable in my view, and equally accountable as those who actually carried out the attacks in the United States. Wouldn't you agree?

Mr. HOLDER. I would, but the FALN people are not in the same category as Khalid Sheikh Mohammed or bin Laden in that they were not the heads of the organization. That is not my understanding of the people who were—where the pardons were—again, I want to emphasize these people were criminals. They were terrorists. I am not giving them a pass. They served substantial amounts of time. I don't want anybody to——

Senator SESSIONS. You recommended against the law enforcement people that they not serve the full time they were sentenced, and they wouldn't even file papers—I don't think any of them actually even asked for a pardon. They were hard core about it.

Chairman LEAHY. The Senator's——

Senator SESSIONS. Excuse me. Okay. My time is up.

Chairman LEAHY. The Senator's 5 minutes has gone to minutes, but Senator Coburn.

Senator COBURN. Thank you, and I promise not to take 24 minutes.

First of all, sorry you have had such a long day, and——

Chairman LEAHY. I am going to need a doctor if you do.

Senator COBURN. And I know the Chairman wants to get home to his grandchildren, and I know you all would like a break and have a dinner, and so I am going to be very short. Three points for the record.

One, the only thing I would say about the FALN is that clemency was granted after the Oklahoma City bombings, so there is a lack of sensitivity there. And it wasn't to the same degree, but the intent was.

Number two, as far as the comments by my colleague Senator Whitehouse, your soon-to-be-boss, when you are sworn in as Attorney General, made great efforts on the Homeland Security Committee to take away the parochialism of the Homeland Security grants. And only three members of this Committee voted with him to make it on the basis of risk instead of on the basis of parochialism. So I hope you will look at that as you see this necessity of trying to rearrange the money that you have in terms of looking at risk instead of parochialism that makes us all look good.

I want to get you on record. We talked about this in the office. Your boss and I passed a bill called the Transparency and Accountability Act. It requires the submission of where you spend your money, both the contracts and the subcontracts, the grants and the sub-grants. Is your intention to comply with that on a timely basis so the American people can see that?

Mr. HOLDER. Yes.

Senator COBURN. Thank you. And then my last question about guns, I promise. I will never ask you another one in the Committee hearings. And all I want is a yes or no, because I think people need to hear where you are going on this. There is some uneasiness among the Second Amendment crowd in this country, and what I am trying to do is clarify that.

Will you commit to protect and preserve the rights of those 40 States that have a right-to-carry law by opposing legislation that would encroach upon those rights?

Mr. HOLDER. You mean opposing State legislation? I am not——

Senator COBURN. No. Opposing Federal legislation that would encroach upon those rights. Let me say it again for you.

Mr. HOLDER. Yes, I understand the question. I am just not sure how—what the appropriate role would be for the Federal Government in the situation that you describe.

Senator COBURN. Well, if we are passing a law that is obviously going to do that, as the supreme enforcer of the law in this land, as the head law enforcer, it should be upon you to challenge that into court when it obviously is going to violate the Heller decision. So what I am asking you is to specifically state that if we pass something that violates these State laws—in other words, is going to limit these State laws, take away Second Amendment rights as

being defined by the Heller decision, will you, in fact, intercede on the basis of the Heller decision to defend the rights of the States to have carry laws?

Mr. HOLDER. Well, I wouldn't support any law that violated the dictates of Heller. Now, I don't know—the question you ask is a hypothetical, and it is hard to answer hypotheticals without having all of the facts. But I will state, as I said, I think earlier, Heller is the law of the land. It has to be taken into account with regard to any legislation that might be considered.

Senator COBURN. Well, let me just pin you down just a little bit closer so I can get comfortable.

Mr. HOLDER. Okay.

Senator COBURN. Do you believe States presently have the right to establish carry laws in States?

Mr. HOLDER. I think that——

Senator COBURN. Either concealed carry or not concealed carry laws.

Mr. HOLDER. Without agreeing or disagreeing with them, I think States do have those rights, yes.

Senator COBURN. The States do. Will you work to protect that the States will continue to have that right?

Mr. HOLDER. Senator, yeah, I guess. I mean, I am in favor——

Senator COBURN. You are making my Second Amendment crowd really nervous. They want to hear you say, yeah, they have that right and they ought to be able to maintain that right. That is what they want to hear you say.

Mr. HOLDER. And I guess what I am saying to that same crowd is that I have no intention, this administration has no intention, of doing anything that would affect a State's regulation of firearms, who can carry a firearm, under what circumstances. There is nothing that we have discussed, nothing that is in planning, nothing that I can imagine that we are going to be doing in that regard.

Senator COBURN. So——

Chairman LEAHY. Would the Senator yield to me?

Senator COBURN. I would be happy to yield.

Chairman LEAHY. Just to ask for a clarification, the State of Vermont has very simple laws on guns. During hunting season, deer hunting season, on your semiautomatics, you are restricted to a certain number of rounds to give the deer a chance. We post signs outside the city limits of Montpelier, our State capital, saying that if you are going to hunt deer inside the city limits of Montpelier—like, for example, crossing the State House lawn or something—you are limited to shotguns. That is the only place you are. Anybody, unless they are a felon, are allowed to carry a loaded concealed weapon above a certain age without a permit. Nobody does. We like the fact that we can. The vast majority of us in Vermont, like myself, own numerous firearms.

Do I understand you to say you are not going to be on a crusade to have the Federal Government come in and override the laws of the State of Vermont?

Mr. HOLDER. That would be true. Maybe I am not expressing——

Chairman LEAHY. Which are a lot less restrictive than the laws of Senator Coburn's State.

Mr. HOLDER. Maybe I have not expressed this well, but this is not an agenda item, it is not a focus, it is not an expectation that I have for this administration. I am not sure how I can say it any plainer than that. There are things that we want to do with regard to crime prevention and to reduce crime, but the concern that you have raised is not on an "of the menu items" that I have seen—or could imagine.

Senator COBURN. Thank you for your answer. It is not the one I wanted to hear, but thank you for the answer.

Mr. Chairman, we will submit additional questions, and thank you for being patient, and thank you, Mr. Holder, for the fine job you have done today.

Mr. HOLDER. Thank you, Senator.

Chairman LEAHY. The witness is dismissed with our thanks.

Mr. HOLDER. Thank you.

Chairman LEAHY. And with me, you are dismissed with my admiration and my gratitude.

Mr. HOLDER. Thank you very much. I think I have been very——

Chairman LEAHY. It is very clear I am going to vote for you. We will reconvene tomorrow morning with the panel at 10 o'clock in the Senate Judiciary Committee hearing.

With that, we stand in recess.

Mr. HOLDER. Thank you, Senator.

[Whereupon, at 7:14 p.m., the Committee was adjourned, to reconvene at 10:a.m., Friday, January 16, 2008.]

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

CONTINUATION OF CONFIRMATION HEARING OF ERIC H. HOLDER JR., NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES

FRIDAY, JANUARY 16, 2009,

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

The Committee met, pursuant to notice, at 10:05 a.m., in room SD–326, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Specter, and Sessions.

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

Chairman LEAHY. Good morning. I am glad to see all of you, many familiar faces in our hearing room. I am thinking Senator Specter and I have spent a significant portion of our lives in this room. I look around, and I am missing one of the Senators I sat with here for over 30 years, Senator Biden, who has now left the Senate for other duties of sorts. So I welcome all of you.

Yesterday we met in the Senate Caucus Room from 9:30 until 7:15 so that every Senator, Republican and Democratic alike, could ask Eric Holder whatever questions they had. That is a historic room for a historic nomination.

Senator John Warner of Virginia once again showed the bipartisanship and leadership that he has shown for over 30 years in the Senate. He noted the problems facing the Department of Justice and the country are so great that he would urge everybody to put aside partisanship and work together. He presented and endorsed Eric Holder to be Attorney General, described his outstanding qualifications, integrity, and independence.

Congresswoman Eleanor Norton was eloquent in her statement of support for Eric Holder, a former judge first nominated by President Ronald Reagan, and then a prosecutor in the District of Columbia.

Everybody asked the questions they wanted to. Senators of both parties have done so. Much of the questioning was substantive. We touched on many important issues, and the Senators were—technically the third round was a 5-minute round, but we went 20 and 25 minutes and longer for some of the Senators. I went until everybody said they had asked all the questions they wanted.

Now, having heard Mr. Holder's testimony, I am more convinced than ever he is a person who will reinvigorate the Department of Justice. He served ably as a member of the President's national security team. He pursued the Justice Department's vital missions with skill, integrity, independence, and a commitment to the rule of law. I said before he is a prosecutor's prosecutor. And I am not going to use all my time because I want to get the witnesses, but I would yield to Senator Specter.

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

Senator SPECTER. Thank you, Mr. Chairman. The attendance is substantially less than yesterday. I cannot imagine why, considering the impressive array of seven witnesses who are here. But I join the Chairman in thanking all of you for coming, and outside witnesses are very important to give a fuller picture.

As I said yesterday, I had hoped to have initially 12 and then down to 7, and only three witnesses have been permitted here. But I do not intend to press that point because I know that there is great disdain in the American public for disagreements or bickering in Washington, D.C. So the Chairman and I have had a very cordial relationship for 28 years—actually before that. I met him when he was the district attorney of Burlington. I had a smaller city—Philadelphia—to be district attorney. And we had the national convention in Philadelphia, and I met this young fellow. He was not as tall then. He had a lot more hair.

[Laughter.]

Chairman LEAHY. A lot more.

Senator SPECTER. And we have worked very closely together, and we have had a disagreement about the handling of the scheduling and the handling of witnesses in a number of matters here. And I do want to help President-elect Obama. It is very important. There are enormous problems facing this country, and we all ought to do everything we can.

There is the constitutional responsibility that this Committee has on advice and consent, and we are at the consent part now. And separation of powers is the rock bed of our republic, and independence is very important, and I emphasized that yesterday in the questioning of Mr. Holder. So we have an important role to perform here, and we appreciate your coming in.

In the interest of time, I am going to yield back the balance of my 2 minutes and 37 seconds.

Chairman LEAHY. Thank you.

The first witness, who was here for a good part of the hearing yesterday, is Louis Freeh. Judge Freeh is a former Director of the Federal Bureau of Investigation. I read this from the notes, Judge. I do not think there is anybody in the room that needs to know that, but you are. Your career began in the Department of Justice in 1975 when you became a special agent for the FBI. He has a long and distinguished career as a public servant under both Democratic and Republican Presidents. He was appointed by President George H.W. Bush as a Federal district court judge, a lifetime appointment, in the Southern District of New York. He had been a career Federal prosecutor in the United States Attorney's Office

for the Southern District of New York, serving as chief of the Organized Crime Unit.

Now, he gave up that lifetime position to take the appointment as the head of the FBI, and I should note for the record, I have known Louis Freeh and his wife, Marilyn, and family for years. I am thrilled and I feel honored that he is now a part-time resident of the State of Vermont.

Judge, please go ahead. We will start with you, and I will introduce each one, and if it is OK with you, I thought we would just go through and let everybody testify, and then we will ask some questions.

STATEMENT OF HON. LOUIS J. FREEH, FORMER DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. FREEH. Thank you. Good morning, Mr. Chairman. Senator Specter, good morning to you. It is a pleasure to be before you. I have been in front of this Committee dozens and dozens of times over the years, and I am very pleased to come here and speak in support of the nomination of Eric Holder.

We have presiding over the Committee today not just two Chairmen—Senator Specter being a former Chairman of this Committee—but two prosecutors, two district attorneys, who know firsthand the importance and the challenges of protecting our laws and our society, but also adhering to the rule of law and being politically independent as you make important decisions—decisions which are subject to review and criticism. So I think the country and the Senate could not have two more knowledgeable and experienced people to lead the inquiry, and I commend the Committee and you, Mr. Chairman, and the Ranking Member for the fairness and thoroughness of your hearing.

You know, I was confirmed twice by this Committee. I spent 25 years serving in the U.S. Government, mostly the Department of Justice. I left the FBI Director's job after 8 years. One of the things I was proudest of is, when I left Washington, no one in the Senate, no one in the Congress had called for my resignation while I was here. No one said I was politically partisan. No one said that I was not independent. And, for me, and the FBI, that was a great feeling. I also left town without being further investigated, which, as you know, is a great benefit to any Federal serving official.

When I was a prosecutor, Attorney General Thornburgh at the time sent me down to Atlanta to work on a bombing case. It was a pretty egregious case. Someone had killed a Federal judge and also the head of the NAACP in Savannah. That was my first opportunity to meet Griffin Bell. Griffin Bell, in his typical humility, called me up. I was in the U.S. Attorney's Office in Atlanta. And he said, "Mr. Freeh," he said, "if I can help you in any way, I know a few people in town here."

When he was Attorney General—and you probably have heard this story—he was in his conference room, the great conference room where both of you have visited, and he was presiding over a meeting. His secretary came out—he was a new Attorney General—and she was very excited, and she said, "General, General, the White House is on the phone." And he looked at her, and he

said, in his typical Southern drawl, "I don't take calls from buildings."

The importance of that statement I think is very relevant to your inquiry here and to what I want to say about Eric Holder. The Attorney General of the United States is the chief law enforcement officer of the United States. Beyond competence, the elements of integrity, the elements of leadership, and, I think most importantly, political independence is critical.

Attorney Generals, like district attorneys, like U.S. Attorneys, like FBI Directors, will make decisions from time to time with which people disagree, and that is an important facet of the service and an essential element of our democracy. I made many decisions when I was an Assistant U.S. Attorney, when I was the Deputy U.S. Attorney, certainly when I was an FBI Director, that people disagreed with. And Eric Holder has made decisions with which I disagree, and I will talk about those briefly in a moment. But it is not the decision to me as much as the process and the principles and the integrity and independence with which that decision is made.

My very strong belief with respect to Eric Holder is that he has tremendous, he has great character, he has got good judgment. He has excellent competence as a lawyer, which I will talk about, because I also worked with him in the private sector, as you know. But he does have political independence. He is not afraid to say no, in my view, to an Attorney General and now, if he is confirmed by the Senate, the President of the United States. And I think if we look at those essential characteristics and elements, we can put into better perspective decisions which he made, and as I said, some decisions which he yesterday told you he regretted and with which I also disagreed.

The men and women of the Department of Justice—and I can speak, I think, for the men and women, many of them, in the FBI, had tremendous respect for Eric Holder as U.S. Attorney. And as you know, when you were district attorneys, if someone wanted to really find out about what kind of a job you were doing, they would ask your assistants, they would ask the assistant district attorneys who worked for you, your chiefs; and they would give a pretty honest and pretty accurate view as to your qualities as a leader, whether or not you were strong, whether you were politically independent, whether you had the courage, the moral courage to take on difficult cases and make difficult decisions.

And with respect to Eric Holder, beyond the background investigations, which the FBI, of course, performed with respect to him, the agents who worked with him, particularly when he was a line assistant, have told me time and time again that he was smart, he was honest, he was fair, he was not afraid. He exercised his office without fear or favor, whether he was looking at a very powerful political subject of an investigation—as you know, he did prosecute one as U.S. Attorney. And he did not pull his punches when it came to fair and thorough investigations.

That reputational evidence to me is quite essential. The Federal Rules of Evidence allow reputational evidence to be heard by a jury because our experience has found that it is very reliable. His reputation as a good prosecutor, an honest prosecutor, and an inde-

pendent prosecutor is very, very well established. I have never heard anything to dispute that, and I think that that is an essential evaluation for you to conduct.

The letters that you read yesterday, Mr. Chairman, those endorsements are not come by very easy, in my experience. The International Association of Chiefs of Police—I am on one of their boards. They don't casually or routinely endorse people. It is not a coincidence that you have all those endorsements. You have them because his reputation and the experience of the men and women who have worked with him on the line and worked with him in the Department of Justice see him and have experienced him as a good, honest, tough, and independent prosecutor.

And I have another note here, Mr. Chairman, which I would submit for the record, from Ron Noble, who, as you know, is the Director General in Interpol. And Assistant U.S. Attorney, Senator Specter, in Philadelphia, a protege of Ed Dennis, he said he would fly over here if anybody wanted to speak to him. But he says that Eric Holder is exactly the kind of attorney that we should trust as our Attorney General.

You know, I worked with Eric Holder probably more than anybody in this room. I saw him on a daily basis sometimes when he was deputy. We disagreed a lot. We argued over things. He would overrule me from time to time. I would challenge him occasionally—maybe more than occasionally—on things. And we came out sometimes on different ends of a point or a position. But in all of those dealings, what I saw was a smart, intelligent, skillful attorney, a great public servant, somebody with humility and somebody with independence who was not afraid to say no and call something as he thought it had to be called. And for me, that is very essential.

Let me talk just 2 minutes—not 2 minutes, but briefly about the Marc Rich and the FALN matters.

You know, on the Marc Rich matter, I was the Deputy U.S. Attorney in the Southern District of New York. That was a Southern District of New York case. One of the things I did while I was Deputy U.S. Attorney is I went over to Switzerland. I actually negotiated with the Swiss to get a warrant of extradition served on Marc Rich.

The pardon of Marc Rich was a corrupt act. There is no other way that I could describe it. And committees here have looked at it. They have evaluated it. It was a corrupt act. But it was not an act by Eric Holder. Let me give you just a quick picture of what was going on at the end of the Clinton administration when this pardon took place.

Nobody in the Department of Justice, nobody in the FBI had a clue about who was on the pardon list. The White House staff and its leadership, whoever was working this process, actively conspired to ensure that nobody knew what they were doing. On the morning of Inauguration Day—the morning of Inauguration Day—I sent two FBI agents to stand at the west gate of the White House so they could read the list of pardoned officials when it was published, because they wouldn't tell us who was being considered.

Eric Holder made some terrible mistakes, which he told you about yesterday, in allowing himself to be used and co-opted with respect to the facilitation of that pardon. But he did not under-

stand, he did not authorize, he certainly did not execute this pardon. And he has learned a lot from that. I think as Senator John Warner told us, we can be sure from that experience that he will never allow himself again to be put in that position.

The FALN pardon, you know, I wrote the letter to the Department of Justice vehemently opposed to that. The FBI took a very strong position. We were continuing FALN investigations at the time of that pardon. But the pardon process functions as a quasi-judicial process. Both the pardon attorney who prepares the materials for the deputy and ultimately the President of the United States function in a quasi-judicial manner. I did not agree, I do not agree with the decision with respect to that pardon. I opposed it personally. I opposed it as Director. And I don't think it was a reasonable act to be done.

But there are many, many judicial decisions, some of which I made briefly when I was a judge, with which people disagreed. The process, however, that was followed was the process prescribed in the Department and by the President. And I don't think it is fair or a good index of the character, judgment, and independence of Eric Holder to look at that without the context of 26 years of dedicated, independent, and brave leadership.

Briefly, in private practice, you know, I hired Eric Holder when I was general counsel at MBNA Bank of America. I had a very complex piece of litigation in Texas, and I hired him to handle it. I could have hired any lawyer in America, and a lot of my colleagues from the Southern District were wondering why I didn't hire them. I didn't know Eric Holder in a social frame. I still don't know him in a social frame. I hired him for that case because his legal skills, his integrity, and his willingness to tell me independently whether or not the case was one that should be tried or settled in a very complicated scheme was someone who I trusted. He litigated the case. He did a superb job. The judge ended up sanctioning the plaintiff's lawyers, which, as you know, rarely happens in Federal court. And by everybody's estimate, both my lawyers in the bank and co-counsel and the judge, he did an absolutely outstanding job.

Let me just finish by echoing what John Warner said, and I agree with you, Mr. Chairman. I mean, it was such a pleasure to see him and hear him yesterday. He nominated our oldest son to the Naval Academy, he was my Senator for 8 years, and just the template of what we want for public service in Government. And remember what he said. He said, you know, "The theme and the phrase I keep hearing with respect to this man is 'He is a good man.'" And being a good man in the Attorney Generalship of the United States is critical. And beyond good, as I said, I think he has superb lawyering skills. I mean, where do we find for our Attorney General someone who has had the trial and prosecutorial experience of someone like Eric Holder?

He is a man of integrity, he is a man of the law, and I think and I know he will exercise political independence. This Committee will make sure that he does that. The media will make sure that he does that. The people in the FBI will make sure that he does that. And if he doesn't, you are going to hear about it. I don't think you will because I don't think he will be anything except independent.

But you have a great candidate here, and I really urge you to approve him for confirmation. Thank you.

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

Chairman LEAHY. Thank you very much, Judge Freeh.

Our next witness, Chuck Canterbury is the National President of the Fraternal Order of Police, one of the Nation's largest and most prominent voices for law enforcement officers. He has served in numerous capacities in that organization: National Vice President, National Second Vice President, of course, now as President, Twenty-five years of experience in law enforcement; a police officer in South Carolina. It was in Horry County, wasn't it?

Mr. CANTERBURY. Yes, sir.

Chairman LEAHY. He has also been appointed by President George W. Bush to serve on the Medal of Valor Board. He serves on our Nation's Homeland Security Council. He certainly is no stranger to this Committee.

Mr. Canterbury, please go ahead, sir.

STATEMENT OF CHUCK CANTERBURY, NATIONAL PRESIDENT, NATIONAL FRATERNAL ORDER OF POLICE

Mr. CANTERBURY. Thank you, Mr. Chairman and Mr. Ranking Member Specter. We are very pleased to be here and graciously accepted the invitation.

As the spokesperson of the largest law enforcement organization not only in the country but obviously in the State of Pennsylvania, and hopefully one day in the State of Vermont, Senator, we are very pleased to be here to offer our strong support for this candidate to be the next Attorney General of the United States.

We are also fortunate to have both of you gentlemen, and the leadership that you provide, for the law enforcement community across this country is greatly appreciated by my peers in law enforcement.

Upon hearing the news that President-elect Obama intended to tap Mr. Holder for this Cabinet position, we directed our legislative staff to conduct the most exhaustive examination of a candidate's record for anybody that we have ever endorsed for the position of Attorney General. We looked at his record of his 12 years at the Department of Justice in the Public Integrity Section, his role as the Deputy Attorney General, and that of the time he spent in the judicial branch as a judge. It was an extremely thorough review.

His positions, his policy work, and the official acts were consistent with the goals of the FOP, and we have every reason to believe that he will be an exemplary U.S. Attorney General with whom we will have a very productive relationship.

I think the FOP brings a unique perspective to this nomination because of our familiarity with his record in the courtroom and as a judge and a U.S. Attorney. As part of this review process, we talked to the rank-and-file officers in the District of Columbia, one of our largest groups, and talked to him about his time in superior court as a judge. To a man, every individual that we talked to reported that he was fair and tough, and they spoke favorably about U.S. Attorney Holder, describing him as an "able and aggressive" prosecutor. And from the perspective of the line officers who work

on real cases, those are the adjectives that you want to hear as a police officer.

The FOP has a better sense and a complete picture because of the interviews that we conducted with our membership, with the men on the street that actually worked cases with Eric Holder.

I would also like to add that we talked to a lot of our career employees, members of our organization who worked at the Department of Justice, the best of the best, and many of them are members of our organization, and they were anxious for us to endorse Eric Holder for this position. He is one that they felt was one of their own who could take the helm of the Department and restore the integrity that they felt the Department needed.

The FOP was also privileged to have the opportunity to discuss with Mr. Holder a number of different issues, including his vision for the Department of Justice and the ability to have input and talk to him about the crime-fighting strategies and the policies that affect our members, the rank-and-file, the boots on the street.

I believe that the President-elect has made a great choice in Eric Holder to be the next Attorney General of the United States, and we want to emphasize that all the major law enforcement organizations have announced their support. I believe it is unprecedented that you have the chiefs, the rank-and-file, the sheriffs, all organizations standing together on this.

I urge the Committee to complete their review of this nominee in as quickly a fashion as possible and favorably report this to the Senate floor. As you examine his record, I believe you will find him not only well qualified but possessed of the requisite character, knowledge, and skills to do this job and be an extremely effective leader for the Department.

And, again, Mr. Chairman, Mr. Ranking Member, we thank you for the invitation, and we urge you to move this along as quickly as possible. We believe that he will be a fine Attorney General.

Thank you, sir.

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

Chairman LEAHY. Thank you, Mr. Canterbury, and I thank you and your organization for all the time you have spent up here before this Committee, the help you have given, and Mr. Pascal who is here often on critical law enforcement matters that we have before us, and I appreciate that.

Our next witness is John Payton. He became Director-Counsel and President of the NAACP Legal Defense Fund last March. This was after a very long and distinguished career in private practice. He is the sixth person to lead the Legal Defense Fund in its 67-year history, something started by Thurgood Marshall. Mr. Payton is recognized as one of the premier litigators in this country. His civil rights experience includes Supreme Court arguments defending the use of race-based remedies in the University of Michigan's admission criteria. He worked in private practice here in Washington, D.C., for the law firm of Wilmer Hale. He was Corporation Counsel of the District of Columbia. He served as President of the District of Columbia Bar. He has taught at Harvard, Georgetown, and Howard law schools.

Again, he is no stranger to this Committee, and, Mr. Payton, thank you very much, sir, for being here.

STATEMENT OF JOHN PAYTON, PRESIDENT AND DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Mr. PAYTON. Thank you, Mr. Chairman. It is a pleasure to be here, especially on the occasion of the nomination of Eric Holder. I am here to support enthusiastically his nomination to be Attorney General of the United States. The Legal Defense Fund views it as a national imperative that the Department of Justice live up to its name by delivering justice and equality for all people in the United States.

The harsh reality today—and it is a very harsh reality today—is that the Department of Justice is in shambles. Mr. Holder, if he is confirmed, will inherit a Department with its very credibility in question. The entire Department has been decimated by scandal and controversy, from the firings of U.S. Attorneys to the use of an ideological test for the Justice Department's Honors Program to the assault on the Civil Rights Division.

The task at hand is nothing less than to reclaim the soul of the Department of Justice, as former Attorney General Edward Levi phrased it immediately after Watergate, a strikingly analogous set of circumstances. But I believe the core of the soul of the Department of Justice is its Civil Rights Division. Yes, integrity must be restored to all of the Department's operations. And, yes, it must regain its independence from political influence. But the area in which the Department has been most damaged is the Civil Rights Division, which has been plagued by problems that have shaken its very foundation.

Press reports and hearings before this Committee have revealed the insertion of politics into litigation decisions, the weakening of enforcement, improper or possibly illegal personnel practices, and a substantial decline in cases filed to protect racial and ethnic minorities. Politics and ideology have triumphed over evenhanded enforcement at almost every turn. Career civil rights lawyers in the Department have been demoralized, and many have been literally driven out of the Department.

This Tuesday, the Department's Office of Inspector General and the Office of Professional Responsibility released their joint report on an investigation of allegations of politicized hiring and other improper personnel actions in the Civil Rights Division. The report was completed last July, but only released this week. It is a shocking report.

It shows, as the earlier report identified, an enemies list that was used to actually keep people from becoming members of the Department. The entire Department of Justice Honors Program used the enemies list. Our organization, the Legal Defense Fund, was on the list.

The second report is even more shocking than the first. It concludes that hiring in the Special Litigation Section, the Employment Litigation Section, the Voting Section, the Criminal Section, the Appellate Section, all were illegally infected with political and

ideological considerations; and it makes a criminal referral to the U.S. Attorney's Office.

But as I said, the entire Department of Justice has suffered grievously. The challenge for the next Attorney General requires very special leadership and very special commitment. It requires someone who can inspire and be an example.

Yesterday's hearing, I believe—and I sat through almost all of it and heard the rest—was a dramatic example and dramatic evidence of why President-elect Barack Obama has selected Eric Holder to lead the Department of Justice at this critical moment. We face perilous times, both internationally and domestically. The legal issues before us are complex and dynamic. I think there is no better person than Eric Holder to restore integrity and honor to the entire Department of Justice, and the ethical standing and reputation for excellence of its Civil Rights Division. He has an exceptional resume, which you heard about yesterday: Columbia, Columbia Law School, the Honors Program, lawyer in the Public Integrity Section, a judge, U.S. Attorney, Deputy Attorney General, partner at a very prestigious law firm. Let me just add one other thing to his resume. He began his legal career as a legal intern at the Legal Defense Fund, and ironically, in the recent past, that would have disqualified him from working at the Department of Justice.

I also know Eric from my own history and professional experience in this town. As you said, Mr. Chairman, I was partner at a law firm for many years here. I was Corporation Counsel. I was President of the D.C. Bar. I have known Eric for almost that entire time. We are friends. I think that his personal commitment to issues of justice and equality is exceptional. His experience and the strength of his commitment to fairness assure me, and I am sure they assure this Committee, that the odious practices identified in this week's report by the Inspector General will never be tolerated on his watch.

Let me reiterate one final point. I don't think there is a better person to lead the Department of Justice at this critical moment than Eric Holder. And with his nomination, we can begin to restore the crown jewel of our Nation's legal system.

I urge the Senate to confirm Eric Holder as the next Attorney General of the United States. He will make us all proud.

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

Chairman LEAHY. Thank you, Mr. Payton, and I do appreciate that. Actually, with you testifying, it reminded me of something that I was going to do yesterday, and because we went so late I didn't. But Judge Freeh has talked about all the different people who have written in and support Eric Holder. Mr. Canterbury talked about the unique nature of all the different types of law enforcement being for him. And I put letters from those different organizations in the record yesterday. But we have also received letters of support for Mr. Holder's nomination signed by more than 60 civil rights organizations, including the NAACP, the Leadership Conference on Civil Rights, the Southern Poverty Law Center, the Mexican American Legal Defense and Education Fund, the National Women's Law Center, the American-Arab Anti-Discrimination Committee, the Anti-Defamation League, the AFL–CIO, the

Asian-American Justice Center, and a whole lot more. So I will put the whole entire list of support into the record along with the letters. So thank you very much.

Ms. Townsend, it is always good to see you. She was until last year Homeland Security and Counterterrorism Adviser to President George W. Bush, where she chaired the Homeland Security Council, certainly one person that most people in this country, when you would be interviewed on television or elsewhere, would listen very carefully on a subject that affects every one of us. She advised the President on homeland security policy, anti-terrorism matters.

I have been in meetings where the President has gone out of his way to praise the advice you have given.

Previously, Ms. Townsend spent 13 years at the Department of Justice in a variety of senior positions, including counsel to the Attorney General for Intelligence Policy, which I believe was probably the first place we met; Acting Deputy Assistant Attorney General; Director of the Office of International Affairs; Chief of Staff to the Assistant Attorney General in the Criminal Division. She worked with Mr. Holder during his tenure as a U.S. Attorney and as Deputy Attorney General. She served as a Federal prosecutor in the United States Attorney's Office in the Southern District of New York. She began her prosecutorial career as an assistant district attorney in Brooklyn, New York. That was probably after Eugene Gold. The reason I mention him, he and I served on the board of the National District Attorneys Association. We oftentimes had meetings in his office.

So thank you for appearing, and please go ahead and give your testimony.

STATEMENT OF FRANCES M. FRAGOS TOWNSEND, FORMER HOMELAND SECURITY ADVISER TO PRESIDENT GEORGE W. BUSH

Ms. TOWNSEND. Mr. Chairman, thank you for the warm welcome I have received. It really is a privilege and an opportunity to be here today before the Committee to testify in support of the nomination of Eric Holder to be Attorney General.

You went through my résumé, if you will, and I suppose to many here my appearance in support of Eric comes as something of a surprise, given my most recent position. But as you noted, my 23 years of public service included 13 years at the Department of Justice, where I worked both with Eric Holder and for Eric Holder at various points.

Eric's career both as a superior court judge and as a career prosecutor in the Public Integrity Section of the Criminal Division rightly earned him both the respect and the affection of career prosecutors not only here in Washington, but around the country in the U.S. Attorneys' offices around the Nation. Not surprisingly, given his experience, I found Mr. Holder to be open-minded, fair, and respectful of the views and the opinions of the career lawyers.

Mr. Holder was never reluctant to hear discussion between career and appointed staff if there was a disagreement among them, and oftentimes that was the case. He decided those issues in accordance with the facts and his best judgment, giving serious con-

sideration and respect to the advice of the career lawyers. In his interactions with the Office of Intelligence Policy and Review, he took his national security responsibilities seriously, and he always made himself available whenever he was needed. He carefully reviewed the detailed documents prepared for submission to the Foreign Intelligence Surveillance Court when his approval was required and unfailingly deliberated on the questions and facts before signing such submissions.

In yesterday's testimony, Mr. Holder spoke about being at the Department during the East Africa embassy bombings and in 2000 during the *Cole*. One of the cases I thought I might mention to you, because I think it is very relevant to the execution of his national security responsibilities, was the successful prevention of the Millennium attack 1999 into 2000. As the Committee is aware, and as Director Freeh will recall, this was a very difficult time. We had very specific threat information. Both Attorney General Janet Reno and the Deputy Attorney General were personally involved in the Justice Department and FBI's investigation.

We took risks to prevent that attack. We made considered legal judgments to prevent that attack. We applied the Foreign Intelligence Surveillance Act in a far more aggressive way that had ramifications beyond the disruption of the Millennium attack. That case could have, if tradition had held, been prosecuted under criminal wiretap laws. I believed at the time and recommended both to the Director and the Attorney General that we use the Foreign Intelligence Surveillance Act legally and appropriately in that investigation. Eric Holder was a part of that deliberation. They were persuaded that the use of the Foreign Intelligence Surveillance Act to disrupt that plot was correct. That plot was not only successfully disrupted, individuals who were later criminally prosecuted, the prosecutors in the Southern District of New York legally and appropriately used the take from the foreign intelligence surveillance, and that was upheld on appeal.

That is the kind of man Eric Holder is. That was a difficult legal decision. It was a close call, and it was a decision that he was willing to take because he understood the seriousness of the threat.

But I wish to be clear. I am not here because I believe that, if confirmed as Attorney General, Eric Holder will decide legal issues necessarily in the same way that I would. On the contrary, I expect that there would often be times where this was not the case.

I am here because I believe Eric is competent, capable, and a fair-minded lawyer who will not hesitate to uphold and defend the laws and the Constitution of the United States. I know Eric to be an honest, decent man of the highest ethical standards, who both understands and appreciates the strong and proud traditions of the Department of Justice and will protect and honor them.

The Attorney General position must be filled quickly. We remain a Nation at war and a Nation that faces the continuous threat of a terrorist attack. We cannot afford for the Attorney General position to sit vacant or for there to be a needlessly protracted period where the leadership of the Department is in question.

For these reasons, sir, I humbly and respectfully recommend that the Committee move expeditiously to confirm Eric Holder as an Attorney General of the United States.

Thank you.

[The prepared statement of Ms. Townsend appears as a submission for the record.]

Chairman LEAHY. Ms. Townsend, thank you very much. I appreciate that, especially, as you stated, there will be areas where you disagree with Mr. Holder. I think in my 34 years here there has never been an Attorney General, in a Republican or Democratic administration, included Attorneys General that I have voted for, that I have not found something where I have disagreed.

Joseph Connor is the son of Frank Connor. Frank Connor was still a young man when he lost his life in a bombing at Fraunces Tavern in New York, a bombing that was conducted by a Puerto Rican nationalist group called the Armed Forces for National Liberation, FALN. Mr. Connor testified before the Senate Subcommittee on Foreign Relations in 1999 about the clemency that was granted to some FALN members. He worked with Senator Hatch to introduce the Pardon Attorney Reform and Integrity Act to Congress in 2000. I was touched also very much in reading your testimony, Mr. Connor—all of which will be placed in the record, of course—when you spoke about the fact that your father never got to see his grandchildren. My colleagues on this Committee have to hear my stories ad infinitum about my grandchildren. I think that is one of the greatest joys of life to have your grandchildren.

So we thank you for coming back to the Senate. You have been here before, and please go ahead, sir.

STATEMENT OF JOSEPH F. CONNOR, GLEN ROCK, NEW JERSEY

Mr. CONNOR. Well, thank you. Thanks for having me back. They say you love your children, but you really love your grandchildren, so——

Chairman LEAHY. Without taking up your time, I would add that I have told people that I have discovered this hidden clause in the Constitution which requires grandparents to spoil their grandchildren, then turn them back to the parents, who have to deal with the consequences.

Mr. CONNOR. Oh, so that is what happens, I guess. Okay. Thanks for the insight.

My name is Joseph Connor, and I am here, as the Senator said, for a second time, once again addressing the unimaginable, immoral, and really dangerous 1999 clemencies to 16 Puerto Rican terrorists of Los Macheteros and the FALN. We will call them the FALN. These terrorists proudly claimed responsibility for over 130 bombings in the U.S., including the murder of my 33-year-old father, Frank Connor, as he ate lunch at Fraunces Tavern in downtown New York. It was January 24, 1975.

Despite the warnings and recommendations to the contrary from the FBI, the Bureau of Prisons, prosecutors, Janet Reno herself, then Deputy Attorney General and current Attorney General nominee Eric Holder yesterday flatly admitted recommending release of those terrorists.

Upon hearing those words yesterday, some questions popped into my mind. One was: Did he actually believe in their cause? No. 2, did he recommend the release at someone else's direction, perhaps

the President? And, No. 3, and maybe most disturbing, did he not know what they did? It seemed that a lot of the issues that were raised he claimed he didn't know about, from the surveillance tape of them building bombs to their threat of Judge McMillan at their sentencing. And that was disturbing.

He admitted to have taken advice from people outside our Government—dignitaries, if you will, folks like Desmond Tutu, Jimmy Carter, Coretta Scott King—and ignore those people within our Government—the FBI, the Bureau of Prisons, the prosecutors. Something didn't add up.

When we look back at the people whose recommendation he did take, on what information were they basing their recommendation? Were they told the "political prisoner"—I put that in quotes—line that the pro-FALN people were passing? Or did they actually know the facts? Something tells me if they knew the facts, they wouldn't be recommending this.

Putting aside as well documented involvement in the outrageous pardon of Marc Rich, the Attorney General nominee's egregious recommendation for playing Russian roulette by unleashing unrepentant terrorists on the American people against the advice of the FBI, Bureau of Prisons, prosecutors—even Janet Reno herself—should disqualify him on its own merit.

It is almost 10 years ago, but, incredibly, we are revisiting today the same issues, the recriminations of the hearings, and how sad that we have to go through this again. We knew the clemencies were wrong in 1999. After all, the Senate voted 95–2 to condemn them. Yet here we are contemplating the confirmation of the architect of that very release as the top law enforcement officer in our country? How can this be?

If anything, the devastating attacks of 9/11, we should be more resolute in our opposition to anybody who would be soft on terror or support any terrorist organizations.

If anyone needs to be reminded about what terrorism can do, give me a couple minutes.

It was a beautiful day on January 24, 1975. I had just turned 9; my brother, Tom, had just turned 11. That night, my Mom was cooking us a dinner to celebrate our birthdays, and we were expecting our father home on time to celebrate with us.

Well, after we got home from school, we found out that there was a bombing downtown. We didn't know my father was in it right away. My Mom didn't know he had a meeting that day. He wore an old suit when he wouldn't have expected to be with clients. But when she called up, he didn't answer. She knew then something was wrong.

After hours, we finally got the news that he had been killed. He and three others were murdered that day, intentionally and, as we may find out later from Rick, who will give a bit more information, the bomb was meant to kill a lot more people than the four that it ended up killing.

My Dad was only 33, as I mentioned. He was the only child of immigrants Thomas Connor and Margaret Maloney. His father was an elevator operator downtown, and his Mom was a cleaning lady at J.P. Morgan. She was so proud when she got him the job so he wouldn't be in a dangerous position. His friends were becoming

cops and firemen or working in the subways. But he got a job in a nice office out of high school. And his was an American success story. He went to college at night. He worked his way up to an officer position at J.P. Morgan, and he had two sons, and he had made something of himself, from a cleaning lady to an office at the bank. It was an amazing story.

Although my Mom is remarried to a fine man and my brother Tom and I have families of our own, not a day passes without us feeling the void that this has left in our lives. My father's death has become a wound, and it was reopened when the clemencies were offered, and it has been reopened now by this nomination. These terrorists took away my Dad's life. As you mentioned, he never got to see his sons graduate high school and college, meet his daughters-in-law, or be a grandfather.

Now, we ask why. The kids ask why, what happened? It seems that it was all done for politics. Was it direction from the President to further his wife's Senate future? Or was it something else? Was it someone who believed in the cause of the terrorists?

Who were the FALN? And like I said, Rick will get into it a little bit more, but contrary to the disingenuous claims we heard yesterday, there was nothing non-violent about these people. These people blew up 130 bombs in the U.S. They killed five people, and they meant to kill a lot more. They devastated lives and maimed.

The day after their release, one of them was on with Tim Russert, and when asked about the Fraunces bombing, one of them released, one of these people who was non-violent, had nothing to do with it, said, "Well, you know what? The restaurant didn't take the proper precautions," blaming someone else, never taking responsibility for what happened. And these people were released.

On 9/11, my brother, Tom, and I commuted through the World Trade Center. We left. I said good-bye to him in the Trade Center. I went my way, he went his. At quarter to 9, I saw the North Tower explode out my window. I couldn't get Tom on the phone, and I called my cousin, Steve, who worked at Cantor Fitzgerald. Steve never answered. Steve was my father's godson. He was killed on 9/11.

Tom and I got home that night safely to our families, but there are consequences. Terrorism cannot be treated as a political tool. It has to be treated for what it does. It kills people, and it hit our family very hard twice.

Despite what Mr. Freeh just said, the clemency process was not followed properly. We were never informed as a family of their release, although I understand we were supposed to have been through the Victims Rights and Restitution Act of 1990. The terrorists did not request clemency. They did not express remorse. They were not required to provide information solving other crimes. They were allowed 30 days to decide to accept the conditions, and they were given conference calls between prisons.

Now, clemency is an individual grant, yet they were treated as a group, and that is not right.

Supporters were given nine meetings with Mr. Holder and his group. You know how many we got? None. He never talked to us. Despite what he said yesterday, he didn't—there was no consideration to the victims, at least to the people I know.

Had we been properly notified, we would have told him what happened, because it seemed like yesterday from the conversation he didn't know about the threats to the judge, he didn't know about them building bombs. It was a very disturbing moment in the interviews yesterday.

The biggest issue that I read in the recently released memos, as it came from the Justice Department, was how the public relations fallout might be if these guys committed more crimes—not what might happen to those people who were injured by them, but what the public relations issues would be for Holder and his team if something went wrong.

I have a whole litany of questions I would like to put into the record. I know I am kind of going late now. I can read them now, or I can do it at another time. But I have a bunch of questions——

Chairman LEAHY. I have read them, and if you want to flag some, go ahead.

Mr. CONNOR. OK.

Chairman LEAHY. I am trying to give as much flexibility to all the witnesses as I can.

Mr. CONNOR. I appreciate that. Look, I know I am going long.

Chairman LEAHY. I know this is a difficult time. I am not trying to cut you off. Your whole statement, of course, will be made part of the record, but if there are some of those questions you would like to emphasize, please go ahead.

Mr. CONNOR. Thank you. See, yesterday a lot of issues came up that caused my statement to change and my questions to change, because he said some things that were just a surprise.

He admitted that he knew so little about the terrorists. As he testified yesterday, he hadn't seen the surveillance video, didn't know they had threatened the judge. How then could you know enough about the case to feel comfortable in releasing them? What does that say about the judgment there?

He said none of these terrorists were part of any attacks that killed or hurt people. Given his limited knowledge on the subject, how could he possibly know that? And given what Ricardo Jimenez said on "Meet the Press," that is just not true.

He took advice of others over his own due diligence, from what I could see, and that is irresponsible. It borders on incompetence.

Now, I know he has a long record, and I know there are a lot of very good people here who have spoken to his successes in the past. But it is not unprecedented that one mistake can disqualify you. Look at what happened when Clinton had Zoe Baird and Kimba Wood. They were both very qualified people, and both of them had to withdraw their nomination because they did something like hire illegal aliens to work in their house and didn't pay taxes on them—which to me is far less egregious than what he did.

He mentioned yesterday that Cardinal O'Connor supported clemency. That is not true. I have a letter from the Cardinal specifically saying he didn't, because I contacted the Cardinal at the time.

We came here in 2000 and introduced the Pardon Attorney Reform and Integrity Act, and we warned at the time about future terrorist acts. And we hoped that by instituting this act, which never was instituted, that there wouldn't be releases like this, that there would be a light shining on people so everyone would know

what the pardon attorney was doing and what the Justice Department was doing before the clemencies were released. And that is the transparency that we need, not yesterday in the meetings when Mr. Holder was asked to produce a document recommending the clemency, he didn't want to do it.

Now, this new administration is supposed to be the most transparent in our Government's history, yet his Attorney General has no transparency.

I will go now, but I urge the Senate to review Mr. Holder's record. Put aside any politics, put themselves in the shoes of ordinary Americans who have given them their trust and their vote, and decide if this man who recommended playing Russian roulette with American people by releasing unrepentant terrorists should be charged with protecting our fellow citizens. I think ordinary Americans would agree the answer is very clear.

Thank you.

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

Chairman LEAHY. Thank you, Mr. Connor.

Mr. Richard Hahn is the President and CEO of R. Hahn & Company, Inc., a security consulting and investigating company specializing on counterterrorism and homeland defense. He retired from the FBI after a distinguished career that spanned 33 years as a senior supervisory agent and as a special agent. As a member of the FBI, he investigated domestic and international terrorist organizations, specialized in events carried out by the Armed Forces of National Liberation, or the FALN. And he testified before this Committee in 1999, 10 years ago, about the FALN clemencies.

Thank you for coming back and testifying again. Of course, your whole statement will be made part of the record. Please go ahead, Mr. Hahn.

STATEMENT OF RICHARD S. HAHN, R. HAHN & COMPANY, SEAL BEACH, CALIFORNIA, AND FORMER FBI SPECIAL AGENT

Mr. HAHN. Thank you, Mr. Chairman. My purpose in being here today is to make clear just who and what the FALN and the Macheteros were.

These organizations were no less terrorists than any of the terror organizations recognized by this Government today. These were clandestine organizations with cellular structure and secret membership. This makes knowing who did what acts inside these conspiracies difficult, if not impossible. But despite this, through investigation some acts attributable to those who received clemency are known.

Former FALN member Freddie Mendez chose to cooperate with the Government after being convicted on Federal charges, but before being sentenced. Mendez described being mentored by FALN leader Oscar Lopez, one of those offered clemency. Lopez taught Mendez how to detect and avoid surveillance, use dead drops for communications, the code words used by the FALN, how to operate safe houses, and how to build a bomb.

Mendez participated in the preparation of bombs in October 1979 which were coordinated with the Macheteros. On that occasion, he was assisted by Oscar Lopez and Ida Luz Rodriguez, and carried

a bomb with Ricardo Jimenez to the Democratic Party headquarters in Chicago with the intention of placing it in their offices. Three bombs were placed in Chicago that day. He participated with Oscar Lopez, Dylcia Pagan, Ida Luz Rodriguez, Haydee Torres, Luis Rosa, Ricardo Jimenez, and William Morales in the armed assault on the National Guard Armory in Oak Creek, Wisconsin, to steal weapons and explosives. Employees were put on the floor, guns placed at their heads, and they were repeatedly threatened during the takeover.

He also participated in the armed takeover of the Carter-Mondale campaign headquarters in Chicago for the purpose of intimidating campaign workers and delegates to the convention. Mendez named participants in the planning and execution of this invasion as himself, Oscar Lopez, Carmen Valentin, Dylcia Pagan, Ricardo Jimenez, Ida Luz Rodriguez, Luis Rosa, and Alicia Rodriguez. It is noted that they carried rifles and a variety of pistols into the assault, and, again, workers were threatened, bound, gagged, and the offices ransacked.

Mendez was arrested in Evanston, Illinois, along with Carlos Torres, Haydee Torres, Adolfo Matos, Ricardo Jiminez, Dylcia Pagan, Ida Luz Rodriguez, Alicia Rodriguez, Luis Rosa, Elizam Escobar, and Carmen Valentin. Some of these conspirators had just participated in the armed takeover of a truck rental agency, not only stealing a truck but robbing the patrons of personal effects. The group had gathered in Evanston for the express purpose of robbing an armored car that serviced Northwestern University. All were wearing disguises and armed.

In a separate investigation of an FALN safe-house apartment operated by Alejandrina Torres and Edwin Cortes, over 21 pounds of dynamite, 24 blasting caps, four handguns, over 3,000 rounds of ammunition were discovered and seized. Also found were disguise materials, false identification, and terrorist training manuals. Cortes and Torres were videotaped as they built firing circuits for bombs. They also were surveilled electronically and physically as they made plans and traveled to Wadsworth Veterans Hospital in Kansas with weapons and explosives to attempt the escape of FALN leader Oscar Lopez. A second safe-house apartment in Chicago searched in April 1983 was found to contain a semiautomatic rifle, silencers, bulletproof vests, and documents including intelligence materials from the police in Puerto Rico. Cortes and co-conspirator Alberto Rodriguez were surveilled electronically as they plotted an armed robbery and subsequently, with Alejandrina Torres, as they planned bombings of military installations in Chicago.

Regarding other crimes of the FALN, as you know, they engaged in a campaign of bombings that started in 1974 and did not end until 1983. This campaign encompassed over 100 explosive and incendiary attacks, killed five and maimed scores of others, including several police officers. Some of these attacks were designed to kill. In December 1974, the FALN called in a report of a dead body in a building in Spanish Harlem. A booby-trapped explosive device hung on the opposite of the main entry door. Exploding as the door opened, a New York P.D. officer was blinded in one eye and severely maimed. Ironically, the officer, Angel Poggi, was Puerto

Rican himself, and even more incredible, it was his first day on the job.

In January 1975, the bombing of Fraunces Tavern killed four and wounded 60. Credit was claimed within minutes by a written FALN communique.

In August 1977, the FALN conducted the daytime bombing of the employment offices of Mobil Oil in Manhattan, killing one and maiming several others.

The Macheteros have a similar history of terrorist acts. In 1978, the Macheteros ambushed a patrol car of the Police of Puerto Rico in an attempt to steal weapons, uniforms, and the patrol car itself. One of the officers was killed as he resisted the ambush. The other, stripped of his uniform was left handcuffed to a tree at the side of the road. The Macheteros proudly claimed credit for this act in a written communique.

In October 1979, the Macheteros, in concert with the FALN, conducted bombings on the island of Puerto Rico while simultaneously bombings were conducted in the U.S. Credit for these were claimed by a joint communique to the press which bore the logos and names of both the FALN and the Macheteros.

In December 1979, the Macheteros, with other groups, conducted a well-coordinated attack on a Navy transport bus at Sebana Seca, Puerto Rico. The bus was blocked on a public highway. Then another vehicle driven by the terrorists pulled into the opposing lanes of traffic, shot the bus driver, and proceeded to rake the side of the bus with automatic weapon fire. Two died and many more were wounded.

In January 1981, the Macheteros bombed jet aircraft of the Puerto Rican National Guard, resulting in tens of millions of dollars in damage to the specialized aircraft.

In 1983, the Macheteros fired LAW rockets at the FBI office in Hato Rey, Puerto Rico, and at the U.S. Courthouse in Old San Juan, Puerto Rico.

And, finally, in the fall of 1983, the Macheteros engineered one of the greatest thefts in U.S. history, the theft of over $7 million in U.S. currency from a Wells Fargo depot in West Hartford, Connecticut. Much of the money ended up in the hands of Cuban agents.

All of this is a matter of public record not only accessible to the Department of Justice, but to any motivated citizen, who wishes to find these facts. All this makes clear that these conspirators were not merely activists but, in fact, were indeed terrorists.

In my opinion, granting them clemency in the absence of any cooperation or understanding of who committed the most heinous of crimes remains a compromise of our justice system and reflects a failure of the Government personnel with oversight of such matters to competently carry out their duties.

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

Chairman LEAHY. Thank you very much.

Our last witness is Stephen Halbrook. He has practiced law for over 30 years. He has authored or edited seven books and dozens of articles related to the right to bear arms. He is also the author of an amicus brief in a recent Second Amendment case before the

Supreme Court, *District of Columbia* v. *Heller*, submitted on behalf of Vice President Cheney and 250 members of the House of Representatives.

Mr. Halbrook is known in my State, a State which actually, as I mentioned yesterday, has no gun laws except during hunting season. And then we have certain restrictions if you are going to hunt on the Statehouse lawn. I also noted the fact that I own numerous weapons, and I am almost tempted—well, I will tell the story about Director Freeh and myself target shooting in my backyard in Vermont later on.

Go ahead, Mr. Halbrook.

STATEMENT OF STEPHEN P. HALBROOK, ATTORNEY AT LAW, FAIRFAX, VIRGINIA

Mr. Halbrook. Thank you, Mr. Chairman. Good morning, Senator Leahy and Senator Specter. It is a real pleasure to be here.

I did file the amicus brief on behalf not only of 250 representatives, but also 55 Senators, including a majority members of this Committee, in the *Heller* case. *Heller*, as you know, held that the Second Amendment means what it says. The right of the people to keep and bear arms means that individuals have that right.

I am author of the book "The Founders' Second Amendment" and numerous other publications. I have done a lot of litigation on this subject in the Supreme Court. I am outside counsel for the NRA. I am not representing them here today.

This is an issue for which we have an explicit constitutional guarantee. We live in an age when people invent rights, and they seem to be implicit in the Constitution. And I like Senator Leahy's "the right to spoil grandchildren" as an implicit constitutional right. It is a lot more innocuous than other ones that might be invented, and I fully support that concept.

As you know, Mr. Holder filed—rather, joined in an amicus brief in the *Heller* case, denying that the Second Amendment protects any individual right and seeking to uphold the total ban on handguns by D.C. residents.

My background, by the way, I have appeared before this Committee a number of times, going back to the 1982 Subcommittee on the Constitution hearing and report which was entitled "The Right to Keep and Bear Arms."

Serious concerns I think are raised about Mr. Holder's position. Throughout his career he has denied that the Second Amendment basically means anything in regard to private citizens, and he has advocated basically the criminalization of what many people consider to be their constitutional rights. And I am talking about, for example, the advocacy of making it a 5-year felony to possess an unregistered firearm in the District of Columbia. That was when he was U.S. Attorney. And there have been many other draconian proposals that he has set forth.

I listened carefully yesterday to Mr. Holder's testimony, in particular, the question that if the Supreme Court reconsidered the issue of the meaning of the Second Amendment, whether it recognized individual rights. It does refer to the right of the people, after all, not some kind of elusive collective right that doesn't really protect anybody, and if the Supreme Court revisits that issue, what

position would you take? And Mr. Holder responded that first it would depend on the facts, even though facts really don't matter in the interpretation of a constitutional provision. And he did say that stare decisis is one consideration that would be taken into account. I think given that he has supported the so-called collective rights view for his career, it is most likely that he would, indeed, support a reconsideration of the meaning of the Second Amendment.

And, in addition to that, Mr. Holder, based on his career-long proposals for draconian firearm bans, would be likely to say that nothing really violates the *Heller* decision if it, indeed, stands the test of time.

I am not going to get into any policy questions, but I did take note yesterday that he advocated the reenactment of the so-called assault weapon ban as a permanent fixture. The *Heller* decision did talk about firearms that are commonly possessed by law-abiding people for lawful purposes as being protected by the Second Amendment. It might depend on what a person arbitrarily chooses to call by this pejorative term "assault weapon" whether that test would be met or not. But there is a lot of meat in the *Heller* decision that basically says that banning commonly possessed firearms would violate the Second Amendment.

He mentioned that what he called the "gun show loophole" must be closed, and it reminds me of his prior advocacy of a Federal law that would require background checks on all private intrastate transactions involving firearms, presumably making it a felony to give a firearm to your grandchild as a gift without a Federal background check.

And, also, he has advocated the registration of all firearms, that all of those background checks on private transfers would be registered with the Bureau of Alcohol, Tobacco, Firearms, and Explosives so we would have a registration system of firearms.

He was asked yesterday about proposals to ban firearm possession by individuals who are in the age group 18 to 21 years old, and that was a proposal that he supported. Mr. Holder supported H.R. 1768 back in 1999. So you would have the phenomenon of a person who is serving in the armed forces, eligible to do so at age 18, eligible to vote, serve on juries, and it would be a Federal felony for them to possess a firearm.

Now, the Attorney General not only prosecutes Federal crimes and influences courts on the meaning of constitutional rights. The Attorney General also administers and enforces the Gun Control Act through the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

For his entire career, Mr. Holder has denied that individuals have any Second Amendment rights. On behalf of law-abiding citizens, he has advocated that firearms must be registered, and the possession of an unregistered firearm be punished with 5 years' imprisonment. The millions of Americans who exercise their Second Amendment rights rightly feel uneasy about this nomination.

Much has been said about unjust prison sentences imposed on persons who possess crack cocaine, not to mention the rights of alleged terrorists held at Gitmo and other places. And we would hope for sympathy to be shown for Americans who bother no one and

who merely wish to exercise their Second Amendment rights without being sent to prison because they possess a gun without the Government's permission.

Thank you, Mr. Chairman.

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

Chairman LEAHY. Thank you. It is interesting hearing what you are saying and listening to Mr. Holder yesterday. I have a home—or a house in Virginia that I use when I am down here. My home is in Vermont. I have often been struck that in your State of Virginia, your gun laws are considerably more restrictive than the laws are in my State of Vermont. For example, you couldn't carry a concealed weapon without a permit in Virginia. You could in Vermont. I mean, you could this afternoon if you were there.

I own at least a dozen weapons of different sorts ranging—well, of all calibers, and I enjoy shooting in my backyard. You cannot do that in Virginia.

Mr. Holder—I asked him would he support Federal laws that would restrict Vermont's laws other than the obvious ones about felons who are restricted. And that has been upheld by the Court in their purchase and use of weapons. I asked him if he would support restricting Vermont laws. He said no. It is interesting. And we have considerably less laws than you have in Virginia on firearms.

Now, Judge Freeh, we talked about your unique perspective. And, Mr. Halbrook, I will let you go back to that if you care to after. But let me just—the thought occurred while you were speaking.

Judge Freeh, you have this unique perspective and you did work closely with Eric Holder, as you have described, when you were FBI Director. You said sometimes you agreed, sometimes you disagreed.

You certainly been very critical of the pardon of Marc Rich, and you know that both I and Senator Specter have been very critical of that pardon. Of course, it was a pardon issued not by Eric Holder. It was issued by then-President Clinton. And the clemency granted to members of the FALN, you were critical of that, as was I. But the clemency was granted by President Clinton.

But notwithstanding these disagreements, if he is confirmed as Attorney General, he is going to be Attorney General of all the country. Both you and I will be in the country served by this Attorney General. Notwithstanding your past disagreements, you do strongly support the nomination of Eric Holder. Is that correct?

Mr. HAHN. Yes, sir. I do.

Chairman LEAHY. Thank you.

The question I always ask—and I used to ask this of prosecutors in my office, and I think it is a mark of a prosecutor. I ask if they will be politically independent, follow the rule of law, not feel they have to be subservient to any political party. I certainly prosecuted members of both the Republican and Democratic Party, including a Chairman of my own party. The Attorney General has to be independent of the President who nominates him.

Do you have any question in your mind that he would be politically independent?

Mr. FREEH. No, I don't. I mean, as you well put it, Mr. Chairman, the Attorney General is not the President's lawyer. We have had, unfortunately, in that office, I think at times, people who thought that was the case. But he is not the President's lawyer. The President has a White House counsel for those purposes. And I know that Eric Holder understands that difference. I think he would be very quickly able to say no to the president if he disagreed with him. And I think that is the confidence and trust that we need in that position.

Chairman LEAHY. In fact, would you agree with me that a President is ill served by an Attorney General who is unwilling to say no to him if he thinks that a President is wrong?

Mr. FREEH. Of course he is. It not only subverts the purpose of the Attorney General, but it puts the President in a very vulnerable position.

Chairman LEAHY. And you dealt with him when he was Deputy Attorney General and you were Director of the FBI. We have another FBI Director now, well respected by this Committee. Do you have any doubt that if the current Director were to come into an Attorney General Holder and say, Mr. Attorney General, I think you are wrong on this and here is why, do you have any doubt that he would get a fair and complete hearing?

Mr. FREEH. No. He would get a completely fair hearing, and I think Eric would expect that from his staff. And I think the people in the career staff who did not do that would not be his trusted advisers and would not be serving the country in their function.

Chairman LEAHY. And, Mr. Canterbury, obviously the Fraternal Order of Police has had some disagreements, certainly, on the clemency issue of the FALN, and I recall your organization testifying to Congress. In fact, we asked you to testify to Congress at that time.

But do I understand your testimony correctly that you believe that Eric Holder will be a strong Attorney General, especially on law enforcement matters?

Mr. CANTERBURY. Based on the totality of his record, we absolutely believe that. We sit here like we did in 1999, we abhor the clemency that was granted. We thought it was wrong, just like Director Freeh. We still think it was wrong. But we also believe based on the information in the record of Eric Holder that, given the position of authority of the Attorney General versus a Deputy Attorney General and the fact that clemency was a Presidential issue and not his sole recommendation, we believe that he would be fair, and we look at it from the totality of circumstances and his career, and we feel comfortable after an exhaustive review of his decisions as a judge and as a prosecutor.

Chairman LEAHY. And your support of him, you are joined by virtually every national law enforcement organization there is.

Mr. CANTERBURY. Every organization we know of, Senator.

Chairman LEAHY. I am sorry. I went 32 seconds over my time. Senator Specter.

Senator SPECTER. Mr. Connor, thank you for your appearance here today. You have put a significantly different dimension on the hearing from other items that we have heard, and sometimes these matters on paper don't really reflect the kind of injury and the kind

of scarring which is involved. But I think it is very, very important to bear in mind what the victims have to say and how the victims feel about it.

Mr. CONNOR. Thank you.

Senator SPECTER. When I bumped into you yesterday in the corridor, you told me neither you nor your family have come to closure. I can see it as you described the wounds, and I think it was really unfortunate that you weren't consulted and at least given an opportunity to be heard about it.

Director Freeh, welcome again to this Committee. A distinguished career: FBI agent, a judge, Director. You have come down harder on the characterizations of what Mr. Holder has done than anybody else in the hearing. You say that the Rich pardon was a "corrupt act." You said it twice. You said it was a "terrible mistake." He allowed himself to be "used and co-opted." Pretty tough words. Tougher than Mr. Canterbury, who characterized it as "abhorrent." You said that he will be independent because the Committee will make sure about that.

Well, my experience, 28 years on this Committee, is we have been more ignored by Attorneys General than we have been able to influence them. Every time we seek information, letters signed jointly by Chairman Leahy and Ranking Member Specter or Chairman Arlen Specter and Ranking Member Leahy, we get nothing in return.

You say the media will make sure? Absolutely not. The media doesn't know what is going on. Sometimes they find out, but they can't stop it.

In the limited time, I am not going to pursue that. I wanted to get into one question with you. With respect to the independent counsel and campaign finance—and I pressed Mr. Holder very hard about that, and I could only comment about a bit of that because of the limitation of time. But there is a subject I want to take up, and this is going to be what I am going to have to say, Mr. Chairman, so I may take a little longer, if I may.

I chaired the full Committee on the Rich pardon. I know a lot about that, more than we could get into. But on the independent counsel investigation, I chaired the Committee, and you made a statement: "It is difficult to imagine a more compelling situation for appointing an independent counsel."

Difficult to imagine a more compelling situation for appointment of independent counsel.

That is why it seemed to me that a man of Mr. Holder's status, intelligence, experience, that it was inexplicable. "Inexplicable" is the word that I apply also to the Rich pardon and also I apply to the FALN situation.

The matter is still under investigation, as you have said—FALN; a situation where two of the people wouldn't even accept clemency, that the Federal Government, the U.S. Government had no standing to convict them. They wouldn't accept clemency. People involved in murders and bank robberies—you could have a parade of victims that would fill a stadium.

But on the issue of independent counsel—and, Mr. Chairman, I ask consent that the memorandum from Mr. Freeh to the Attorney General be included in the record.

Chairman LEAHY. Of course. Without objection.

Senator SPECTER. As well as the memorandum I am about to refer to now.

Chairman LEAHY. Whatever memos that you wish to be included, they will be included.

Senator SPECTER. Mr. Freeh, this is a matter you and I talked about when I conducted the investigation in the year 2000, and I now refer to a memo, and I talked to you about it a few moments ago before the hearing started. No surprises. No "gotcha's." Everything on top of the table.

This is a memorandum which you wrote to Mr. Esposito, one of your top deputies, about a meeting he had with Mr. Lee Radek, who was the head of the Public Integrity Section of the Department of Justice. And this is what it says in part: "I also advised the Attorney General of Lee Radek's comment to you that there was a lot of 'pressure' on him and PIS"—Public Integrity Section—"regarding this case"—campaign finance investigation—"because the Attorney General's job might hang in the balance (or words to that effect). I stated that these comments would be enough for me to take him and the Criminal Division off the case completely."

This memo is dated December 9, 1996, and the background was that President Clinton had been reelected, and Attorney General Reno had said she wanted to stay on publicly, and she hadn't been reappointed. And then there is this meeting between your top deputy and one of her top deputies in effect saying ease off the campaign finance investigation.

And you complain in this memo, which I won't read fully because of the limitation of time—that the FBI ought to take over. The FBI had been kept out of the investigation.

Now, that is the backdrop of what is happening in the Department of Justice, where Mr. Holder is the deputy, where they are bringing the issue to the FBI to ease off so the Attorney General's job will be safe.

Now, how do you evaluate that in terms of politics, rank politics, reappointment of a public official interfering with investigation, law enforcement, and the rule of law?

Mr. FREEH. Well, as I said, I couldn't think of a more compelling case to go to an independent prosecutor, but let me just put that in perspective. And we have spoken about this before.

That was not a statement, of course, by the Attorney General. It was by her Public Integrity Section chief.

Senator SPECTER. Well, now, wait a minute, Mr. Freeh. Do you think that Radek did that all on his own?

Mr. FREEH. Well, I don't know. I never got a chance to cross-examine him.

Senator SPECTER. Of course, you don't know, but—well, I will draw my inference. Radek is doing his boss' bidding. Now, that happens occasionally.

Mr. FREEH. Well, I would draw a different inference, but I would say the following: That statement was alarming enough, together with all the other information we had, that I renewed my recommendation that this case go to an independent prosecutor. The Attorney General disagreed. We had a very strong, perhaps the strongest disagreement in 8 years, over that issue.

Eric Holder, just to put it into perspective, was, of course, aware of this—he was the deputy—went out of his way with me and the Attorney General to say that, you know, Louis has a different position, we have to respect that position, and actually supported the fact that I was taking a different position, which is, again, how I adjudge him to be willing and able to speak up and be independent.

I didn't agree with the Attorney General's determination, but she made that determination subject to what she believed to be the right factors, and we disagreed.

Senator SPECTER. Well, as the record will show, this memorandum you sent was sent as a copy to Mr. Holder. I will let the memo speak for itself, where Radek, one of her top deputies, talks about a lot of pressure on him and the Public Integrity Section. I think it is an obvious conclusion that pressure is coming from the Attorney General.

Mr. FREEH. Yes, well, I don't agree with you, respectfully, Senator.

Senator SPECTER. Well, OK. Why not? Why not?

Mr. FREEH. Well, because there was never a conversation that we had where she indicated and, more importantly, any action that she ever took that we were aware of—and we were pretty aware of everything that was going on in the case—that at all indicated, you know, her aptitude or willingness or even consideration of trying to interfere with this investigation in any manner, so——

Senator SPECTER. Interfere?

Mr. FREEH. Yes.

Senator SPECTER. Well, you weren't on the case in any real sense. This memorandum particularizes your request to her to get these people off the case who were submitting to pressure and to put the FBI in as the lead investigative agency. You weren't the lead investigative agency, were you?

Mr. FREEH. Not at that time, no.

Senator SPECTER. Mr. Freeh, let me move to another very delicate subject, one which you and I discussed years ago and talked about a few minutes ago. You turned down the White House request for a briefing on campaign finance reform. Would you testify as to the circumstances of that matter?

Mr. FREEH. Yes. Well, we had a criminal investigation called the "campaign contributions case," and the subjects of that investigation, as you know, were senior people in the White House, including the President, the Vice President, and others. And at some point, the White House wanted to be briefed on the criminal case, which was also the intelligence operation by the Chinese Ministry of Intelligence in the United States to which we have documentation—this Committee has looked at it—interfering with the electoral processes here in the United States. So we decided——

Senator SPECTER. Interfering with the electoral process where?

Mr. FREEH. In the United States. So we decided that we could not brief the President and senior officials, who were also subjects of the investigation, on the investigation. It seemed to me a pretty no-brainer with respect to conflict, also protecting the integrity of the investigation. So the Attorney General and I discussed it, and

we made a decision not to brief them on the criminal aspects of the case.

Senator SPECTER. Was there any aspect of any other governmental function, foreign policy or anything else, beyond the criminal investigation?

Mr. FREEH. There was, and that part of the case was briefed to them. In other words, Chinese intelligence operations, we briefed the National Security Adviser——

Senator SPECTER. But you declined to brief the President.

Mr. FREEH. Oh, I don't think he asked me for a briefing.

Senator SPECTER. Well, could it have been a part of the briefing that the President did ask you for?

Mr. FREEH. Well, no, he didn't. He didn't ask me for any briefing at all, actually. It was the National Security Adviser, and we briefed them on everything except the criminal aspects of the case for which subjects in the White House were now under investigation.

Senator SPECTER. You say the White House asked for the briefing.

Mr. FREEH. The National Security——

Senator SPECTER. Griffin Bell said the White House doesn't ask for things.

Mr. FREEH. The National Security Adviser.

Senator SPECTER. OK. Well, I am concluding now. The inferences I draw—and I will give you an opportunity to disagree with me. The inferences that I draw is that this investigation was right to the top—the President, as you testify, the Vice President, the Attorney General's job, the question about independent counsel as to the Vice President, the President being involved.

I had told you, when we talked about it at the time—you and I and Fred Thompson had a conversation—that I thought you were on very shaky grounds in not responding to a President's request. If you had evidence that might activate the impeachment process, you ought to go to the Speaker of the House. You came to me. I had just been Chairman of Intelligence, and Fred Thompson was Chairman of campaign finance reform.

Well, I will let these facts speak for themselves as to what kind of pressure there was and whether Mr. Holder was a party to a matter which succumbed to political pressure.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you.

Chairman LEAHY. Senator Sessions was the only one who was able to claim any kind of direct connection to the nominee yesterday, because the nominee's wife is from Alabama. Her family is from Alabama.

Senator SESSIONS. And they are a remarkable family she has and a remarkable sister particularly, a historic figure in the civil rights movement.

Let me just say, Mr. Freeh, thank you for coming. And the matters that we are discussing here, as you can tell from Senator Specter's remarks, were pretty big deals at the time, were they not? I mean, this is a very intense situation, a very difficult time for you

and the FBI during all these periods of allegations and campaign contributions and so forth.

Mr. FREEH. Yes, sir, they were.

Senator SESSIONS. I just want to say this: I believe Senator Specter felt the pressures, he felt the development of the investigations, and Senator Specter was asking the tough questions to find the truth, as he always tries to do, and felt that there was political efforts to block that, to block the truth from being discovered, which is not consistent with the highest ideals of American justice. And it was a very difficult time. I remember it well.

So I like Mr. Holder. I think he has a lot of fine qualities. But I think it is appropriate that this be inquired into. I thank you for your integrity in your testimony and in your work at the time.

With regard to the pardons, Mr. Freeh, your Department of Justice experience, I think maybe the only panelist—maybe Ms. Townsend did, too, previously. But there is a reason, is there not, that we have a pardon attorney? I mean, thousands of people ask for pardons every year or commutations of sentences. The President—I think the last two or three Presidents have served 8 years, gave about 400 or 500. The vast majority are denied.

I know of a case where a former public official in Alabama in his 70s and reaching the end of his life—maybe 80s—was convicted 40 years ago. He has contributed to his community ever since. He would like a pardon. I doubt he will get a pardon. Thousands are turned down, see, more deserving than the ones that got approved. That is what upsets me, and that is what caused me to question my friend, Mr. Holder, a man I respect very vigorously, at the time of the FALN pardon.

So everybody can make a mistake, and somebody said the best spin you could put on this is that Bill Clinton could talk anybody into anything. So if he wanted it, maybe he just talked Mr. Holder into doing something he really didn't want to do, and he tried to resist but just couldn't resist. Maybe that is what happened, but it was a big mistake, I think.

Mr. Hahn, yesterday I compared the fact that some of these people didn't actually murder somebody or set off a bomb to the fact that neither did Osama bin Laden or Khalid Sheikh Mohammed. They didn't actually do it; they got people who flew the airplanes and caused all the destruction. And Mr. Holder responded that this was not in the same category and that it was not his understanding that any of the terrorists, FALN terrorists, were "heads of the organizations and leaders."

What is your evaluation of that?

Mr. HAHN. Well, first of all, Senator, in fact, Oscar Lopez Rivera is and was a leader of the FALN. So there is no question as to whether or not——

Senator SESSIONS. So he was in error in his memory or failed to know that when he recommended the pardon.

Mr. HAHN. Correct. And the second point, of course, is these are clandestine organizations with secret membership. Who did what acts remains unknown. So it could very well have been, in fact, Oscar Lopez Rivera told Freddie Mendez that he had participated in bombings both in the United States and Puerto Rico.

Now, that is pretty amazing since the FALN never claimed credit for any bombings in Puerto Rico, but other groups did. So did he act on behalf of other groups when he was there? We don't know the answer to those questions. So we really don't know whether or not Oscar Lopez or any of these other people may have been involved in acts in which people were killed.

Senator SESSIONS. Now, Mr. Freeh, that is why you go through the pardon attorney process. You remember Kathryn Love—I mean, Margaret Love, the former pardon attorney?

Mr. FREEH. Yes, sir, I know her.

Senator SESSIONS. For some reason, Mr. Holder removed her, I understand. She was, I thought, a woman of great integrity and handled the job—she was a Democrat, but she handled the job exceedingly well. But, at any rate, those are the kind of facts that, if you go through the formal process, the pardon attorney gets, does he not?

Mr. FREEH. He does. He does.

Senator SESSIONS. And you avoid mistakes when you do that, and you also seek out the opinions of the prosecutors who tried the case and the agents who investigated the case. I just feel like that was a very unwise thing, I mean, how that went along.

Mr. Connor, thank you for sharing the human perspective on this. I appreciated the little opportunity to chat with you yesterday.

Mr. CONNOR. I appreciate that, Senator.

Senator SESSIONS. You know, one of the things I think I shared with you that was troubling to me was, after such a big controversy over this pardon, the Senate voted 95–2, Chairman Leahy and all the members of our Committee voted to deplore President Clinton's pardon. The Marc Rich pardon was done not much longer after that. So, Mr. Chairman. I will wrap up.

I guess I will ask Mr. Hahn or maybe—well, let me ask Mr. Freeh. It strikes me that after all of that flap over the FALN pardon that the Deputy Attorney General who was handling these matters should have been even more resistant to the Marc Rich pardon, which you have considered to be corrupt, and should have done everything possible to resist it, and certainly shouldn't have said, "I am leaning toward it," but should have said, "It is the position of"—"Mr. President, you can do what you want, but my position is you should not execute this pardon."

Mr. FREEH. Yes. No, Senator, you are absolutely right. You were a lead prosecutor. You were responsible for an office. You know, I was, as I mentioned before, the Deputy U.S. Attorney in the Southern District. I went over to the Swiss authorities to negotiate for Marc Rich's arrest. There was nobody more outraged at that pardon than me and my colleagues in the Southern District of New York.

But I did say earlier this morning, you know, the White House went to extraordinary lengths to deceive the Attorney General, myself, the Department of Justice, and everyone about who was on the secret pardon list, whether it is a pay-for-play list or whatever you want to call it.

But, you know, to put Eric Holder's position and victimization in perspective, as I said, I had two FBI agents on inauguration morning—8 years ago next week, I had two FBI agents standing in the

cold outside of the west gate of the White House, because that was the only way we were going to see the publicly posted list of people who were pardoned.

So the extraordinary lengths that they went to—and Marc Rich's lawyer being a part of that cabal—I don't think it is fair to put that blame totally on Eric Holder. He takes responsibility, and he will never make that mistake again. But I think, as Senator Warner said yesterday, he is learned from that mistake, and that should certainly not be the basis upon disqualifying him for a job which I think he is going to do with excellence.

Senator SESSIONS. Thank you. I think you framed the issue for the Senate very well.

Mr. Chairman, thank you for allowing us to have extra time.

Chairman LEAHY. Thank you. Again, I am going to put in the rest of the letters from victim's advocates and all the law enforcement in the record.

We will keep the record open until the close of business today. I thank all of you for being here. I know how busy you are.

Judge Freeh, you said that you were heading to Vermont this afternoon. I want you to know that at my home this morning in Vermont, the temperature was 24. That is 24 below zero.

Mr. FREEH. Thank you, sir.

Chairman LEAHY. Thank you. We stand in recess.

[Whereupon, at 11:51 a.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Written Questions for Joseph Connor from Senator Specter

1. **In his testimony before this Committee, Mr. Holder called the FALN clemency offer "reasonable" and "appropriate." What is your reaction to that statement?**

My reaction was the feeling of pure betrayal. Holder casually dismissed the life of my father, Frank Connor as meaningless. It was disgraceful.

He diminished the efforts of the FBI agents like Rick Hahn who sacrificed years of their lives investigating and capturing these terrorists.

He dismissed the professional opinions of the judge at trial, the US attorneys, the prosecutors and forgot all those murdered and maimed. He so casually disregarded those families, like mine who are forever shattered; the police officers who bravely tried to defuse bombs only to have them explode in their faces. These brave men were left forever disfigured.

He has repudiated the very senate now poised to confirm him. After all in 1999 the senate voted 95–2 to condemn the clemencies; the House 311 - 41. But that means nothing to Holder.

His boss Janet Reno termed the clemencies dangerous. His friend Louie Freeh condemned them in the most severe way. He put partisan interests above the interests of the American people and now, refuses to admit it was a mistake.

How must all those people feel? He spoke of currently low moral at DoJ. How does he think these arrogant, off handed words like "reasonable and appropriate" will affect the moral those people who work so hard to keep us safe?

He had the audacity to claim, "This was a pre 9/11 world." However it was also a post:

- WTC '93 (6 dead),
- Oklahoma City (168 dead),
- Kobar Towers (19 dead),
- African Embassy (257 dead) and
- Fraunces Tavern (4 dead) world.

Had he no insight that terrorism is the major threat to our country? My family certainly knew it. I warned of it in my introduction of the Pardon Attorney Reform and Integrity Act. Incredibly the Attorney General Nominee does not understand that or has other reasons to deny it.

He let this list of "some pretty impressive people" over ride the opinions of law enforcement professionals at the FBI, DoJ, prosecutors, judges, Bureau of Prisons who strictly and forcefully opposed the clemencies. Once again, what does that say to them and their years of service? What does that say to his judgment?

His comments were outrageous and insulting to the families, victims and to those dedicated people in law enforcement sworn to protect us.

As I said Friday, Eric Holder played Russian roulette with the American people.

2. **Mr. Holder had at least three meetings with clemency supporters. You, however, never met with Mr. Holder about clemency. If you had been allowed to meet with Mr. Holder to discuss the FALN terrorist clemency petitions before they were granted, what would you have said to him?**

I would have explained to him what kind of a man and a dad Frank Connor was. I would have described how his death nearly killed his loving old mother; how on the day he was killed I asked my mom if grandma Connor was still our grandmother and the comfort I felt as she definitively declared, "Of course she is. She will always be your grandma."

I would have made sure he knew my brother and I had been left fatherless by these brutes and the tenderist of years 9, 11.

He would have found out what sense of betrayal we would have felt had he gone through with these craven clemencies.

Frank Connor was a good man, a great son, husband and the best dad two sons could have. In our minds, he could do anything; fix anything, make us better when we were sick. He was our dad and our hero.

Could Holder ever imagine how we felt when our dad's, our hero's life was tossed away in favor of cheap politics and pandering to those who killed him?

3. **In Mr. Holder's testimony, he stated that, in considering whether to grant clemency to the terrorists, he considered the length of the terrorists' sentences. In fact, in Mr. Holder's meeting with certain Members of Congress who were advocating for clemency, he was told that one of the reasons to support clemency was "[t]hese crimes happened a long time ago. Families have been broken up and they have suffered." As the son of an FALN victim, what is your response to that statement?**

Our family knows all about being broken up and suffering but for us it does not feel like a long time ago. It might as well have been yesterday. The pain remains. We live with it, but feel it every day.

I can still see my dad, even smell him so vividly from a dream I had only 3 days after his murder. In the dream our young family was walking along the Hudson River where my dad used to go as a kid and ironically had just taken the family the Sunday before his murder.

He was holding me in the dream as I asked him, "Why did you leave us?" He answered his little 9 year old boy, "I didn't want to but I had to."

I've carried that beautiful dream and those words in my heart for 34 years now and will have it with me until I meet him again.

Maybe the families of the terrorists have broken up, but perhaps they should have considered their families before they embarked on the terror and murder spree that took the life of our father

Despite our father's murder, our family did not break up. It's a tribute to the toughness of our family and to our father, Frank Connor that ***we*** stayed together and will always stick together.

4. Do believe that Mr. Holder's actions in the FALN matter override his other accomplishments?

I understand the Mr. Holder has had accomplishments over his career that have brought him to he cusp of the highest law enforcement officer in our country.

Those accomplishments make for a strong resume but they do not substitute for a strong character, solid judgment, values and honesty.

Accomplishments are often the result of the circumstance put before a person. We cannot predict the exact circumstances Holder would face as Attorney General. But we do know there will be tough decisions to make over prosecution of the war on terror and a myriad of possible domestic issues he will have to face.

That's why we have to confirm an AG based on his or her character, independence, judgment, values and honesty so we know the tough decisions are being made by the right person with the benefit of the American people at the forefront.

Based on what we've seen and heard during these hearings, Holder does not have the requisite strengths of character for a position as vital as United States Attorney General.

Written Questions for Richard Hahn from Senator Specter

1. In his testimony before the Committee, Mr. Holder set out his reasons for recommending that the FALN terrorists be granted clemency. He told Senator Cornyn, "I thought that the president's determination was a reasonable one, given the fact that there was -- that these people had served really extended periods of time in jail. Given the fact that -- the nature of the offenses of which they were convicted, they did not directly harm anyone. They were not responsible directly for any murders." As an expert on the FALN and on the investigations that resulted in the capture of the FALN terrorists, are Mr. Holder's characterizations of the FALN terrorists correct?

~~1.~~These individuals, both the FALN members and the Macheteros were convicted of being part of the conspiracy that utilized those names (FALN and Macheteros) in claiming credit for a variety of terrorist actions in various Federal Jurisdictions. Under conspiracy law they could only be charged with acts committed within the jurisdiction charged – in Chicago for the FALN and in Hartford for the Macheteros. Unfortunately, murders were not committed and claimed by these groups in those jurisdictions. Murders were, however, claimed by these groups in the other jurisdictions in both cases (see my testimony 1/16/09). Moreover, former FALN member Freddie Mendez testified that FALN leader Oscar Lopez told him he had done bombings in both the U.S. and Puerto Rico.[1] An interesting assertions inasmuch as the FALN never claimed credit for any bombings in Puerto Rico.

~~1.~~Also to be considered is the secretive nature of the FALN. Even former member Freddie Mendez, only part of the organization for six months before being captured, did not know the identities of many other members who participated with him in actions until after they were captured and were jailed together. This shroud of secrecy keeps members, as well as law enforcement, from knowing exactly who did what acts in the conspiracy. Consequently, it cannot be said conclusively that these individuals were not responsible for acts in which persons were killed. Alternately, the FALN claimed bombings they were convicted of conspiring to carry out in Chicago did result in a number of serious injuries.

a. Did they commit crimes that harmed individuals?

~~a.~~b. Subjects were charged only with the bombs claimed by the FALN that were set in the Northern District of Illinois. Though these did not cause deaths, they did cause a number of injuries. For example, on June 7, 1976 a bomb exploded in a trash container at Monroe and Dearborn in downtown Chicago, injuring Mr. Ricardo Schwarz and his wife. Schwarz stated "I lost my hearing and also lost my voice because a piece of shrapnel went through my vocal cords. I was choking in my own blood…". Both Schwarz and his wife suffered broken

[1] Mendez testimony, July 1981, p. 395-396.

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eardrums and had to undergo surgery to have their eardrums replaced. His wife continued to have long term hearing problems.[2]

~~b.~~c. Were their sentences disproportionately long in relation to their crimes?

~~b.~~d. No. In fact, in the wake of the pardons the U.S. Sentencing commission issued a report saying that if the convicts were sentenced today (1999) they would have gotten equal or harsher sentences under current guidelines.[3]

~~4.~~2. The FALN were tried in Chicago for the crimes committed there. Were they tried for the New York crimes, including the bombing at Fraunces Tavern that killed Frank Connor?

a. Why not?

Those offered clemency were not tried in New York, though they could have been. Captured in Chicago and eight of the eleven being from Chicago, Chicago had first call on prosecution. Having received hefty sentences there was no point in then prosecuting them for conspiracy counting the crimes committed in New York, as there would be no expectation of any greater punishment.

It is worth noting that one of the eleven FALN members captured in Evanston, Illinois was, in fact, prosecuted in New York. Haydee Torres, wife of FALN leader Carlos Torres was prosecuted for the bombing at the offices of Mobil Oil in Manhattan that killed one. Her fingerprint at the scene linked her inextricably to the bombing. That was one of several bombs and bomb threats that occurred that day and though it is clear she did not act alone, no one else was held to answer for the other bombings, or any other bombings in New York.

~~5.~~3. Were any judges or witnesses threatened during the FALN trial?

Judge McMillen was threatened by several of the FALN members at sentencing. Carmen Valentin said to the Judge: "If I weren't chained, I'd try to take care of you right now!"[4] She went on to say "…all those who have partaken in this illegal and vicious trial will not be exempted for the righteous and just revolutionary procedure. There will soon be judges, marshals, member of the jury, prosecutors, agents, all of you – some of you will be walking on

[2] Chicago Sun-Times, September 11, 1999. Ana Medieta and Lynn Sweet, FALN 11 Go Free.
[3] USA Today, October 21, 1999, Tom Squitieri, Reno Rpt: Clemencies Pose Threat.
[4] Time Magazine, March 2, 1981, *Trial Without Defendants.*

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canes and in wheelchairs. Revolutionary justice can be fierce. Mark my words." Luis Rosa boasted "There will be many more Fraunces Taverns and many more Sabana Secas."

Dickie Jimenez behavior so infuriated the Judge that he stated: "If there were a death penalty for these crimes, I'd impose it on you without any hesitation." [5]

~~3.~~

~~3.~~In addition to threats to the judge, following the parole hearing of former FALN member Freddie Mendez in October, 1981, posters appeared in Latino neighborhoods in Chicago, New York and San Juan stating in part: "WANTED: dead – not alive" bearing a photograph of Mendez and his name.

Mendez was also the target of intimidation when he testified at trial in 1985. Details are contained in his testimony.

~~8.~~4. Did any FALN members cooperate in the investigation?

~~4.~~a. Freddie Mendez reached out to prosecutors after being found guilty on Federal charges but before being sentenced. He fully cooperated and was polygraphed on several aspects of his statements. He identified many of those granted clemency as participating with him in armed takeovers, bombings and the attempted robbery at which they were arrested.

~~10.~~5. Mr. Hahn, as an FBI agent, were you ever asked for your opinion as to clemency for these terrorists? On at least one and possibly two occasions my input was sought on the issue of clemency, the last time being approximately 1996.

a. What was your response? In the absence of any cooperation to solve unresolved crimes and a show of contrition, I completely oppose any consideration for these subjects.

~~11.~~6. At the time the FALN was granted clemency, did you believe that they still posed a terrorist threat?

Yes. I would note that the fact that they haven't been arrested does not mean that they aren't still somehow involved in illegal or revolutionary activities. It simply means they have not been arrested.

a. What message does the clemency grant send to other terrorist organizations?

That U.S. policy regarding terrorism is not absolute but rather can be swayed and manipulated. This clearly diminishes any deterrent effect of our policy.

[5] Time Magazine, March 2, 1981, *Trial Without Defendants.*

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~~12.~~7. The FBI and the U.S. Attorneys' offices strongly opposed granting clemency to the FALN terrorists. Yesterday, Mr. Holder said that President Clinton's granting of clemency was "appropriate" and "reasonable." As a retired FBI agent, what do Mr. Holder's actions say about his commitment to fighting domestic terrorism?

~~7.~~8. It tells me that Mr. Holder's views on domestic terrorism are not in line with the law or the judiciary that oversaw these trials and sentencings. I cannot understand how his views can be so far afield from policy and the law.

a. Do you find his actions disqualifying for the position of Attorney General?

In my view, yes. It has the appearance of either misfeasance or malfeasance. Either he was grossly negligent in performing due diligence in this matter and never came to learn and understand the facts, or despite knowing the facts he imposed his own will and/or the will of others over the recommendations of the FBI and the Bureau of Prisons. The argument that there were hundreds of petitioners holds no water for two reasons. First, we don't know what those petitioners were told about the cases or the law. They may well have been misinformed. Second, it is the job of the Dept. of Justice to examine the facts and the law. It appears that Mr. Holder did not know the facts, stating he had no idea the judge was threatened or that there was videotape of the subjects preparing firing circuits for bombs. Missing these two very large and significant facts, one has to wonder what else he didn't know. More importantly, one has to wonder WHY he didn't know.

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Frances Fragos Townsend
4735 Woodway Lane, N.W.

Washington, D.C. 20016

Response to Written Questions for Frances Fragos Townsend from Senator Specter

1. A November 20, 2008 article in the *L.A. Times* reported that you told the paper that Mr. Holder consulted with you and others about the pardon of Marc Rich.[1] The article quoted you as saying about the Rich pardon, "Eric was put in a difficult position by getting a phone call at the last minute, but handled it appropriately."

I was in my Department of Justice office on Inauguration morning, January 20, 2001. I received a call from Mr. Holder who indicated that he was likewise in his office and had just gotten a call from the White House regarding a pardon application for a Mr. Marc Rich. I did not ask and Mr. Holder did not indicate if he had had any prior discussions with the White House regarding Mr. Rich's pardon application. Our conversation was very brief, lasting only a few minutes.

a. When did you first speak with Mr. Holder about the pardon?

January 20, 2001 was the only occasion on which I did so.

b. How many conversations did you have with him about the pardon?

One.

c. When did he indicate to you he was first aware of the pardon application?

Mr. Holder did not say when he first became aware of the Marc Rich pardon application.

d. Did Mr. Holder ever indicate to you the first time he was aware of Mr. Rich generally, apart from the pardon application? What was his familiarity with Mr. Rich at that time?

Mr. Holder did not indicate any awareness of nor familiarity with Mr. Rich during our very brief conversation.

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[1] Meyer, Would-be attorney general Eric Holder haunted by Marc Rich pardon, L.A. TIMES, Nov. 20, 2008.

2. Please recount what Mr. Holder told you in your conversation(s) regarding Mr. Rich and the pardon application. What advice did you give him?

Mr. Holder indicated that he had received a call from the "White House" that morning regarding a pardon application being considered by the President for Mr. Marc Rich. At this time, I was Counsel to the Attorney General for Intelligence Policy. As the head of the Office of Intelligence Policy and Review (OIPR) I was responsible for the Department of Justice's oversight and implementation of the Foreign Intelligence Surveillance Act. Mr. Holder inquired as to whether my office had any information that might be relevant to the President's consideration. I indicated that while I was unable to check historical records at that time, I was not aware of any current OIPR files related to Mr. Rich. I suggested to Mr. Holder that he check with the Department's Pardon Attorney, if he had not already done so.

a. Did anything about the conversation indicate to you that Mr. Holder was aware of a political dimension to the pardon? If so, what was the nature of that political dimension?

No.

b. Did anything about Mr. Holder's comments or demeanor during your conversation(s) indicate to you that he had misgivings about the propriety of the pardon?

No.

c. Did Mr. Holder indicate in your conversation(s) that the process had circumvented the Justice Department and gone straight to the White House? Or that any part of the process was not being followed?

No.

d. To your knowledge, with whom besides you did Mr. Holder speak about the Rich pardon before it was issued? Are you aware of the content of any of those discussions?

I suggested that Mr. Holder contact the Pardon Attorney but I do not know if he did that either before or after our very brief telephone conversation.

e. Did you ever have conversations with Mr. Holder about the pardon after it was granted? If so, what was said in those conversations?

No.

3. When did you first learn of the Marc Rich pardon application? Did you know about it independently of your conversation(s) with Mr. Holder?

I first learned of the pardon application in the call with Mr. Holder described above. I first learned of the Marc Rich pardon from press reports.

Follow-up Questions of Senator Tom Coburn, M.D.
Hearing: "*Nomination of Eric Holder to be Attorney General of the United States*"
United States Senate Committee on the Judiciary
January 15, 2009

Grant Programs

- Grant management has been on the Office of the Inspector General's Top 10 Management Challenges of the DOJ every year since 2000. Clearly, this is a problem for many grants, not just one subset within the Department.

    - In your opinion, why has this remained a consistent problem with DOJ?

Overseeing thousands of grants – and doing it well – requires ongoing vigilance and a strong management team. Unless grant management is treated as a consistent priority by the Department, it is not surprising that some problems will arise simply because of the *numbers* of grants involved and the *amount of money* being dispersed. Therefore, it is vital that systems of internal controls and oversight be put in place to identify underlying problems and remedy them – and then ensure that new systems are utilized on an ongoing basis.

    - What would you do, if confirmed, to change the policies affecting grant management so that it is no longer a Top 10 problem for the Department?

Although it is too soon for me to say in detail which policies affecting grant management I would change, I can tell you that if confirmed, I intend to implement four measures: First, I will ensure that a strong team of leaders is appointed for OJP and COPS. These individuals must work in tandem with the career team at the Department. Second, I will institute ongoing oversight from the Department's leadership offices. Third, as part of that oversight, I will ask the Associate Attorney General who oversees COPS and OJP to provide me with regular tracking reports so we can be ahead of problems – not behind the curve. Fourth, we will work in collaboration with the Inspector General – and insist that OJP and COPS do the same.

    - Please provide specific examples of a few problems you see with certain grants at DOJ, and what you would do to change the grant processes to ensure effective management of those grants.

Until I am at the Department, I cannot provide examples of specific grants where these problems have occurred. However, during the transition, we heard suggestions from state and local grantees for streamlining the grant application award and management process. These recommendations involve, for example, making the federal governments Grants.gov application portal a more effective "one stop shop" for federal grant support. If

implemented, such changes could both improve grant management and enhance communication with applicants – making the process more transparent and easier to navigate.

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- Grant closeout is also a problem at DOJ. My 2008 waste report on the DOJ notes that Office of the Inspector General (OIG) has found that **the DOJ is grossly negligent in its grant close-out process.** Over 375 audits by the OIG have resulted in significant findings associated with serious money lost to waste, fraud or abuse. What recommendations do you have for reforming this process and ensuring that grants are closed out in the proper timeframe?

Careful monitoring of grant close-outs is key to effective grant management, and, if I am confirmed, an examination of the close-out process will be an important component of the grant management review. My understanding from the transition is that a good deal of progress has already been made in this area by COPS and OJP over the past year, prompted by the Office of Inspector General's findings. However, I will want to confirm – and monitor – that progress once I am at the Department.

- In the OIG's various semi-annual reports, each notes specific examples of grantees that are not complying with grant requirements, leading to millions of dollars in questioned costs charged to grants. Will you commit to taking steps to make certain that grantees are actually held responsible for submitting required paperwork, and that they use the money as Congress intended? What suggestions do you have for policies that will help this occur?

Yes, I will take steps to ensure that grantees are held responsible for submitting required reports and other paperwork – and that funds are spent as Congress intended. There are a number of ways that this can be effectuated through careful, ongoing grant monitoring and identification of potentially at-risk grantees. With respect to the latter, I will ask the Associate Attorney General to work with OJP, COPS, and the Office of the Inspector General to see if there are ways that we can successfully identify at-risk grantees. These might, for example, be jurisdictions that have never handled federal grants before. While provision of technical assistance on financial grant management to such jurisdictions cannot forestall fraud, it can help reduce problems of mismanagement

• COPS: During the life of the COPS program, there has been consistent fraud, abuse and waste within the program, yet Congress continues to appropriate millions of dollars to COPS every year. For example, the OIG's 2008 Semi-Annual Report to Congress noted that it conducted a joint investigation that resulted in the arrest of the former president of the San Juan Southern Paiute Tribe, who obtained an Office of Community Oriented Policing Services (COPS) grant totaling $224,997. The tribal president converted $174,997 of the funds for her

own use. The tribal president also converted for her own use approximately $579,412 of a different COPS grant during 2005.

o Do you believe that COPS is an effective program? If so, how do you reconcile that opinion with the numerous reports of waste and abuse within the program? What will you do to clean up these problems? Do you agree that wasted or abused funding undermines any possible effectiveness of the program?

COPS has been an effective program: During the 1990s, violent crime in the U.S. fell by some 25%, and while COPS was by no means the sole factor in that decline, the Government Accountability Office (GAO) and some social scientists attribute that decrease in part to the increase in sworn officers funded by the COPS Program. The instances of fraud and waste represent a small percentage of the funds spent since the program was launched in 1994. This does not diminish, of course, the importance of cleaning up problems and eliminating any waste and abuse in the program. I intend to vigorously pursue the grant management steps outlined in earlier answers – with personal attention and oversight from my office.

o Most COPS dollars are earmarked, which the IG has said essentially hamstrings DOJ's ability to administer and oversee these funds as Congress has directed. Do you agree that earmarks undermine the effectiveness of the program? Will you commit to ensuring that earmarked COPS dollars be vetted with the same criteria used for competitive COPS funds? What will be your response if you find that a certain earmark does not meet established criteria?

As President Obama has said on a number of occasions, our Administration is committed to spending federal money for *effective* programs. During the 1990s, the U.S. Department of Justice commissioned and published a report entitled, "Preventing Crime: What Works, What Doesn't, What's Promising," by the highly respected criminologist Dr. Lawrence W. Sherman and his colleagues at the University of Maryland. That report – and its updates – remain the leading compilation of scientific evidence on what programs and approaches are effective (and which ones are not) in controlling crime. If confirmed I would work with Congress to evaluate all earmarks on the same basis as we do proposals filed in response to open solicitations to ascertain whether they will be effective.

o According to the Inspector General, the "significant use"of earmarks within COPS has meant that "available funding is not always directed to the areas of the country with the greatest need." Given this assessment, do you believe that there should be a prohibition on earmarking COPS funding? If not, explain.

Earmarking obviously constrains the ability of the Justice Department to target funding to jurisdictions based on empirical evidence of need -- for example, to target the COPS methamphetamine program to jurisdictions where that drug is most prevalent. It is for Congress to decide whether there should be a prohibition on earmarking within the COPS program.

o The IG has also said, "Earmarked funds do not require projects to be vetted for duplication, necessity, fiscal accountability, or solicitation and selection process." Do you believe that all COPS dollars should be vetted for duplication, necessity, fiscal accountability, or solicitation and selection purposes? If so, how will you ensure that they are?

I agree that COPS funds should not be spent for projects that are duplicative, unnecessary or fiscally unaccountable. If Congress directs the COPS Office through earmarking to spend funds for specific projects, we will work with the Appropriations Committee to ensure, whenever we can, that the programs funded, in fact, are good and effective ones that meet standards for accountability and are not duplicative.

• On June 19, 2008, the Project on Government Oversight (POGO) released a report on the Byrne Discretionary Grant Program administered by the Office of Justice Program's (OJP) Bureau of Justice Assistance (BJA), which awards grants to crime-fighting organizations. BJA claims the grant process is competitive, but POGO found that "in FY2007, at lease thirteen Byrne grant applicants were given special treatment: they did not go through a peer review process, but were awarded grants anyway."

o Do you believe that all "competitively awarded" grants should receive peer review?

Peer review panels should be used wherever possible to help in the review process.

o How will you ensure that special treatment for grant applicants does not occur under your watch?

Fairness in the grant making process is critical and can only be judged if the process is transparent and accountable. If confirmed, I intend to take steps to ensure that the Department's grant making process adheres to such standards. First, grant solicitations should be issued in a timely fashion so that potential grantees receive sufficient notice to prepare proposals. Second, peer review panels should be used wherever possible to help in the review process. Third, grant-making decisions should be made and announced in a timely fashion. The rationale for those decisions should be made public to the extent possible.

Oversight

• Will you commit to ensuring timely responses from the Department to Republican requests for information or opinions?

Yes, I commit to ensuring timely responses to requests from all lawmakers, Democratic and Republican.

- Which programs within the Department, if any, do you think can be eliminated because they are ineffective, duplicative, unnecessary, or have outlived their purpose?

I believe that a number of functions within OJP may be redundant due to overlap and duplication in the underlying statutes that created OJP's bureaus. In 1999, when I was Deputy Attorney General, the Justice Department recommended a proposed OJP reorganization to Congress. While that proposal was not enacted, I support revisiting the need for reorganization.

- President-elect Obama promised to conduct "an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy." When do you plan to start this and when can we expect you to complete it?

This sort of inventory will be an ongoing process, likely coordinated with the budgeting process, to allow us to be vigilant in our efforts to root out waste. It will begin soon after I take office if I am confirmed as Attorney General.

- Currently all recipients of federal grants, contracts, and loans are required to be posted online for public review. Do you support making all federal assistance including subcontracts and subgrants transparent in the same manner?

To the extent practicable, that seems like a positive step.

Other

- As US Attorney, you must have been contacted on occasion about the possibility of clemency in cases that your office handled. Did you ever endorse any of these suggestions (in other words, as a prosecutor, did you ever agree that clemency was warranted in any case your office prosecuted?) If yes, give examples. If no, explain why not.

I assume I was contacted about clemency matters when I was U.S. attorney some fifteen years ago but have no recollection what positions I took on them I am sure I looked at, among other things, the nature of the offense, the time served and the possibility of re-offending.

- When you and I talked about the FALN commutations, you told me that you took victims' feelings into account before you decided to support clemency. How, exactly, did you

evaluate what those victims' feelings were? Did you ever meet with any victims or their families to discuss this case and solicit their opinion?

I was well aware from press reports and my conversations with law enforcement officials that victims of the FALN crimes strongly objected to clemency. While I did not meet with these crime victims, the U.S. Attorney's office in Chicago was asked to contact them on behalf of the Justice Department.

Second Amendment -

- Has Heller caused you to reevaluate any of the regulations you previously advocated, such as: requiring a three-day waiting period to purchase a gun, raising the age limit for handgun possession (not just purchase) to 21, or limiting handgun purchases to one handgun per month?

o How has your opinion of these ideas changed?

The Supreme Court decided in the Heller case that the Second Amendment confers an individual right to bear arms. I respect the Supreme Court's decision and my actions as Attorney General, if I am confirmed, will be guided by that decision. I have not had occasion to engage in a rigorous legal analysis of the extent to which ideas I previously advocated would be affected by the holding in Heller, but clearly my opinion of those ideas would be affected by such an analysis.

o Do you think these would pass constitutional muster under Heller? Why or why not?

Post-Heller, the options for regulating firearms have been narrowed. I would consult with lawyers at the Department of Justice, law enforcement authorities, and Congress concerning the possible impact of any particular gun-related proposal on the rights enunciated by the Supreme Court in the Heller case.

o Are these regulations (each that I listed) that you would like to see enacted?

I remain supportive of efforts to increase public safety while not interfering with the constitutional right to bear arms. As I said earlier, I have not had occasion to engage in a rigorous legal analysis of the extent to which ideas I previously advocated would be affected by the holding in Heller, but clearly my opinion of those ideas would be affected by such an analysis.

If confirmed as Attorney General, my first priority with respect to gun control legislation will be to ensure that the illegal possession and use of firearms are effectively prevented

and forcefully prosecuted. In doing so, I will not interfere with the constitutional right to bear arms, as recently articulated by the U.S. Supreme Court in the Heller decision.

• At the hearing, you told me that you supported the so-called "assault weapons ban." There has been legislation proposed that would expand the ban to firearms not previously covered, and would allow the Attorney General discretion to ban even more, based on his assessment of whether the firearm is suitable for "sporting" purposes.

o Do you believe the ban on so-called assault weapons needs to be expanded (beyond what existed previously)? Please explain.

The assault weapons ban should only be reenacted or expanded if it does not infringe on the right to bear arms and any such proposal should be guided by the Heller decision.

o Do you believe it is appropriate to assess firearms based on their (subjective) suitability for sporting? Why or why not?

Post-Heller there is clearly a right to own a gun for purposes other than sporting. Any proposed legislation should be guided by the Heller decision itself.

• Crime reports and felon surveys have shown that "assault weapons" were used in only 1-2 percent of violent crimes before the ban, and crime victim surveys have indicated that figure was only 0.25 percent. Moreover, in the 10 years before the ban, murders committed without guns outnumbered those with "assault weapons" by about 37-to-1.

o Given these facts, how do you justify the assault on "assault" weapons?

Congress enacted the assault weapons ban based on an extensive record. That ban has now expired, and any proposal to reenact it must take account of the Heller opinion.

• At the hearing, we discussed how current law prohibits individuals who are adjudicated as a mental defective from possessing a firearm (18 USC 922(d)(4)). By regulation, "adjudicated as a mental defective" is defined as a person who is either a danger to himself or others, or who lacks the mental capacity to contract or manage his own affairs. This determination does not have to be made by a court — it can be made by a board, commission, or "other lawful authority." Anyone found to be a mental defective must be reported to the National Instant Criminal Background Check System (NICS).

o You mentioned that you were not familiar with this area of the law. Now that you have had some time to look at it, do you believe this definition is appropriate? Why or why not?

I have had no occasion to question the appropriateness of this longstanding prohibition on the possession of firearms by felons and the mentally ill.

o Do you think it is necessary for the definition to extend beyond individuals who are found to be a danger to themselves or others?

If confirmed, I look forward to working with Congress and the law enforcement community to determine the necessary and appropriate contours of a prohibition on the possession of firearms by the mentally ill.

o Do you think that individuals deserve a court determination of incompetency before their constitutional right to bear arms is taken away?

If confirmed I would be pleased to work with Congress on how such determinations of incompetency are made.

• At the hearing, we also discussed my concern for veterans'gun rights. I said that I would follow up in writing, to better explain the situation, so I wanted to ask you again what you thought after having some time to consider it.

Two years ago, it came to my attention that the regulatory definition of "adjudicated as a mental defective" was causing problems for certain veterans. Occasionally, the VA determines that a veteran is unable to contract or manage his VA benefits. While this determination may help a veteran (by getting him assistance with benefits and financial affairs), and may be only temporary, it also requires the VA to submit that veteran's name to NICS. The consequence of being added to NICS is that it becomes a felony to simply possess a firearm. More disturbing, the Secretary of Veterans Affairs has said that a veteran can be declared mentally incompetent while in a coma (obviously a temporary condition), also triggering the requirement that his name be reported to NICS. In either of these situations, a veteran may forever lose his Second Amendment rights because of this determination by the VA.

In the last Congress, I worked closely with Senator Schumer to make it easier for affected veterans (CRS has estimated as many as 140,000) to have their names removed from the list, a remedy that was not previously available. The reform, however, has been slow to materialize, and the problem persists.

o Do you agree that barring veterans who have served our country honorably from even possessing a firearm — without a finding that he is a danger to himself or others — is unconscionable?

If confirmed I would be pleased to work with Congress to improve the definition of "mental defective" and the system for removing names from NICS in appropriate circumstances.

o Do you agree that the regulations defining "adjudicated as a mental defective" have contributed to this problem?

I have had no occasion to review these regulations but would be pleased to consider proposed improvements to thems.

o Will you commit to working with me to correct this absurdity in the law?

I am committed to working with you on such improvements.

Follow-up Questions of Senator Tom Coburn, M.D.
Hearing: "*Nomination of Eric Holder to be Attorney General of the United States*"
United States Senate Committee on the Judiciary
January 15, 2009

- In our discussion at the hearing, you acknowledged that there was "some dissonance" in a policy that would prohibit gun ownership for those under 21 years of age, when our country allows those who are 18 (and in some cases, even 17) to serve in the military.

    - Did you support a Clinton administration proposal (introduced by Congressman John Conyers as H.R. 1768) that proposed such an increase in the age limit?

In an appearance before the Crime Subcommittee of the House Judiciary Committee on May 27, 1999, Treasury Department Undersecretary James Johnson and I testified in general support of H.R. 1768. Obviously our position on that legislation did not take account of the Supreme Court's subsequent decision in District of Columbia v. Heller.

    - Do you believe there should be age restrictions on gun ownership? If so, what age do you think is appropriate?

I have supported an age restriction on handgun possession in the past, including in the testimony referenced in the previous answer. Post-Heller, I would consult with Congress, law enforcement officials and other experts to determine what that age should be.

    - Do you believe that such age limits should be applied to handgun possession?

See prior answer.

- In our discussion, you indicated that banning the sale of "cop-killer" bullets is something you would support and that you think is still viable after *Heller*. My understanding, however, is that this prohibition already exists in current law. In particular, 18 USC 922(a)(7) bans the sale or delivery of certain armor-piercing ammunition, except for law enforcement or military purposes. 18 USC 921(a)(17) provides a definition for this kind of ammunition.

    - In your opinion, does current law need to be expanded in any way to represent the kind of ban on "cop-killer" bullets you advocated at the hearing?

It is my understanding that federal law prohibits the manufacture and

importation of armor piercing ammunition, not the sale of armor piercing ammunition.

- When I asked you to commit to opposing federal legislation that would encroach upon state right-to-carry laws, you responded that you were not sure what the "appropriate role" would be for the federal government in that situation. Further, you stated that "without agreeing or disagreeing with [state concealed carry laws], I think states do have those rights."

    - Do you believe the federal government has the jurisdiction or authority to preempt state laws protecting a right-to-carry?

I am aware of no proposal to have the federal government preempt state laws protecting a right-to-carry and have had no occasion to consider the constitutionality of such a proposal.

    - Do you personally favor allowing concealed carry permits for law-abiding citizens?

Such permits systems are typically established under state or local law, and I have had no occasion to consider them as a federal policymaker. I have no personal view of such systems, other than that they should that they should take account of public safety and the Second Amendment right to bear arms as articulated by the Supreme Court in Heller.

Questions from Senator Cornyn

1. (a) Please list and describe the contents of any communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) you had with White House personnel concerning the FALN and/or Los Macheteros commutations?

At the hearing I described the limited access I was given to the options memo I sent to the White House concerning this matter. Beyond that, I have not had access to documents memorializing communications I may have had with White House personnel concerning FALN and/or Los Macheteros commutations, other than what may be in the public domain, nor can I recall each one.

(b) Please describe the content of communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents), if any, that you had with each of the following individuals regarding the FALN and/or Los Macheteros commutations:

- (i) President Clinton
- (ii) Charles Ruff
- (iii) Dawn Chirwa
- (iv) Jeffrey Farrow
- (v) Marcia Hale
- (vi) Mayra Martinez-Fernandez
- (vii) Jack Quinn
- (viii) Vice President Gore
- (ix) Margaret Love
- (x) Roger Adams
- (xi) Janet Reno

At the hearing I described the limited access I was given to the options memo I sent to the White House concerning this matter. Beyond that, I have not have access to documents memorializing communications I may have had with any of the people on this list concerning FALN and/or Los Macheteros commutations, other than what may be in the public domain, nor can I recall each one. I can say that the only people I believe I might have spoken with about this were Mr. Ruff, Ms. Love, Mr. Adams and Attorney General Reno.

2. Please list and describe any communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) you had within the Department of Justice concerning the FALN and/or Los Macheteros commutations?

I do not have access to documents memorializing communications I may have had within the Department of Justice concerning FALN and/or Los Macheteros commutations, other than what may be in the public domain, nor can I recall each

one. See my answer above as to who in the Department of Justice I may have had contact with in this matter.

3. Please list and describe any communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) not listed in your response to questions 1 and 2 that you had concerning the FALN and/or Los Macheteros commutations?

I do not have access to documents memorializing communications I may have had concerning FALN and/or Los Macheteros commutations, other than what may be in the public domain, nor can I recall each one.

4. Why was the December 1996 recommendation of Pardon Attorney Margaret Love, which recommended that clemency be denied for the FALN and/or Los Macheteros terrorists, revisited and revised? Did the idea of drafting a second recommendation originate in the White House or in the Department of Justice? Who, within the White House or the Department of Justice, suggested that a new recommendation was needed? On what grounds?

As I recall, the December 1996 recommendation was not public, so supporters of clemency continued to advocate for their position with the Department. I recall that when I became Deputy Attorney General in 1997, White House Counsel Charles Ruff asked me to review the case and provide my views because I had not previously been involved in any decisions about this matter.

5. Please list in chronological order, and briefly describe, every communication (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) to which you were a party from your first day as Deputy Attorney General through August 11, 1999 regarding the December 1996 recommendation from Pardon Attorney Margaret Love and/or the need for, and contents of, a revised recommendation.

I do not have access to documents memorializing communications I may have had regarding the December 1996 recommendation from Pardon Attorney Margaret Love and/or the need for, and contents of, a revised recommendation, other than what may be in the public domain, nor can I recall each one.

6. When did you decide that a new recommendation should be issued by the Pardon Attorney, and why?

At some point after I became Deputy Attorney General I asked the Office of the Pardon Attorney to review the case. After reviewing the work of the OPA, I concluded a new recommendation should be issued.

7. Did you receive any encouragement, suggestion, pressure, or direct order from the White House to provide a favorable clemency recommendation for the FALN and/or Los Macheteros terrorists?

No.

8. Did you receive any encouragement, suggestion, pressure, or direct order from the White House to provide a neutral or otherwise non-negative clemency recommendation for the FALN and/or the Los Macheteros terrorists?

No.

9. Was the level of White House involvement in the DoJ's recommendation process for the FALN and/or Los Macheteros clemencies in any way unusual or out of the ordinary?

The level of interest in this clemency request was unusual, in that political and religious leaders from around the world supported clemency.

10. In transmitting his draft of a revised FALN/Los Macheteros clemency recommendation to you, Mr. Adams wrote "As we discussed in our last meeting, the desired objective was to recommend that the President grant clemency to the extent it would result in the prisoners' serving 20 years in prison."

(a) How did you communicate this "desired objective" to Mr. Adams?

I do not recall precisely how I communicated this to him.

(b) Did you ever ask Mr. Adams to write a report that favorably recommended clemency?

If I did, it was because it was my prerogative as Mr. Adams' superior within DOJ to direct him to write a report that reflected my views on the matter because the report was to go out under my signature.

(c) Did you ever communicate a "desired objective" for a pardon or clemency recommendation to the Pardon Attorney on any other case? Which cases, and what "desired objective" did you communicate?

I cannot be sure, but I do recall making my views known to Mr. Adams on clemency petitions presented to my office, including cases involving what I believed to be disproportionately long sentences for non-violent drug offenses.

(d) Please describe, in detail, every communication (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other

documents) between you and Mr. Adams regarding the revised recommendation memorandum in the FALN/Los Macheteros case.

I do not have access to documents memorializing communications I may have had with Mr. Adams concerning FALN and/or Los Macheteros commutations, other than what may be in the public domain, nor can I recall each one.

11. In your tenure as Deputy Attorney General, were there any other pardon or clemency related matters in which the Pardon Attorney's memorandum to the President took the form of an "options memo," which did not set out a particular recommendation? Please list any such matters.

Not that I recall, although it is possible there were.

12. Why did the Pardon Attorney's memorandum to the President in the FALN/Los Macheteros matter take the form of an "options memo"?

Because we concluded that it was appropriate to present every possible option for the President in a matter of this nature.

13. Many of the previously disclosed internal White House communications regarding the FALN/Los Macheteros clemency petitions are bluntly political. One memo argues that: "The VP's [Al Gore's] Puerto Rican position would be helped" by clemency, and another argues that clemency would "have a positive impact among strategic Puerto Rican communities in the U.S. (read, voters)."

(a) Please list, and describe in detail, all communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) that you had with any person regarding the effect that these commutations would have within the Puerto Rican community.

I do not have access to documents memorializing communications I may have had regarding the effect that the commutations would have within the Puerto Rican community, other than what may be in the public domain, nor can I recall each one.

(b) Please list, and describe in detail, all communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) that you had with any person regarding the political implications of these commutations.

I do not have access to documents memorializing communications I may have had regarding the political implications of these commutations, other than what may be in the public domain, nor can I recall each one. The political impact of the clemency decision did not enter in to the judgments I made in these matters.

(c) Did you consider any political factors when recommending the commutations? Please elaborate.

No.

(d) Would it ever be appropriate for the Department of Justice to consider the electoral position of the President or Vice President when recommending for or against a pardon or commutation?

No.

14. In an April 8, 1998, meeting with a group of clemency supporters, you asked whether the FALN terrorists would agree to renounce violence if offered clemency. According to notes from that meeting, one of the supporters, the Reverend Paul Sherry, responded that they ''would not change their beliefs.'' Did you tell the President or anyone else involved in the process about this exchange or factor it into your commutation recommendations?

I do not recall if Rev. Sherry's were communicated to the White House, but as a condition of release each one of the prisoners receiving clemency was required to renounce violence. Those that did not do so were not granted relief.

15. At the January 15 confirmation hearing, you testified that Cardinal O'Connor of New York was "in support" of the FALN clemency request. When the Clinton White House cited Cardinal O'Connor's "support" for the clemency request in 1999, the Cardinal shortly thereafter devoted his weekly column to clarifying the record. Though he agreed that he had asked the Attorney General to review the FALN cases, he clarified that he "did not ask for the release of the Puerto Rican federal prisoners called FALN."[1]

(a) Were you aware of the Cardinal's clarification? If so, why did you cite Cardinal O'Connor's "support" at the hearing?

I do not recall if I knew about Cardinal O'Connor's clarification. I apparently erred in citing him as a supporter of clemency.

(b) Cardinal O'Connor's clarification is discussed on page 9 of the House Committee report on the commutations. In your preparation for the January 15 confirmation hearing, did you not review that House report?

I did review parts of the House report. It appears I did not notice Cardinal O'Connor's clarification.

(c) To clarify the record, would you be willing to retract your citation of Cardinal O'Connor's "support"?

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[1] Cardinal John J. O'Connor, FALN: Clarifying the Record, Catholic New York, Sept. 16,1999, at 5, *available at* http://www.cny.org/archive/cv/cv091699.htm.

These questions and answers are part of the record of my hearing, and so can serve as a correction to my mistaken citation of Cardinal O'Connor's views.

16. At the January 15 confirmation hearing, you testified that "with regard to the group of 15, none of them had themselves been directly linked to a murder or directly linked to a crime that involved an injury to somebody." However, in support of a pretrial detention order after his 1985 arrest for robbing over $7 Million from a Wells Fargo truck, a United States District Court made a finding of fact that Juan Enrique Segarra-Palmer "had organized and taken part in the attack at Sabina Seca on a United States Navy bus taking sailors to a radar station, on December 3, 1979, in which two sailors were killed and nine wounded."[2] Please explain your testimony that Mr. Segarra-Palmer has never "been directly linked to a murder or directly linked to a crime that involved an injury to somebody."

Mr. Segarra-Palmer was not indicted or convicted of any crime that involved injury to anyone, which is the basis for my statement.

17. At the January 15 confirmation hearing, you testified that the FALN and Los Macheteros clemency recipients were not "the heads of the organization." However, both Juan Enrique Segarra-Palmer[3] and Robert Maldonado Rivera[4] served on the Central and Directive Committees of Los Macheteros. These Committees are responsible for setting and carrying out the policies of this terrorist group. Similarly, the House report on the commutations found that Oscar Lopez (who refused clemency rather than renounce violence) "had been one of the national leaders of the FALN since its first public acts of violence in 1974."[5] Why are these terrorist leaders not "linked to" and fully accountable for acts of violence that they guided and directed from their leadership positions?

Roberto Maldonado Rivera, Mr. Segarra-Palmer and Oscar Lopez were not indicted or convicted of any crime that involved injury to anyone, which is the basis for my statement.

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[2] U.S. v. Melendez-Carrion, 820 F.2d 56, 58 (2nd Cir. 1987).
[3] *Id.*
[4] H.R. 106-488, at 32 (1999).
[5] *Id.* at 21.

Questions from Senator Cornyn

1. (a) Were you aware of the FALN and Los Macheteros leadership positions of Oscar Lopez, Roberto Maldonado Rivera, and Juan Enrique Segarrra-Palmer at the time that you made your commutation recommendation? If so, did these leadership positions factor into your decision to recommend commutation? Did you mention these leadership positions in your commutation recommendation or in any other communication?

It is my understanding that information about the various positions held within FALN and Los Macheteros by these three men was included in their respective presentence reports, which in the ordinary course would have been requested and reviewed by the Office of Pardon Attorney as one of its first investigative steps. It would not be uncommon to include relevant facts from presentence reports in further consideration of clemency matters.

(b) Do you stand by your statement that Juan Enrique Segarra-Palmer, Roberto Maldonado Rivera, and Oscar Lopez were not "the heads of the organization"?

When I stated that the "FALN people are not in the same category as Khalid Sheikh Mohammad or Bin Laden in that they were not the heads of the organization," I did so based on my understanding that other individuals -- such as FALN leader Carlos Alberto Torres, who was not offered clemency, and Macheteros leader Filiberto Ojeda Rios -- were the top leaders of their respective groups. I stand by that statement, and I also stand by my statement that the prisoners who were offered clemency were criminals and terrorists. They justifiably served very substantial amounts of time.

2. Were you aware of Juan Enrique Segarra-Palmer's alleged involvement in the attack at Sabina [*sic*] Seca at the time that you made your commutation recommendation? If so, did this alleged involvement factor into your decision to recommend commutation? Did you mention this alleged involvement in your commutation recommendation or in any other communication?

The information about Mr. Segarra-Palmer's alleged involvement in the attack at Sabana Seca was included in his presentence report, which in the ordinary course would have been requested and reviewed by the Office of Pardon Attorney as one of its first investigative steps. It would not be uncommon for Mr. Segarra-Palmer's presentence reports to be included in consideration of clemency.

3. Do you believe that, in making pardon and commutation recommendations, the Justice Department is limited to considering only those bad acts of which the applicant has been indicted or convicted? Do you believe that the Justice Department should so limit itself? Or may evidence of other bad acts be considered to show motive, intent, or lack of remorse?

When I was Deputy Attorney General, the factual investigation undertaken by the Office of Pardon Attorney went beyond the indictment and judgment of conviction. One of the first steps that the OPA undertook when reviewing a commutation petition was to contact the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as prison progress reports detailing the prisoner's adjustment to incarceration, his participation in work, educational, vocational, counseling, and financial responsibility programs; as well as the prisoner's disciplinary history. OPA also would check automated legal databases for any court opinions relating to the petitioner's conviction. I believe examining the facts outside the indictment and judgment of conviction is appropriate.

4. You stated that when you became Deputy Attorney General in 1997, "White House Counsel Charles Ruff asked [you] to review the case and provide [your] views because [you] had not previously been involved in any decisions on [the FALN/Los Macheteros] matter." Were you ever asked to review and provide your views on any other matter about which a pardon or commutation recommendation had already been submitted by the Department of Justice?

It is possible that the White House Counsel's office inquired of my views after clemency recommendations were transmitted from OPA to the White House. I do not have a specific recollection sufficient to identify specific cases, however.

5. Other than the November 1997 meeting with Congressmen Jose Serrano, Luis Gutierrez, and Nydia Velazquez and the April 8, 1998 meeting with clemency supporters, did you have any communications (including but not limited to conversations, correspondence, e-mail, memoranda, notes, and other documents) with people outside the White House and Department of Justice concerning the FALN and/or Los Macheteros commutations? If so, please list the people with whom you can recall communicating, and describe any such communications to the best of your ability.

I do not have access to documents memorializing communications that I may have had with people outside the White House and Department of Justice concerning FALN or Los Macheteros, other than what may be in the public domain, nor do I recall each one.

6. Why do you not "have access to documents memorializing communications [you] may have had concerning FALN and/or Los Macheteros commutations"? What efforts have you made to access such documents? In whose possession, custody, and control do you believe such documents to be? Will you encourage any person or organization having possession, custody, and control of such documents to produce them to this Committee?

The documents memorializing communications I may have had concerning the FALN and/or Los Macheteros commutations are in the possession, custody and control of the Department of Justice. I understand these and other documents regarding the commutations were requested from the Department of Justice by Senator Specter. To the extent the Department determined that it could produce the materials, it did so on January 12, 2009 and January 14, 2009.

Nomination of Eric Holder to be
Attorney General of the United States

Questions for the Record from
Senator Russ Feingold
January 16, 2009

Racial Profiling

1. We discussed my racial profiling legislation at the hearing. The Department of Justice's current guidelines prohibiting racial profiling by federal law enforcement appear to include an exception of sorts for federal law enforcement personnel who are protecting national security. Do you think such an exception is appropriate? Isn't it possible to protect our country without resorting to racial profiling?

I believe that we can protect the national security while also adhering to our Constitution and the principles for which our nation stands. As the Attorney General of the United States, I commit to reviewing DOJ's policies to ensure that unlawful racial profiling is not permitted.

Secret Law

2. I held a hearing last year on what I have been calling the problem of "secret law." Our legal system is based on the premise that the public has a right to know what the law is. But we now know that for the past seven years, bodies of executive and judicial law were kept secret from the public, and too often from Congress as well. The prime examples of this were binding opinions of the Office of Legal Counsel, and decisions of the Foreign Intelligence Surveillance Court interpreting the Foreign Intelligence Surveillance Act. Certainly there are times when these opinions and decisions may discuss sensitive operational information, and this type of properly classified information should not be made public. But that shouldn't extend to an explanation of what the law is. Do you agree that, as a general matter, the Justice Department should be committed to more public access to OLC opinions and to FISA Court decisions? And will you work with me on legislation such as the OLC Reporting Act (S. 3501 in the 110th Congress) and Executive Order Integrity Act (S. 3405), to create some statutory protections against this problem?

I firmly believe that transparency is a key to good government. Openness allows the public to have faith that its government obeys the law. Public scrutiny also provides an important check against unpersuasive legal reasoning – reasoning that is biased toward a particular conclusion. Once the new Assistant Attorney General in charge of the Office of Legal Counsel is confirmed, I plan to instruct that official to review the OLC's policies relating to publication of its opinions with the goal of making its opinions available to the maximum extent consistent with sound practice and competing concerns.

In that regard, I support the principles behind the proposed OLC Reporting Act. I believe that the Department should notify Congress when it concludes that a provision of a statute

is unconstitutional or when it interprets a statute in a manner that is manifestly at odds with its intent. As your question indicates, such notice is subject to the legitimate privilege and other secrecy concerns of the executive branch. I will commit to work with Congress to satisfy Congress's legitimate interest in notice and the executive branch's legitimate interests in efficiency and confidentiality.

State Secrets

3. I'm concerned that the outgoing administration may have used the "state secrets privilege" to avoid accountability for potentially unlawful activities, including warrantless wiretapping and rendition. Courts tend to be very deferential to these privilege claims, so there's certainly room for abuse. Will you commit to reviewing all pending cases in which DOJ has invoked the state secrets privilege to make sure the privilege was properly invoked, and withdraw any claims of privilege that are not necessary to preserve national security?

I will review significant pending cases in which DOJ has invoked the state secrets privilege, and will work with leaders in other agencies and professionals at the Department of Justice to ensure that the United States invokes the state secrets privilege only in legally appropriate situations.

4. One reason that the state secrets privilege is so vulnerable to abuse is that courts don't always use the tools that are at their disposal to review privilege claims, such as in camera review of the privileged evidence. I cosponsored the State Secrets Protection Act (S. 2533 in the 110th Congress), with Sen. Kennedy and Sen. Specter, to require courts to engage in meaningful review of these claims. Would you support enactment of this bill?

I appreciate the Committee's concern about potential abuses of the state secrets privilege and will work to ensure that assertions of the privilege are made only when legally and factually appropriate. I will consult with appropriate career personnel at the Department of Justice and perhaps in other agencies, before making a final judgment on whether to support this or other particular legislation.

Criminal Justice

5. Over the past several years, I have heard again and again that the federal government, and the Department of Justice in particular, simply has not provided the kind of crucial support to our state and local law enforcement partners in anti-crime efforts that they need. The outgoing administration repeatedly sought to slash important crime-fighting grant programs like the Byrne Justice Assistance program and the COPS program. In Wisconsin, these cuts have been devastating and have threatened important projects, such as a community prosecutor program in Milwaukee. Even beyond these grants, the Department has not been the leader in the development and dissemination of research on cutting edge law enforcement strategies that it should be. What role do you think the Department should play in providing crime-fighting and crime prevention help to its state and local partners?

I believe the Department of Justice has a vital role to play in supporting state and local law enforcement. DOJ should be a leader and strategic partner with states and localities in addressing crime. It should reach out to state and local law enforcement officials to ascertain needs and figure out the best ways we can work together. The incoming administration is committed to restoration of Byrne / JAG funding and to the Biden COPS legislation – along with support for research and evaluation to ensure that what we are funding is effective in reducing crime.

6. A growing body of research shows that prevention and intervention programs and mental health and drug treatment services can help children move out of the juvenile justice system, return to school, and become responsible members of our communities. In the outgoing Administration, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) was widely criticized for failing to provide leadership and innovation in delinquency prevention policy and the effective administration of juvenile justice. How do you plan to prioritize youth and juvenile justice and delinquency prevention in the Department of Justice, and will you seek to restore OJJDP to its previous role as the leader and central resource for juvenile justice innovation?

The federal government should be a leader in tackling the difficult questions surrounding juvenile delinquency. The President-Elect and Vice-President-Elect have supported a comprehensive public health approach to addressing youth crime. Community-based programs – employing the evidence-based strategies that you describe – have been shown to be most effective in steering young people away from a life of crime. If confirmed, I hope to restore the Department's Office of Juvenile Justice & Delinquency Prevention (OJJDP) to its former role as a leader in advancing these and other innovations. I also plan to give priority to juvenile justice and delinquency prevention issues in a number of ways: First, I will work with the President to identify a strong leader for OJJDP Administrator. Second, I will work with the new Administrator to reinvigorate the important work of OJJDP, especially in the area of delinquency. Third, I will ensure that OJJDP's professional staff is given senior leadership support within the Department. Fourth, the Department will reach out to constituent organizations to elicit their views on what we can

and should be doing. Finally, we will make it a priority to work with Congress on reauthorization of the JJDP Act.

7. The United States has the highest incarceration rate in the world; nearly 2.3 million Americans are held in federal or state prisons or local jails. Close to two thirds of those in prison are African American or Latino. Many of those who are currently incarcerated were sentenced under mandatory minimum sentencing laws. President-elect Obama has indicated that mandatory minimum sentencing, especially for non-violent offenders, is not only unfair in many cases, but is an unwise use of taxpayer dollars.

   Many respected jurists have spoken out against the wisdom of mandatory minimums, including Former Chief Justice Rehnquist, Justice Kennedy, and Justice Breyer. Like many others, I believe that mandatory minimums take a "one-size-fits-all" approach to justice, and the results are sometimes irrational and unfair and that it is judges who are in the best position to fairly tailor the punishment to the crime. What is your position on mandatory minimums?

I agree that the Department of Justice needs to review the use of mandatory minimum sentences, especially for non-violent offenders. I am well aware of former Chief Justice Rehnquist's and other experts' views opposing the application of mandatory minimum sentences in certain contexts, and I am also well aware of our nation's incarceration rates and the very troubling racial disparities in the criminal justice system. I intend to study this issue carefully, review the considerable amount of data that has been collected, solicit the views of members of Congress, consult with members of the bipartisan United States Sentencing Commission, law enforcement groups, and other important constituencies, and make recommendations that serve the interests of justice.

8. As Attorney General, would you consider recommending that the President use grants of clemency to certain non-violent, first time offenders serving lengthy mandatory minimum sentences to address the unfairness of their sentences and to send a message to Congress that it should reassess statutory mandatory minimums?

I understand the significant potential for mandatory minimum sentences to reach an unjust result in some cases. The question of whether a mandatory minimum sentence has been imposed unjustly depends on the particular facts and circumstances of each case. Similarly, the President's clemency power should be exercised based upon the particular facts and circumstances of each case.

Tort Reform

9. I noticed that at least for a while you were on the Advisory Board of an organization called Common Good, which was founded by your law partner Phillip Howard, and which strongly supports so-called tort reform initiatives that seek to restrict the ability of injured people to gain redress in the courts. Mr. Howard's writings in my view sometimes paint a distorted view of our legal system. I'm not looking to debate his views with you here, but I do want to ask you in light of your connection with that organization and your recent background of representing corporate interests in private practice, as

Attorney General, can you be a strong voice for consumers and those injured by corporate wrongdoing? Is there anything in your background and record that you would point to to balance your association with Mr. Howard's organization?

I will be a strong voice for consumers and I am committed to revitalizing the Department of Justice's role in protecting consumers and enforcing the law against corporate violators, especially in these difficult economic times. As a prosecutor in public integrity cases, as a judge, and as Deputy Attorney General I have demonstrated my willingness to enforce the law against powerful interests where appropriate.

Civil and Voting Rights Enforcement

10. I was encouraged to see in your statement your commitment to reinvigorate enforcement of the civil rights and voting rights laws. The drop-off in cases brought by the outgoing Administration is truly disheartening: by some estimates there has a 40% overall drop in Title VII cases, a paucity of employment discrimination cases based on the disparate impact on minorities of employment practices, a significant decrease in employment cases brought on behalf of minorities and women, and a 40% drop in fair housing cases. With respect to voting rights, no cases were brought on behalf of African-American voters between 2001 and 2006, and in the entire administration not a single voting rights case has been brought on behalf of Native Americans. Do you agree that these statistics are probably not due to a marked decrease in discriminatory behavior taking place in this country? What will be your priorities in civil rights enforcement and how you do you plan to go about repairing and reinforcing this part of the Department's historic mission.

As Attorney General, one of my highest priorities will be to restore the Civil Rights Division's tradition of vigorously enforcing all of the nation's civil rights laws. I will take steps to ensure that all components within the Division utilize fully available tools to combat discrimination, including lawsuits based on disparate racial impact. In the area of voting rights, this will mean protecting the voting rights of racial minorities by bringing lawsuits under Section 2 of the Voting Rights Act. This provision is one of the most powerful voting rights protection tools and I will not hesitate to use it. I will take seriously the mandate to protect the civil rights of all Americans.

Antitrust Enforcement

11. Yet another area where the outgoing administration's enforcement of the law has been dismal is antitrust. I have been particularly dismayed by increasing concentration in agriculture and its impact on farmers and consumers.

In September 2008, the Department issued a troubling report on single firm monopoly conduct. A majority of the Federal Trade Commission immediately issued a statement calling the report "a blueprint for radically weakened enforcement of Section 2 of the Sherman Act." The FTC Commissioners described the report as being "chiefly concerned with firms that enjoy monopoly or near monopoly power, and prescribes a legal regime that places these firms' interests ahead of the interests of consumers. At almost every turn, the Department would place a thumb on the scales in favor of firms

with monopoly or near-monopoly power and against other equally significant stakeholders."

The report and the FTC's reaction confirmed my concern that misplaced priorities have been influencing Antitrust Division decisions for some time. What are your plans to rebalance the scales of antitrust enforcement to better protect the welfare of the public? And will you take a fresh look at cases that were either closed with no action or have been left open indefinitely?

If confirmed, under my leadership, the Antitrust Division will work to enforce the antitrust laws and to protect the public against monopolistic conduct. We will review current cases and, as part of that review, may examine the history of relevant past cases.

Legal Representation in Immigration Proceedings

12. Just last week Attorney General Mukasey ruled that because noncitizens do not have a right to counsel in deportation proceedings, they cannot raise a constitutional challenge to a deportation based on claim of ineffective assistance by their lawyers. As I understand it, this is a departure from both longstanding established practice and legal precedent. The idea of someone being deported because of poor representation or even fraudulent actions by a lawyer is very troubling. Will you at least take a new look at this decision made by your predecessor in his last few weeks in office?

The Constitution guarantees due process of law to those who are the subjects of deportation proceeding. I understand Attorney General Mukasey's desire to expedite immigration court proceedings, but the Constitution requires that those proceedings be fundamentally fair. For this reason, I intend to reexamine the decision should I become Attorney General.

DOJ Employment Policies

13. Attorney General Mukasey committed to me at his confirmation hearing that he would end disparate treatment of the gay and lesbian employees' organization at DOJ, called DOJ Pride. I'm happy to say that he kept his word on that. Do you see any reason not to continue his policies, and will you pledge to work cooperatively with DOJ Pride to resolve any additional concerns that they bring to your attention?

I will continue Attorney General Muaksey's policies on this topic. I will work with employee organizations to guarantee that there are equal opportunities for all to contribute to the mission of the Department of Justice.

Graham QFR's for Eric Holder

1. On January 7, 2009, the United States District Court for the District of Columbia held a hearing on whether the constitutional right to habeas corpus established in *Boumediene* extends to detainees held at the military prison in Bagram, Afghanistan. In your opinion, does the *Boumediene* habeas corpus right extend beyond detainees held at Guantanamo Bay? Do you believe that the *Boumediene* habeas corpus right extends to detainees held at Bagram? Under your lead, will the Department of Justice oppose habeas corpus petitions filed by detainees at Bagram and other military prisons around the world?

I agree with the Supreme Court's decision in *Boumediene* vindicating the right to habeas corpus. As you note, there is litigation currently pending about the scope of that decision. I have not reviewed the facts and issues in these cases, and it would be inappropriate to set forth a view about their merits one way or the other before I am in office and can consult with the career professionals handling those matters. I can say that President Obama will make sure that any detentions that do occur are consistent with the laws of war and the Constitution.

2. In 2004, President Bush signed into law the *Unborn Victims of Violence Act of 2004*, which provides that, under federal law, any person criminally causing death or injury to a child in the womb is guilty of an offense separate from the crime against the mother. Do you pledge to fully enforce the *Unborn Victims of Violence Act of 2004*?

I will enforce the Act where facts support it.

3. When you were Deputy Attorney General, the Department of Justice circulated a package of gun control legislation, from which many provisions were included in H.R. 1768 in the 106th Congress, introduced by Representative Conyers. Did you support the following provisions of that legislation at that time, and do you support them now?
    - A three-day waiting period for purchase of handguns, although the federal instant background check system had already been available for several months;
    - An age limit of 21 for handgun possession;
    - Imposing criminal liability on adults who allow juveniles to gain access to firearms under some circumstances;
    - Limiting handgun purchases to one per month;
    - Allowing the Bureau of Alcohol, Tobacco and Firearms to prescribe unlimited forms of dealer security regulations; and
    - Requiring firearms dealers to make monthly reports to ATF of all firearms they received from non-licensees.

As Attorney General, my first priority with respect to gun control legislation will be to ensure that the illegal possession and use of firearms are effectively prevented and forcefully prosecuted. In doing so, I will not interfere with the constitutional right to bear arms, as recently articulated by the U.S. Supreme Court in the *Heller* decision.

I have supported legislation to reduce gun violence, but with respect to any such proposal I will consult with law enforcement authorities concerning the need for such provisions and with lawyers at the Department of Justice concerning the possible impact of any particular proposal on the rights enunciated by the Supreme Court in the *Heller* case.

4. When you were Deputy Attorney General, the Justice Department insisted it was necessary to keep records of firearms purchases approved by the National Instant Criminal Background Check System (NICS) for 90 days or longer for system auditing. Congress (by appropriations amendment) and the Bush administration (by regulation) reduced that period by regulation to 24 hours. As Attorney General, will you seek to change the law in order to retain these records longer than 24 hours?

I will need to review the nature and amount of data that has been collected in the last eight years in order to formulate a current view about the proper length of time to keep records of firearms purchases. Before I reach a view, I will obtain the input of appropriate constituencies, understand the factual bases for Congress's appropriations amendment and the Bush administration's regulation, understand the operation of NICS, and evaluate this information carefully.

5. In October 2001, you wrote an op-ed in the Washington Post in which you proposed that the Bureau of Alcohol, Tobacco, Firearms and Explosives should get "a record of every firearm sale." Do you still support this proposal?

While I supported such a proposal in 2001, I would need to review data that has been developed in the last 8 years and current case law to evaluate whether such a proposal continues to be appropriate.

Senator Grassley's Written Questions for Eric Holder, to be Attorney General of the United States, January 16, 2009

PARDONS

Remorse for Rich Pardon

1. Have you done anything to make amends for your admitted lapses in judgment? For example, have you spoken with the career attorneys who prosecuted the Rich case or the U.S. Marshals who worked so tirelessly to apprehend him for so long to offer any apology for not representing the U.S. government's interests more vigorously? If not, then why haven't you done so?

My public testimony expresses contrition for my role in this matter. As I have testified, I made mistakes that contributed in part to the flawed decision by President Clinton to grant Marc Rich a pardon. I have learned specific lessons that, I believe, will make me a better Attorney General, if I am confirmed. I should have kept the front-line prosecutors responsible for the case better informed and I should not have spoken to the White House about the case without knowing all the facts. If confirmed as Attorney General, I will ensure full consultation with prosecutors who are handling individual cases with respect to pardon applications and other matters; I will strengthen the Justice Department's independence from the White House; and I will work to improve the pardon review process within DOJ so that applications are processed promptly and the White House does not need to establish an alternative review system.

2. It's not just your handling of the Rich pardon that has raised concerns. There is a pattern in at least two other cases where it looks like you also helped undeserving pardon seekers by taking a neutral position or no position at all, despite fierce opposition by the Pardon Attorney and the rest of the Justice Department. Those cases are: **(1) Drug Kingpin Carlos Vignali** and **(2) the FALN terrorists.**

Drug Kingpin Carlos Vignali: Former Pardon Attorney Roger Adams said that you refused to sign a number of recommendations against clemency toward the end of the Clinton administration.[1] One of those that you refused to sign was a memo opposing clemency for Carlos Vignali, a cocaine trafficker whose father paid the First Lady's brother, Hugh Rodham, over $200,000 for his lobbying on behalf of Vignali.[2]

FALN terrorists: Documents the press uncovered just last week[3] confirmed what many had suspected for years. Specifically, we learned that you directed the Pardon Attorney to re-write a recommendation against clemency for the Puerto Rican terrorists into a neutral "options memo." Congress has never been allowed to see that memo.

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[1] H. Rpt. 107-454, p. 1312.

[2] H. Rpt. 107-454, p. 1307.

[3] *L.A. Times*, Eric Holder Pushed for Controversial Clemency" (Jan. 9, 2009).

Marc Rich, Carlos Vignali, and the FALN terrorists have two things in common: (1) they received clemency despite being ineligible under Justice Department criteria, and (2) they all had politically influential people lobbying the White House on their behalf.

(a) Do you have any regrets about your actions in the Vignali case, the way that you do in the Rich case? If so, what specifically would you do differently?

The Justice Department opposed the clemency petition of Carlos Vignali. In the final days of President Clinton's term, when the Pardon Attorney learned that Vignali's application was receiving serious consideration by the White House, I agreed that a negative recommendation should be sent to the White House immediately - even though it did not contain my signature - so that President Clinton would be aware of the Justice Department's opposition to Vignali's petition. I do not regret the way this matter was handled.

(b) Do you have any regrets about your actions in the FALN terrorist case? If so, what specifically would you do differently?

I do not think my actions in the FALN case were a mistake given all of the factors at the time. However, as I testified, I think I would view this clemency request differently today in the aftermath of the September 11th attacks.

Recommendation of Jack Quinn

3. Marc Rich's publicist, Gershon Kekst told the House Committee on Government Reform that during a dinner in honor of the Chrysler-Daimler merger, he asked you how someone could deal with the problem of an "overzealous prosecutor." According to Kekst, you said that person should hire a lawyer who "knew the process" and that person could come to you and "work it out."[4] According to the House report, Kekst did not mention Marc Rich's name during the conversation. However, in response to his general inquiries, you pointed to Quinn, who was seated nearby and said something to the effect of "there's Jack Quinn. He's a perfect example" of the kind of lawyer you meant. At your confirmation hearing, you testified that you were at the dinner and did have a similar conversation but that Jack Quinn's name never came up.

(a) Have you ever discussed with Kekst your recollection of that conversation? If so, please explain in detail.

No, I have not.

(b) Have you ever discussed with Quinn your recollection of that conversation with Kekst? If so, please explain in detail.

No.

(c) Have you ever discussed Kekst with Quinn at all? If so, please describe in detail.

No.

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[4] H. Rpt. 107-454, p. 135-136.

(d) What did you know about Kekst's relationship with Marc Rich at the time of the conversation in question?

To the best of my recollection, Mr. Kekst did not mention Mr. Rich's name during our dinner conversation in late 1998 and therefore I did not know that Mr. Kekst had a relationship with Marc Rich. I believe this is consistent with what Mr. Kekst indicated in his interaction with the House Committee.

(e) At any time prior to the issuance of the House report, did you learn more about Kekst's relationship with Marc Rich? If so, please explain in detail.

No.

(f) Please describe in detail any other communications you had with Gershon Kekst and any time before or after that dinner up to the present.

None.

Quinn's Notes, Emails, and Testimony

4. The conclusions of House Report 107-454, *Justice Undone: Clemency Decisions in the Clinton White* House are largely based on your documented conversations with former White House Counsel Jack Quinn, in which you appear to be coaching, encouraging, and lending a hand in his efforts to represent Marc Rich. Quinn's notes and emails corroborate his version of those conversations. You have previously been asked about some, but not all of the details contained in the documentation Quinn submitted along with his testimony.
According to Quinn, on November 8, 1999, you suggested that Quinn write to the prosecutors and copy you, to seek a meeting to settle the Rich case. You also indicated that you would support such a meeting and that the Southern District's opposition to meeting with a fugitive was "ridiculous."[5]

(a) Did you suggest that Quinn write to "Mary Jo [White]," the U.S. Attorney in the Southern District?

Upon learning that Mr. Quinn wished to discuss the Rich matter with prosecutors in the Southern District, I suggested that Mr. Quinn write a letter to U.S. Attorney Mary Jo White to request a meeting.

(b) Did you suggest that Quinn copy you on the letter?

Yes.

(c) Did you suggest anything to effect that after receiving the a copy of the letter, "We'll call her and say you should do it?"

I agreed to recommend that prosecutors in the Southern District of New York meet with Mr. Rich's lawyers. When I was a U.S. Attorney, I considered meetings with

[5] H. Hrg. 107-11, p. 60-61, 64.

defense counsel to be worthwhile because prosecutors often benefit from hearing about the flaws, real or imagined, cited by defense counsel in a criminal case. The prosecutors in the Southern District of New York refused to do that in this case, which was their prerogative. When they decided not to meet with Mr. Quinn the matter was dropped.

(d) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. But these are his notes of conversations supposedly with me that I did not prepare nor review for accuracy.

According to Quinn, on January 18 2000, you told Quinn you spoke to Mary Jo White, that she was reviewing the Marc Rich matter, and that you would "do what [you] can."[6]

(e) Did you tell Quinn you had spoken to Mary Jo White?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but I do not believe that I spoke with Mary Jo White.

(f) Did you tell him she was reviewing the Marc Rich matter?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but I may have told Mr. Quinn that Ms. White would probably review Mr. Quinn's request for a meeting.

(g) Did you tell him something to the effect that you would do what you can?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but, to the extent that I mentioned my intentions, I would have said that I would do what I could to assist him arrange a meeting with the Southern District because, as noted above, I believe such meetings can be beneficial to prosecutors.

(h) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. See "d" above.

According to Quinn, in March 25, 2000, you told Quinn in a conversation about a settlement meeting on the Marc Rich case that "we're all sympathetic" and that "the equities are on your side."[7]

(h) Did you tell Quinn that you were sympathetic?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that

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[6] H. Hrg. 107-11, p. 60-61, 72.

[7] H. Hrg. 107-11, p.60-61, 78.

conversation but, to the extent I indicated that I was "sympathetic," it would only have been to Mr. Quinn's desire to meet with the Southern District prosecutors and not related to the merits of the case.

(i) Did you tell Quinn that the equities were on his side?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but, to the extent I indicated that, it would only have been related to Mr. Quinn's desire to meet with the Southern District prosecutors and not related to the merits of the case.

(j) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. See "d" above.

According to Quinn, November 17 and 21, 2000, you learned that Rich's lawyers prepared a pardon petition, but suggested that Quinn send it "straight to the White House" and that he should **not** give you a copy.[8] As to Quinn's November 18 email about a conversation the night before, you denied at the confirmation hearing that you told Quinn to go straight to the White House with the Rich pardon petition. However, the email also indicates that you said the "timing was good" and that Rich's legal team "should get it in soon."

(k) Did you tell Quinn something to the effect that the timing was good?

No.

(m) Did you tell Quinn something to the effect that he should get the petition in soon?

No.

(n) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. See "d" above.

According to Quinn, on January 19, 2001 that you had "no personal problem" with the pardon, but that you "expected a 'howl from SD [the Southern District.'"[9] At your confirmation hearing, you said you did not remember making either comment but argued that reference to a "howl" from the prosecutors, "shows that there's an expectation -- assumption on my part that the people in the Southern District in fact know about this."

(o) Did you have any communications with prosecutors in the Southern District about the prospect of a Marc Rich pardon prior to its issuance? If so, please describe them all in detail?

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[8] H. Rpt. 107-454, p. 209-210, 640.

[9] H. Hrg, 107-11, p. 60-61, 85.

No. I assumed, mistakenly, that, as in other cases, communications below my level weer occurring between the involved offices and Main Justice.

(p) In the last week of the Clinton administration, did you have any communications with prosecutors in the Southern District about other potential clemency matters in with they expressed concerns that clemency not be issued? If so, please describe them in detail?

I may have had conversations with, or knew of conversations between others at Main Justice involving the Southern District, concerning what I think were called the New Market Cases.

(q) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. See "d" above.

According to Quinn, after the pardon was granted, you told Quinn on January 22, 2001, about your advice to the White House on the 19th that you were "neutral leaning towards" the pardon. You also said you, "thought it was a good idea to 'have the case out' in the public and also 'get the waiver out there.'" You also "advised Mr. Quinn about procedures to 'dismiss' the indictment and to allow Mr. Rich 'to travel.'" You also told Quinn he had done, "a very good job" and asked if you could "send some resumes."[10]

(r) Did you disclose to Quinn your "neutral leaning towards" advice to the White House?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that we discussed the statements that I made to the White House. I do not have a specific recollection of that conversation.

(s) Assuming, as the evidence indicates, that you did disclose your advice to Marc Rich's lawyer, please explain how doing so would not be inconsistent with your duties as an attorney of loyalty and confidentiality?

I do not have an independent recollection of telling him about that advice.

(t) Did you say something to Quinn to the effect that it was a good idea to "have the case out" and "get the waiver out there?"

No. I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that one of us said something about having "the case out there." Mr. Quinn's notes do not indicate that I said it was a "good idea" to do anything.

(u) Did you advise Quinn on dismissing the Rich indictment?

No. I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that dismissing the indictment was discussed. I do no have a specific

[10] H. Hrg, 107-11, p. 60-61, 86-87.

recollection of that conversation but I would not have provided "advice" on how to do so and Mr. Quinn's notes do not indicate that I did.

(v) Did you discuss with Quinn procedures to allow Rich to travel?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that travel was discussed. I do not have a specific recollection of that conversation but I believe that Mr. Quinn called me to ask what steps needed to be taken to ensure that Mr. Rich would not be detained by international law enforcement authorities and I responded to his inquiry, as I would for any attorney who posed similar questions to me.

(w) Did you tell Quinn he had done a "very good job?"

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that doing a "good job" was mentioned. I do not have a specific recollection of that conversation but, to the extent that I told Mr. Quinn that he had done a good job, it was only an acknowledgement that he had done something that I considered to have been very difficult and unexpected.

(x) Did you ask to send some resumes to Quinn?

I understand that Mr. Quinn's contemporaneous notes of that conversation indicate that resumes were discussed. I do not have a specific recollection of that conversation but, at that time, I was trying to assist my staff find other employment and, as I did with other attorneys, I may have asked Mr. Quinn to consider the resumes of two people in my office. This had nothing to do with the Rich matter.

(y) Did Quinn provide any assistance in providing jobs to the individuals whose resumes you referenced? If so, please explain in detail.

I am not aware of any assistance that Mr. Quinn provided to these individuals. The extent of my involvement would have been to send resumes to Mr. Quinn and others.

(z) Are you aware of any documents that would contradict Quinn's version of the conversation?

No. See "d" above

5. Did you do anything to ensure that the President heard the other side of the story on the Marc Rich pardon rather than simply what Jack Quinn was telling him?

I did not do so, which was one of the mistakes I made. I never received or reviewed the pardon application because the application was sent directly to the White House and was not referred to the Justice Department. I was not sufficiently familiar with the facts of the case and mistakenly assumed that communications between the White House and the Justice Department was occurring

Did not Devote much Time

6. In your testimony at the pardon hearings, you said that you "never devoted a great deal of time" to the Marc Rich matter.[11] However, the House Committee report cited a document from 1996 with your name as the supervising attorney on a civil enforcement matter related to a scheme by Rich to hide his ownership of a company doing business with the U.S. Mint.[12] The case had been the subject of Congressional hearings critical of allowing a tax fugitive to contract with the federal government, and you were quoted in the *Wall Street Journal* commenting on the case.[13] Yet, your sworn testimony before the House said your first involvement with the Rich case was after Quinn was hired in 1999.[14]

(a) Why didn't you acknowledge that you had been involved in the Rich matter as far back as 1996?

I was not personally aware of the Rich matter in 1996 because it was one of approximately 28,000 cases processed by that office each year. I was not personally involved in the Clarendon case. I did not personally sign the settlement agreement. As the document notes, it was signed on my behalf by the Assistant US Attorney prosecuting the case, Barbara van Gelder, as was routine for cases of this nature.

(b) Given your office's work on the case in 1996, your public comment in the newspaper, your efforts to arrange a settlement meeting in 1999, your multiple contacts with Quinn in the months leading up to the pardon, and your contact with him after the pardon— it may or may not be fair to deny that you spent "a great deal of time" on the Rich case. However, in light of the record, do you acknowledge that your involvement was more than just a momentary lapse in judgment on one late night in January 2001?

I stand by my public testimony which recounts the mistakes I believe I made with respect to the Rich matter.

(c) Jack Quinn testified that White House Counsel Beth Nolan told him afterward, "if Mr. Holder hadn't participated in the process ... this pardon wouldn't have happened."[15] With several years of hindsight now, do you disagree with that assessment?

I disagree with that assessment. I never recommended that the pardon be granted. My comments to the White House counsel were inconclusive. President Clinton has outlined at least seven other reasons for his decision to pardon Rich and it was the President, not me, who pardoned Marc Rich.

Grand Jury Testimony

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[11] H. Hrg. 107-11, p. 192.

[12] H. Rpt. 107-454, p. 129, fn. 183.

[13] *Wall Street Journal*, "Clarendon Agrees to Settle Claims over U.S. Contracts" (Apr. 13, 1995).

[14] H. Hrg. 107-11, p. 192-193.

[15] H. Hrg. 107-11, p. 255.

7. How many times did you testify before the grand jury investigating President Clinton's last-minute pardons?

Three times.

8. Did you testify before the grand jury about conflicts between your testimony and Jack Quinn's testimony?

I do not recall if I was asked about Mr. Quinn's testimony. Neither do I know if there were conflicts between his testimony and mine.

9. Were you ever advised that you were a target of the grand jury's investigation?

No.

10. Have you ever seen a transcript of your grand jury testimony? If so, when and under what circumstances?

I have not.

11. Has President-Elect Obama or any of his representatives has had an opportunity to review your grand jury testimony, as part of the vetting process or for any other reason?

No.

12. Given that the investigation was closed many years ago, can you provide any reason why this Committee should not obtain and review your testimony prior to voting on your confirmation?

That is not my decision to make, but as a general matter there would be serious concerns about violating the secrecy of grand jury proceedings, which is a fundamental rule of criminal procedure.

Holder Not Sympathetic?

13. In response to my questioning, you claimed that you were not sympathetic to the Rich case:

> GRASSLEY: If the attorney for Rich had been someone that you had no relationship with rather than former White House Counsel Jack Quinn, would you have been as sympathetic to his case as you were?
> HOLDER: I wasn't sympathetic to the case. All I did with regard to Mr. Quinn as I've done for any number of lawyers initially was to try to set up a meeting that he wanted to have with the people in the Southern District of New York to review his case. ***
> *** The lawyers in the Southern District of New York refused to do that and that was the end of it. I didn't pressure anybody. I didn't question their judgment. ***
> *** I didn't do anything to try to make this pardon happen. I certainly didn't perform as well, I think, as I should have. And had I performed as well as I was capable of doing, I might have done

something more. I think I would have done more to try to prevent it, but I didn't do anything affirmatively to try to make the pardon happen.

However, Quinn's notes indicate that you told him on March 25, 2000 that "we're all sympathetic" in reference to a meeting about settling the case. That was shortly after you'd received a memo from Quinn on February 28, 2000 from Quinn arguing why the case should be settled. Quinn's notes also indicate that on November 8, 1999, you indicated that you thought the "impasse with SDNY is 'ridiculous.'"

(a) How do you reconcile your testimony that you were not sympathetic with those comments to Jack Quinn?

I do not have a specific recollection of that conversation but, to the extent I indicated that I was "sympathetic," it would only have been to Mr. Quinn's desire to meet with the Southern District prosecutors and not related to the merits of the case.

(b) Please describe in detail any examples where you have attempted to facilitate a similar settlement meeting for a fugitive whose lawyer did not have a personal or political relationship to you similar to Quinn's?

None at any time, including Marc Rich. I did not have a "personal or political relationship" with Mr. Quinn.

(c) How do you reconcile your claim that you "didn't do anything to try to make this pardon happen" with the evidence from Jack Quinn's testimony, contemporaneous notes, and emails, which appears to show a consistent pattern of coaching, encouragement, and assistance?

I stand by my testimony that I did not do anything to try to make this pardon happen. In fact, in March 2000, Mark Rich's defense team referred to me as "a second level bureaucrat who has proved to be a weak link."

(d) What motivation would Quinn have to consistently overstate your involvement in his personal notes for a period of 15 months?

I cannot speak to Mr. Quinn's motivations. I can only tell you the facts of my involvement in this matter.

Victims

14. Understandably, some victims of the FALN terrorist attacks are critical of your nomination. The testimony given by Joseph Conner really puts into perspective the impact a terrorist attack has on the loved ones of the victims. Can you please explain to the victims' families of the FALN terrorist attacks why the clemencies issued to the FALN terrorists were "reasonable"?

The prisoners who were offered clemency by President Clinton had already served long prison terms. None of them were convicted of killing or injuring anyone. Moreover,

the clemency offers were conditioned on each prisoner's willingness to renounce violence and accept certain restrictions on his or her freedom of travel and association. The prisoners were released under the strict supervision of federal probation authorities and continue to be convicted felons with a criminal record.

15. Could you please explain why the support of certain politicians, officials and groups outweighed the strong opposition of the DOJ Pardon Attorney, FBI, U.S. prosecutors and other DOJ employees in your decision to support the FALN clemencies?

I took all relevant factors and views into consideration while weighing the clemency request. The support of groups advocating for clememcy did not "outweigh" those in law enforcement. I considered the nature of the crimes and the duration of the sentences already served. Clemency was supported by numerous religious, human rights, labor and Hispanic civic and community groups, as well as former President Carter, Archbishop Desmond Tutu, and eleven Nobel Peace Prize recipients, including Coretta Scott King.

16. Could you please explain why you did not contact the families of the FALN victims in your decision-making process? Did you not think it was important to hear their views? Did you not think that their views mattered to your decision or the decision of the President?

The U.S. Attorney's Office in Chicago was asked to contact the victims.

17. At the hearing, you justified the pardons/clemencies in the context of a pre-9/11 world. Yet, as Senator Cornyn indicated, other acts of terrorism, such as the 1993 World Trade Center attacks, the 1998 embassy bombings in Kenya and Tanzania, and the 2000 bombing of the U.S.S. Cole had occurred. Were you not put on notice by those events that the terror threat was increasing and that these pardons/clemencies would send the wrong message?

As I testified, I think the nation did not come to understand we were at war soon enough. That said, while I may have come to a different decision regarding the FALN clemency requests in the context of a post 9/11 world, the commitment of the Department of Justice to fighting terrorism remained strong.

WHISTLEBLOWERS

1. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?

If confirmed, I will work with the Judiciary Committee and the independent Office of Special Counsel, which investigates and prosecutes violations of law, including reprisals against whistleblowers, to provide timely and accurate information to the Congress.

2. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI

whistleblowers are not subject to retaliation, be if from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

I will not tolerate unlawful retaliation against any Department of Justice employee, including FBI employees. If confirmed, I will work with OPR and others in the Department to ensure that there are adequate safeguards to ensure whistleblowers receive all of the protections to which they are entitled by law.

3. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

I will make clear to senior officials and managers in the Department, including the FBI, that unlawful retaliation against whistleblowers will not be tolerated and will be cause for discipline under my watch.

DEFENDING/FOLLOWING ACTS OF CONGRESS

Many times an Administration will not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, as Attorney General, it will be your job to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views.

1. If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a matter?

Yes.

FALSE CLAIMS ACT

1. If you are confirmed, will you pledge to vigorously enforce the False Claims Act (FCA), and devote adequate resources to investigating and prosecuting FCA cases?

The False Claims Act serves as the Department of Justice's primary weapon for fighting private sector fraud of Government funds. The Government has recovered over $22 billion through FCA cases since 1986 when Congress last amended the statute to improve its effectiveness. The "qui tam" provisions, reinvigorated as part of the 1986 amendments to the FCA, are a unique and essential feature of the FCA's enforcement scheme. Under my leadership, the Department will vigorously enforce the False Claims Act, and we will devote resources to do so. However, the Department will need the help of Congress. The Civil Division currently does not have sufficient resources to fully enforce the False Claims Act, and we hope Congress will work with us to ensure that the Civil Division has sufficient resources to pursue, investigate, and prosecute these cases both in the current and next fiscal years.

2. Will you pledge to cooperate and support *qui tam* whistleblowers that come forward with allegations of fraud, waste, and abuse under the FCA?

Under my leadership, the Department will work cooperatively with *qui tam* whistleblowers to root out fraud, waste, and abuse.

3. Will you provide Congress with regular, timely updates on the status of FCA cases, including statistics as to how many are under seal and the average length of seal time?

The Department will provide appropriate updates to Congress on the status of FCA cases.

4. Will you work cooperatively with me to ensure that a bill I introduced to restore the original intent of the FCA is reviewed by DOJ in a timely manner and with constructive input?

Yes.

INSPECTOR GENERAL

Oversight by Congress is important, but Congress cannot do all the oversight needed on its own. We need to rely on strong Inspectors General to provide another independent assessment on the operations within the Executive Branch.

1. Do you agree that independence is the hallmark of an Inspector General's integrity and effectiveness?

Yes, I agree.

2. Please explain what kind of relationship you intend to have with DOJ Inspector General Glenn Fine, and describe what steps you'll take to ensure that his office will function as an aggressive and independent check on the Department and its components, in particular the FBI.

I expect to have a good working relationship with the Inspector General, as our goals for a well-functioning Department are the same. I will make known throughout the Department my support for the Inspector General's Office and will insist that components of the Department cooperate with that office. Furthermore, if confirmed, I will work with the Inspector General to implement his various recommendations.

ANTITRUST

As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector.

I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

1. I would like to get a commitment from you that the Antitrust Division, under your watch, will pay heightened attention to agribusiness transactions. Can you assure me that agriculture antitrust issues will be a priority for DOJ if you are confirmed to be U.S. Attorney General?

Agriculture is a way of life for many Americans, and I recognize that very substantial investments are committed to the business of agriculture. Americans rely on agricultural products for nutrition and increasingly for purposes of generating energy. Some of these products are also exported. We will investigate and prosecute violations of the antitrust laws when the facts and law warrant, including in the area of the agriculture. If confirmed, I will work with the Committee and other agencies to ensure that we make agriculture antitrust issues a priority.

2. I will be re-introducing a bill that I sponsored in the 110th Congress with Senator Kohl, the Agriculture Competition Enhancement Act. This legislation, among other things, would require the Justice Department to issue agriculture merger guidelines. Can I get your commitment that the Justice Department will work with me on this bill? As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector.

The Department will review this bill and if confirmed, I commit to work with Congress on these issues.

FBI AND ATF COOPERATION

Last year, it was reported that the ATF and FBI have been involved in a jurisdictional squabble over domestic bombing investigations ever since ATF merged into the Justice Department in 2002. In 2004, then-Attorney General Ashcroft wrote a memorandum in an attempt to tackle the coordination of explosives investigations. Just recently, a new Memorandum of Understanding was drafted and signed by the Director of the FBI and the Acting-Director of the ATF. This document supersedes the previous agreement and is designed to facilitate coordination in the field. While I believe this new memorandum is a step in the right direction, real leadership from the Attorney General is needed to make sure that true coordination and cooperation is occurring between the two agencies.

In addition, the Inspector General is reviewing the cooperation between the ATF and FBI in bombing investigations, and is expected to issue a report later this year.

1. In the period that the Inspector General is completing his report, what will be your plan of action to move this issue forward to achieve a workable solution for all parties?

If confirmed, I will work with FBI and ATF leadership to ensure that their Memorandum of Understanding is enforced and that measures are taken to ensure coordination and cooperation in the field between the two agencies. If confirmed, I look forward to meeting with the leadership of these law enforcement agencies and reviewing whether their Memorandum of Understanding covers all the concerns outlined in Attorney General Ashcroft's memorandum and whether adequate internal safeguards exist to ensure that agents in the field adhere to the letter and the spirit of both memoranda.

2. Will you work with the Inspector General to ensure that any recommendations for facilitating cooperation are followed and immediately implemented by both the ATF and the FBI?

Yes.

COOPERATION ON NARCOTICS INVESTIGATIONS BY DOJ AND DHS

In April 2008, the Judiciary Committee held an oversight hearing on the Department of Homeland Security where Secretary Chertoff was questioned about why Immigration and Customs Enforcement (ICE) has chosen not to participate in DOJ's Organized Crime Drug Enforcement Task Force Executive Office. That office hosts a law enforcement "Fusion Center" where various law enforcement agencies share information and intelligence. It is my understanding that ICE has attempted to discuss participation in the Fusion Center and sent a letter dated May 15, 2007, to then-Deputy Attorney General McNulty, which was never formally responded to. I am also aware that a subsequent letter forwarding this communication was sent on April 28, 2008, to the Acting Administrator of the Drug Enforcement Administration (DEA). I am concerned that this back and forth exchange demonstrates signs of a strained relationship between agencies that are on the front line in preventing narcotics from coming into our country.

I am conveying this same message to ICE and am strongly encouraging them to cooperate in good faith with DOJ to begin participating in the Fusion Center. In the post 9/11 world, we cannot have gaps in our intelligence sharing. In my capacity as the Co-chairman of the Caucus on International Narcotics Control, I have asked the Government Accountability Office to review the post-9/11 operations of the DEA and I understand the final report is forthcoming.

1. If you are confirmed, will you immediately implement any recommendations that are offered by the Government Accountability Office that require the DEA or DOJ to make changes to facilitate better cooperation with ICE?

Inter-agency cooperation is essential to our national security mission, as well as traditional law enforcement goals. If confirmed as Attorney General, I pledge to work with the Secretary of the Department of Homeland Security to ensure cooperation between the DOJ agencies and those of DHS, including ICE. To this end, I look forward to reviewing the recommendations of the Government Accountability Office

and to working with the agency heads to implement measures designed to increase collaboration and cooperation if I am confirmed.

2. It is my understanding that House members are considering introducing legislation that would allow ICE to investigate violations of the Controlled Substances Act (known as Title 21 of the US Code). Currently, only the DEA and the FBI have the legislative authority to investigate such matters, despite the fact that ICE often uncovers evidence of Title 21 violations during its investigations into smuggling at the U.S. border and other ports of entry.
3. Do you believe that ICE should be given concurrent authority with DEA and FBI to investigate violations of Title 21? Why or why not?

(2 and 3) There has been considerable restructuring of the various law enforcement agencies since I served as Deputy Attorney General. ATF is now part of DOJ, ICE and Secret Service are now part of DHS, and the FBI has reallocated a considerable percentage of its resources from its traditional law enforcement work to our critical national security mission. If confirmed, I will review the current structure of these agencies before recommending whether ICE should be given authority to enforce Title 21. If confirmed, I will work to ensure a strong working relationship between DOJ and DHS on these matters.

MONEY LAUNDERING

I have fought to enact tough legislation that cuts the financing of criminal and terrorist organizations by reforming our Nation's anti-money laundering laws. We need wide ranging reforms to curb abuses of our financial system that hide and transfer money from ill gotten gains. While we have made great strides since 9/11, these unscrupulous networks of terrorists and criminals still seek to move money through an ever changing and evolving network of transactions. I believe more can and should be done immediately to meet these evolving threats.

To this end, I introduced the Combating Money Laundering and Terrorist Financing Act in the 110th Congress, and I plan to reintroduce it again this year. This legislation will restructure our anti-money laundering laws to stop new trends such as bulk cash smuggling and use of monetary instruments in blank or bearer form. It also prohibits unlicensed money transmitting businesses, and brings stored value instruments within the money laundering statutes. These are critical changes needed to protect us from terrorists and to stop criminals from garnering ill gotten gains.

1. If you are confirmed, will you work with me to help strengthen our money laundering laws to prevent terrorists, criminals and drug traffickers from possessing illegal proceeds?

If confirmed, I pledge my full cooperation in the efforts to strengthen money laundering laws and other tools designed to reduce the access of terrorists and other criminals to their illegal proceeds.

2. The current Memorandum of Understanding (MOU) between law enforcement agencies investigating money laundering is almost 20 years old and does not include the Department of Homeland Security which houses the Secret Service and ICE—two agencies integral to money laundering investigations. Will you pledge to update this MOU so that our Nation's law enforcement agencies are actively working together?

We need a full arsenal to achieve this critical objective, especially as terrorist groups and international criminal organizations become more sophisticated in using established banking systems. To this end, if I am confirmed, I will review relevant memoranda of understanding and work to ensure that all appropriate parties are fully represented and engaged.

3. What steps will you take to more aggressively investigate alternative financing methods that terrorists and money launderers use to earn, move and store assets?

If confirmed, I intend to meet with the experienced prosecutors in the Asset Forfeiture and Money Laundering Section to better understand what mechanisms are currently deployed, which ones are not, and what steps we should undertake to maximize such efforts. Asset forfeiture can be a crippling blow to terrorist and criminal organizations.

4. Do you pledge to coordinate the Department's criminal enforcement efforts with the Department of the Treasury's separate regulatory mission to fill in some of the current gaps in our financial system that allow money launderers to go undetected? If so, what would be your first step to accomplish this task?

Asset forfeiture laws must be vigorously and creatively enforced, and we must work with our counterparts in the Treasury Department and other organizations to ensure that financial institutions are doing all that they can to detect and report suspicious activity, that illegal proceeds are frozen and seized, that sanctions are imposed when appropriate, and that the criminal and civil laws are utilized to their fullest extent. If confirmed, I intend to meet with the experienced prosecutors in the Asset Forfeiture and Money Laundering Section to better understand what mechanisms are currently deployed, which ones are not, and what steps we should undertake to maximize such efforts.

METHAMPHETAMINE ENFORCEMENT AND PROSECUTION

Methamphetamine continues to plague states across the country, particularly in rural areas in the Midwest that were hit hard by the spike in meth labs in the 1990's. However, because tough laws such as the Combat Meth Enforcement Act were enacted at both the state and federal level, there has been a dramatic decrease in the amount of domestically produced methamphetamine. This drop in production is largely attributed to the reduction in available precursor chemicals such as Pseudoephedrine or PSE. While this reduction in domestic labs has helped clear our communities of meth and these dangerous labs, more work remains.

Unfortunately, cartels outside the country have filled the void for domestic meth, and now a significant amount of this drug is imported from outside the U.S. Further, the National Drug Intelligence Center has stated in the 2009 Drug Threat Assessment that recent actions in Mexico to reduce meth precursor chemicals will cause domestic meth production to surpass 2007 levels. This is a concerning turn of events given domestic production decreased from 2003-2007. Senator Durbin and I worked to pass the Methamphetamine Production Prevention Act last year to cut down on "smurfing"—where meth cooks go store to store to buy legal amounts of precursors until they obtain a large enough quantity to make meth. We believe this law will give DOJ prosecutors the tools to convict domestic meth cooks who "smurf".

1. Given that the 2009 Threat Assessment envisions an increase in domestic meth production, how would you have DOJ help stop meth production and put meth manufacturers out of business?

From my prior service in law enforcement, I am well aware of the plague of methamphetamine, and the dramatic dangers its abuse and manufacture pose. I applaud congressional effort to limit the distribution of the critical precursor chemical, pseudoephedrine. Under my leadership, the DEA will work aggressively to address the production of methamphetamine in the United States and in the international arena. If confirmed, I intend to review the allocation of resources to determine how to reinvigorate the DEA's collaborative programs with local law enforcement; through these programs the DEA worked effectively with local law enforcement to identify and target methamphetamine laboratories and dealers in particular jurisdictions. I also intend to review the allocation of grant funds to local law enforcement to help combat this serious problem.

2. Would you reallocate any DOJ resources for drug prosecutions and enforcement given the potential for more domestic production?Do you think that electronic, interoperable log book systems are necessary to help crack down on meth cooks that "smurf" between stores to buy meth precursors?

If confirmed, I pledge to review this system and other efforts underway to fight the methamphetamine problem, to help ensure that the Department is doing everything it can with its available resources.

3. If you are confirmed as Attorney General, how will you prioritize efforts to combat the manufacture, distribution and importation/smuggling of illegal drugs?

I am committed to our ongoing efforts to fight the manufacture, distribution, and importation of illegal drugs. This is increasingly a fight that impacts our national security as well as the safety of communities on a daily basis. The DEA has uncovered links between international narcotics trafficking organizations and the funding of terrorist groups. These links add a new dimension to our fight against drug trafficking.

PRESCRIPTION DRUG AND OVER THE COUNTER DRUG ABUSE

Another dangerous trend in drug abuse is the use of prescription drugs and over the counter (OTC) medicines for recreational purposes. The 2009 Threat Assessment states that prescription drug abuse is very high. Given that prescription drugs and OTC medications are easy to obtain from virtually any home medicine cabinet or convenience store, this trend threatens to create an explosion of new drug users. Moreover, many users of these kinds of drugs think that they are safe because they are prescribed by doctors or are readily available over the counter.

The DEA Office of Diversion Control is responsible for overseeing the wholesale and retail diversion of prescription drugs, but cannot generally enforce the laws against those who abuse these types of drugs taken from someone with a lawful prescription. This is a tricky situation that requires a multi-faceted approach.

1. Given the increase in abuse of prescription drugs and OTC medications, do you believe DOJ should devote additional resources to combat this trend, either via law enforcement or prosecution? Why or why not?

The DEA considers prescription drug abuse to be a grave and rapidly-growing problem for both children and adults. The widespread use of the internet to sell prescription drugs outside the bounds of proper medical use make it a more difficult problem to combat. The DEA estimates that one in five teens abuses prescription medication, and that the non-medical use of prescription drugs is becoming the most frequent initiation into illegal drug use. The DEA also estimates that nearly seven million people in this country engage in the non-medical use of prescription drugs. If confirmed, I intend to work closely with the DEA to review its diversion control funding streams, the systems currently in place that require pharmaceutical distributors to file reports that law enforcement can track, and efforts to regulate how doctors and pharmacies interact via the internet. Based on this review, we can assess whether additional regulatory tools and resources are needed to help combat this growing problem.

2. What other options are available for DOJ and its subordinate agencies to help stop this abuse from continuing to increase every year?

If confirmed, I intend to work closely with the DEA to review its diversion control funding streams, the systems currently in place that require pharmaceutical distributors to file reports that law enforcement can track, and efforts to regulate how doctors and pharmacies interact via the internet. Based on this review, we can assess whether additional regulatory tools and resources are needed to help combat this growing problem.

FUGITIVE WARRANTS AND NCIC

The St. Louis Post-Dispatch published a series of articles last year regarding the serious shortcomings of the National Criminal Information Center (NCIC) managed by the FBI. The NCIC is an FBI administered database that is supposed to be a clearinghouse for all fugitive

information input by federal, state and local law enforcement. The articles reported that dangerous fugitives continue to roam freely in our country committing more crimes or evading law enforcement because some state and local law enforcement agencies do not enter these warrants into NCIC and/or refuse to pay for extraditing criminals back to their jurisdictions.

NCIC is a crucial tool for both police officers and for public safety. Law enforcement agencies that receive federal funding are supposed to input the necessary fugitive information into the system. However, many of these agencies simply aren't doing it and the information in the system is not up to date.

1. A couple of different legislative proposals have been discussed in this Committee which would create new grant programs that provide additional money to states to do the job they are already supposed to do. Why should DOJ provide more funding, particularly when law enforcement agencies do not comply with the current requirements to enter fugitive warrants into the system?

The National Criminal Information Center (NCIC) is an important tool for law enforcement but its shortcomings represent a public safety risk. The failure to address these shortcomings and lack of support from federal, state, and local law enforcement may result in greater danger as fugitives evade capture more successfully and commit more crimes. To the extent that law enforcement does not comply with current requirements, if confirmed I look forward to working with Congress to correct shortcomings with NCIC and create an adequate incentive approach to any new grant program.

2. If new spending were authorized by Congress, what oversight mechanisms would you put in place to ensure that these funds are not wasted, law enforcement agencies comply with the law, and the NCIC system is up to date and accurate?

If confirmed, I would work to ensure a robust compliance office for any authorized spending in this area. I would also seek the advice of the Office of Inspector General, which has developed some expertise in the oversight of grant management programs. I would work to ensure that grants are awarded through an open and fair competitive process, that any non-competitive grants are properly justified, that funds are used as intended, and that all grant making procedures are appropriate.

BLAGOJEVICH

1. Can you please give us some detail on the work you did for Governor Blagojevich on the Rosemont Casino issue? What were the terms of your contract? How did you identify this work in your law firm time sheets?

My law firm and the State of Illinois were unable to come to agreement on terms of a contract. Time spent on preliminary, preparatory work for the Illinois Gaming Commission matter was recorded as potentially billable work, but ultimately written off

because, as I testified during my hearing, no invoice was ever sent to the Illinois Gaming Commission, and my law firm received no fees from the matter.

2. You may have read press accounts about concerns expressed regarding your ability to conduct the investigation into the activities of the Rosemont Casino. According to one press report, the Gaming Board's chief investigator in 2004 said that the timing of Governor Blagojevich's appointment of you to be the Illinois Gaming Board's Special Investigator raised the staff's suspicions, and that "the concern was Holder had a bias to do whatever Blagojevich wanted, which was to give the casino to Rosemont. We all believed the only reason Holder was coming in was to fashion an investigation that would manipulate the casino into Rosemont." How do you respond to this allegation? Do you agree with that assessment? Why do you think that people had these kinds of concerns?

I had no bias whatsoever related to the proposed investigation. I cannot comment on why anyone would have mistakenly thought otherwise.

3. Can you tell me how you came about to be picked by Governor Blagojevich to work on the Rosemont Casino matter? How did he approach you for the position? Did you have to go through an open bidding process with the state of Illinois for this job?

I do not now know or recall having known how my name came to the attention of the Gaming Board, nor do I recall who contacted us about representation. There was not an open bidding process, and as I testified during my hearing, no invoice was ever sent to the Illinois Gaming Commission and Covington received no fees from the matter.

4. If you are confirmed to be the next Attorney General of the United States, do you commit to recuse yourself from any DOJ matter involving the Illinois Governor? Do you see you having any possible conflict of interest with DOJ matters concerning Governor Blagojevich? If you do, why didn't you identify this as a possible conflict of interest in your Judiciary Committee questionnaire?

If confirmed as Attorney General I will consult with ethics experts at the Department of Justice to determine whether I should recuse myself from matters, including matters involving Governor Blagojevich. I did not identify this as a possible conflict of interest because my law firm's engagement by the state of Illinois never materialized and I was never paid to perform legal work for the state or the Governor.

DOJ GRANTS MANAGEMENT

For the past 8 years, DOJ's Inspector General has identified the grant award process and oversight of grant funding as major challenges to preventing fraud, waste, and abuse. It seems that year after year, the Inspector General's audits of grantees point to unallowable and unsupported costs, awards to grantees and subgrantees based upon connections and not merit, failure of grantees to comply with grant requirements, and little or no oversight by the Office of Justice Programs (OJP) —the entity overseeing grants. With DOJ awarding billions of dollars a year in grants, any failure in adequately managing and monitoring grants could lead to millions of taxpayer dollars lost to fraud, waste, or abuse.

1. What is your plan for revamping grant management at DOJ?

Overseeing thousands of grants – and doing it well – requires ongoing vigilance and a strong management team that insists on accountability and a system of internal controls. If confirmed, I intend to implement four measures: First, I will ensure that a strong team of leaders is appointed for OJP and COPS. These individuals must be ready to work in tandem with the career team at the Department. Second, I will institute ongoing oversight from the Department's leadership offices. Third, as part of that oversight, I will ask the Associate Attorney General, who oversees COPS and OJP, to provide me with regular tracking reports so we can be ahead of problems – not behind the curve. Fourth, we will work in collaboration with the Inspector General – and insist that OJP and COPS do the same.

2. How do you plan to ensure accountability and transparency in the grant making process?

Fairness in the grant making process is critical, and that can only be judged if the process is transparent and accountable. If confirmed, I intend to take steps to ensure that the Department's grant making process adheres to such standards. Specifically, I would do the following: First, ensure that grant solicitations are issued in a timely fashion so that potential grantees receive sufficient notice to prepare proposals. The solicitations should spell out the ground rules – how will decisions be reached? Who will be making the decisions? When will those decisions be made? Second, peer review panels should be used wherever possible to help in the review process. Third, decisions should be made and announced in a timely fashion. The rationale for those decisions should be announced to the extent possible.

3. Do you have any specific recommendations for reforms?

Yes. During the transition, we heard suggestions from state and local grantees for streamlining the grant application award and management process that many find frustrating. These recommendations involve, for example, making the federal government's Grants.gov application portal a more effective "one stop shop" for federal grant support. If implemented, such changes could both improve grant management and enhance communication with applicants – making the process more transparent and easier to navigate.

4. If you are confirmed, will you examine the grant management structure at OJP and look for cost savings by eliminating potentially duplicative programs?

Yes. I believe there are redundant programs at OJP arising from the overlap and duplication in the underlying statutes that created OJP's bureaus. In 1999, when I was Deputy Attorney General, the Justice Department recommended a proposed OJP reorganization to Congress. While that proposal was not enacted, I support revisiting the need for reorganization.

BYRNE/JAG GRANTS

The Byrne/JAG program has been successful because it provides vital resources of both equipment and staff to state and local law enforcement when they assist in the prosecution of federal crimes, such as drug crimes. In my home state of Iowa, the Byrne/JAG funding is used to form multi-jurisdiction drug task forces. In Border States, Byrne/JAG funding is used to help shore up border security. It is this use of funds for truly federal purposes that makes the Byrne/JAG grants a worthwhile endeavor.

However, while the Byrne/JAG program has truly helped state and local law enforcement fight violent crimes that have a federal nexus, there are a number of other grant programs at DOJ that lack a similar corresponding federal nexus. I am concerned that as budgets tighten and deficit spending increases, funding must be given to programs that are truly federal in character and are not just spending money on purely state matters.

1. Will you ensure that the Byrne/JAG program remains the cornerstone of federal financial assistance to state and local law enforcement agencies?

Yes, I will. Byrne/JAG is, as you say, the central federal criminal justice assistance program to the states. It is what allows states to innovate in the kind of critical areas that you cite. It will be a priority of mine to reinvigorate this program.

2. Will you review the various grant programs at DOJ to ensure federal dollars are spent on matters that are truly federal in nature and not merely slush funds for state expenditures?

Yes. The federal government has a strong interest in expenditures being used for their intended purpose, such as preventing crime, but has no interest in funds being misused for state expenditures unconnected to the purpose of the grants.

SEX TRAFFICKING PASSPORT REVOCATION NOTIFICATION

I have concerns about our efforts to curb sex trafficking and sex tourism. The Victims of Trafficking and Violence Protection Act of 2000 required the Secretary of State to report to Congress about trafficking in persons and sexual exploitation around the world. The 2007 Trafficking in Persons Report recognized this problem noting that each year more than one million children are exploited in the global commercial sex trade. I find this number staggering and worry that as a byproduct of our efforts domestically, we may be driving the problem outside our country. I believe we have an obligation to ensure that we protect children at home and abroad.

To that end, I authored an amendment in the recently enacted William Wilberforce Trafficking Victims Protection Act of 2008 that requires the Attorney General to notify the Secretary of State of any convictions under 18 U.S.C. § 2423 (Transportation of Minors) in order for the Secretary of State to revoke or suspend passports issued to known, convicted sex traffickers.

1. If you are confirmed, will you ensure that DOJ provides timely notice of conviction of any individual under 18 U.S.C. § 2423 to the Secretary of State?

If confirmed, I will work to ensure timely notice of such convictions to the Secretaries of State and Homeland Security. We should ensure that our domestic efforts do not simply drive the problem to other countries.

2. Will you actively support efforts to prevent known sex offenders and sex traffickers from traveling abroad to abuse children in foreign countries?

Yes, I will actively support such efforts.

3. Do you support raising minimum mandatory federal prison sentences for child predators who are convicted of the most heinous sex and violent crimes against children?

I support using every tool made available by Congress to prosecute these offenders.

OVERSIGHT

Often times, Congress will ask the Government Accountability Office (GAO) to evaluate the Justice Department, subordinate agencies, as well as programs and activities. These evaluations require the cooperation of the Department in providing documents for review and access to witnesses for interviews. The cooperation of the Department is critical in allowing the GAO to fulfill the requests Congress makes.

1. Will you commit to ensuring that GAO requests for access to documents and witnesses are agreed to in a timely manner?
Yes, I will ensure that reasonable and lawful requests from GAO are agreed to in a timely manner.

2. Will you commit to working with the GAO in a constructive manner to address the oversight and other needs of Congress?

Yes, I am committed to working with GAO in a constructive manner to address the oversight and other needs of Congress.

3. Will you encourage subordinate agencies of the Justice Department to also cooperate with GAO in a similar fashion?

Yes, if confirmed I will encourage subordinate agencies within the Justice Department to cooperate with GAO.

4. What specific steps will you take to ensure that GAO receives timely access to the information and agency officials it needs to carry out reviews of DOJ and its programs?

One of the problems I have encountered relative to receiving documents from DOJ is the claim that there is a policy of not releasing Office of Professional Responsibility (OPR) documents. However, OPR documents are routinely provided in civil litigation, and have been provided to Congress in the past. I am aware of no legal support for a general policy of

withholding all OPR documents from Congress, and this policy hinders our ability to examine OPR decisions for potential retaliation.

I will make it directly and explicitly clear to leadership within the agency that they are to work with GAO in a timely and constructive manner.

5. If you are confirmed, will you continue this policy of withholding OPR documents from Congress? If so, what is the legal basis for withholding OPR documents from Congress?

It is my understanding that the longstanding policy of the Department is that disclosure of certain documents cannot occur until all administrative reviews have been completed and the Office of Privacy and Civil Liberties makes a review of the information to be disclosed. This review is conducted with sufficient consultation to protect the privacy of government employees and law enforcement concerns. If confirmed I will work with Congress to ensure that body has access to the greatest information possible without offending legitimate privacy or law enforcement concerns.

OLC OPINION ON RANKING MEMBER ACCESS TO DOCUMENTS AND INFORMATION

On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Letter Opinion was titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." The Opinion concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member.

Courts have also held views contrary to that of the Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army,* 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". *See Devine v. United States,* 202 F.3d 547, 551 (2nd Cir. 2000).

Despite the plain language and the court interpretations, this opinion is used as a shield to prevent disclosure of information to Ranking Members. It erroneously relies upon the "longstanding executive branch practice on this question," and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion. I believe this opinion is a detriment to the American people who have a right to know what goes on in the Government.

1. Do you support the position taken by DOJ in this OLC Letter Opinion?

I fully respect the important role of Congress under the Constitution, and if confirmed I will work to ensure that the Department operates in a manner consistent with the legislative branch's legitimate oversight functions.

2. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

I strongly believe in transparency and that the Department should, to the extent possible, cooperate with Congress and its members in the exercise of legislative oversight. That said, there may be occasions on which the executive branch must keep information confidential, as the courts have recognized.

3. In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

I have not had the opportunity to study this issue of interpretation with the care that it warrants. I do believe that, where possible, the executive branch should work with Congress and its members to ensure that the legislative branch may exercise its legitimate oversight functions.

4. Will you pledge to work with Ranking Minority Members of Committees on any oversight request, regardless of the OLC Letter Opinion?

Yes.

OBSCENITY PROSECUTIONS

In 2005, DOJ created the Obscenity Prosecution Task Force to "exclusively protect America's children and families through the enforcement of our Nation's obscenity laws." This task force was designed to coordinate prosecutions of obscenity related crimes among the 93 United States Attorney's offices and DOJ. The FBI also created an obscenity task force following the confirmation of then Attorney General Ashcroft in 2001. These task forces were designed to bring step up prosecutions for those who violated Federal obscenity laws.

1. Do you plan to continue the Obscenity Prosecution Task Force as Attorney General? If not, why not?

I agree that protecting children and their families from obscenity is an important objective. If confirmed as Attorney General, I will review the work of the Task Force and consult with Department officials about the best means going forward to protect children and their families.

2. Will obscenity prosecutions remain a top priority at DOJ, should you be confirmed as Attorney General?

I will make protecting children and their families a high priority.

3. Some have raised concerns that in practice, the Obscenity Prosecution Task Force limited the ability of U.S. Attorney's to prosecute obscenity cases outside of Washington D.C. Do you believe that the Task Force will hinder the ability to prosecute obscenity cases by U.S. Attorneys?

I am unaware of this concern and will investigate the impact that the Task Force has on the ability of U.S. Attorneys to prosecute appropriate cases.

4. I understand that during the Reagan and Bush 41 Administrations, federal agents were allowed to fully participate and lead obscenity investigations, and local police officers and sheriffs' deputies were often times deputized as deputy U.S. Marshalls to assist in the federal prosecution of obscenity cases. As Attorney General would you advocate the use of deputized local law enforcement agents to pursue obscenity cases?

Whether deputized as federal officials or as partners in critical law enforcement efforts, I strongly support partnerships with state and local law enforcement and will work to foster such cooperation.

CRIMINAL PROSECUTIONS FOR COUNTERFEITING AND THE SENTENCING COMMISSION

Last year I was joined by Senators Specter, Hatch, and Vitter in writing a letter to the U.S. Sentencing Commission regarding the U.S. Sentencing Guidelines and the application of the current guidelines to individuals who have been convicted of a counterfeiting scheme that involved the process of "bleaching" Federal Reserve notes. A bleached note occurs when an individual uses chemicals to remove the ink from a real Federal Reserve note and then uses a printer to print a new image on the bleached paper. As a result, a number of safety features present on the bleach note remain, with a new image superimposed on top. By bleaching the original note, these criminals are able to produce counterfeit note on real currency paper that could very easily be mistaken as real currency.

Currently, the Sentencing Guidelines instruct the courts to use §2B1.1 (Theft Property Destruction and Fraud) and § 2B5.1 (Counterfeit Bearer Obligations of the United States) when sentencing persons convicted of counterfeiting. The problem with the use of these two different guidelines is that individuals who use the more sophisticated method of counterfeiting by bleaching notes—as opposed to just photocopying currency—are given a sentence under §2B1.1 which has a lower base offense level than that of §2B5.1. This difference results in a more sophisticated criminal getting a lower sentence than the less sophisticated criminal, despite the exact same intent—and arguably a higher quality counterfeit note.

Courts across the country have struggled with this application of the Sentencing Guidelines and we've asked the Sentencing Commission to address this. The Sentencing Commission

has added this issue to its Notice of Final Priorities for the amendment cycle ending in May 2009. I fear that instead of a straightforward fix that puts all counterfeiting under the same guideline, we may get a new set of guidelines that try to create different sentences for criminals who seek to do the same thing—harm the integrity of the U.S. Federal Reserve by creating counterfeit Federal Reserve Notes.

1. Do you believe that the Sentencing Guidelines should include one straightforward Guideline for the sentencing of individuals convicted of counterfeiting? Why or why not?

A sentencing regime that treats sophisticated criminal activity more leniently than similar but simpler crimes is at odds with law enforcement objectives and the goals of the Sentencing Guidelines themselves. The Sentencing Guidelines expressly consider as aggravating factors the amount of planning that criminal activity involved and the level of sophistication it entailed. I am not aware of any reason why the crime of counterfeiting should be an anomaly. I will need to study the Sentencing Guidelines as they pertain to counterfeiting crimes, consult with the Sentencing Commission and learn more about the crimes of counterfeiting to assess the reforms that are needed in the sentencing laws that pertain to this illegal activity.

2. Will you pledge to work with me to ensure that we bring some sanity to the Sentencing Guidelines for counterfeiting crimes to ensure that more sophisticated criminals are not rewarded with a lower sentence for their crimes?

If I am confirmed, I pledge to work with the Commission and Congress to ensure that one of the objectives of the Sentencing Guidelines -- to punish more sophisticated criminal activity more forcefully -- is realized in this law enforcement area.

MSP QUI TAM

In the 1980's, Congress enacted the Medicare Secondary Payer (MSP) statute that was designed to protect Medicare expenditures from waste and abuse when Medicare footed the bill for services, but another insurer was supposed to pay. The MSP statute provided a right of action to either the Department of Justice or to private litigants to file suit on behalf of Medicare. This law was based largely upon the successes of other *qui tam* statutes—such as the False Claims Act—and was designed to recover monies that Medicare wrongfully paid out. However, recent court decisions have held that the MSP statute is not a *qui tam* statute for the purposes of recoveries. As a result, any monies recovered by a plaintiff are theirs to keep and they are not required to pay back any share to the U.S. Treasury. This is an inaccurate reading of the statute and creates a result contrary to the purpose of the statute.

Recently, DOJ filed a brief in the Federal District Court for the Western District of North Carolina as an Intervenor defending the constitutionality of a *qui tam* provision that allows relators to file suit on behalf of the Government for misuse of patent markings (35 U.S.C § 292).

In that brief, DOJ stated that Congress has enacted several *qui tam* provisions and expressly noted that the MSP statute (42 U.S.C. § 1395y) provided a *qui tam* cause of action for "failure to pay primary health insurance claims where Medicare is the secondary payer."

Based upon this statement, DOJ seems to agree that the MSP statute is a *qui tam* statute similar to those such as the False Claims Act.

1. Do you believe that the MSP statute is a *qui tam* statute?

The MSP statute is a complex one and the issue of whether Congress provided qui tam authority in the MSP is a relatively new issue. If confirmed I will work with the career professionals at the Department of Justice to provide the Committee with the Department's view.

2. Will you continue to support the use of the MSP statute and the *qui tam* mechanism in the statute to help Medicare recover monies expended when Medicare should have been the secondary payer?

The MSP statute is a complex one and the issue of whether Congress provided qui tam authority in the MSP is a relatively new issue. If confirmed I will work with the career professionals at the Department to address this issue.

ATF NIBIN

The ATF operates the National Ballistic Information Network (NIBIN) Program which permits federal, state, and local law enforcement agencies to image and compare gun evidence obtained from crime scenes. On the NIBIN website, the success of the system is touted by examples of cases solved or arrests made as a result of NIBIN use. These examples are listed under "Hits of the Week." A review of these "hits" going back to 2004 shows that a nearly all of the law enforcement successes listed are cases from local police departments. This lack of data from federal agencies is surprising given that on January 19, 2001, then-Attorney General Reno and Treasury Secretary Summers issued a memorandum directing all Justice and Treasury law enforcement agencies to trace all weapons and enter every shell casing or bullet obtained from a crime scene into NIBIN. . Despite this directive, it appears that federal data is lacking in NIBIN. Further, in 2005, the DOJ Inspector General found that the NIBIN system was not being properly used and made twelve recommendations to ATF improve it.

1. Given that federal law enforcement agencies are mandated to use the system, will you inquire with the ATF at to why as a whole federal law enforcement agencies are conspicuously absent for these "hits of the week"?

Yes.

2. Will you look at internal DOJ policies mandating component agencies to use NIBIN and confirm compliance? Will you inquire with other federal law enforcement agencies to determine if they are participating in NIBIN?

Yes.

GUN VIOLENCE VERSUS ILLEGAL GUN PROSECUTIONS

In the late 1990s, federal prosecutors in Richmond, Virginia implemented Project Exile, a program where federal prosecutors targeted felons in possession of firearms or people using guns in the course of drug trafficking. Many Senators wanted to expand the program nationally, but the Clinton Justice Department resisted. Despite the fact that Project Exile was a clear success in Richmond, VA, Philadelphia, PA, Rochester, NY, and everywhere else it was implemented, you called this "a cookie-cutter approach to reducing gun violence."

1. Do you still believe a national Project Exile would be a mistake?
I, along with James Comey, started and supported Project Exile in Richmond. Law enforcement tactics must adjust to the factual circumstances that they face; the strategies that worked in the 1990s may not be the right ones today. If confirmed, I will work with prosecutors and law enforcement officials at the local, state, and federal level to determine what program will most effectively address the violence we face today.

2. Why did you believe that expanding a successful federal program like Project Exile nationwide would not help target gun violence?

I strongly believe that addressing gun violence is a critical law enforcement priority, but efforts to reduce such violence will be most effective when local, state, and federal authorities work together to address the particular problems of each community. Project Exile worked well in the 1990s in some cities, but may not be the best solution in a different place at a different time.

3. Do you believe that enforcing gun laws already on the books is insufficient to combat gun violence?

If confirmed, I will work to strongly enforce the laws currently on the books and will consult with prosecutors and law enforcement officials and Congress about whether additional legal authorities are needed.

***ALLISON ENGINE* FALSE CLAIMS ACT**

Last year, the Supreme Court issued a decision interpreting portions of the False Claims Act in A*llison Engine Co. v. United States ex rel. Sanders*. This opinion created a new intent requirement for the Government and *qui tam* relators to prove before liability can attach to certain false claims. Unfortunately, this new requirement has hindered the ability of the Government to recover Government money lost to fraud. My concerns were heightened when a judge in my home state of Iowa dismissed a False Claims Act case on his own motion, despite objections from the Justice Department. I am worried that this case, *U.S. v. Hawley*, is just the start of a series of case dismissals and will endanger the Federal Fisc.

1. Do you agree that the decision in *Allison Engine* is a set back for the Federal Government in prosecuting FCA cases?

The Department is evaluating the actual impact of the decision in *Allison Engine*. The Department is still vigorously pursuing these cases, and I believe we have strong cases and strong arguments to make.

2. If confirmed, will you make it a priority to determine what, if any, legislative fix is necessary to ensure that fraudfeasors do not get away with ripping off the Government because of this new loophole?

Under my leadership, efforts to combat fraud against the government will be a priority. If further legislation is needed, the Department will work cooperatively and expeditiously with Congress to resolve any issues.

NATIONAL SECURITY WHISTLEBLOWERS

National Security Whistleblowers who are often treated differently from other government whistleblowers because of the sensitive nature of their duties. These individuals have security clearances that prevent the disclosure of our Nation's closest held secrets. Security clearances are a privilege and not a right and must be given out only to those who are trustworthy. However, individuals with security clearances that know of or witness wrongdoing often face a catch-22. They can either report the wrongdoing to supervisors who may have an interest in covering up the wrongdoing and in turn retaliate against them, or they can sit silent and let the wrongdoing continue. Either situation is unacceptable.

The Senate unanimously passed the Federal Employee Protection Act of 2007 during the last Congress. This bi-partisan legislation would ensure that classified, highly sensitive national security information remains secret, while allowing Congress to conduct oversight required under the Constitution. This bill attempts to strike a balance between national security and whistleblower protection. It would allow individuals who know of wrongdoing in classified matters to come forward and report that wrongdoing to Congress. But, it only allows disclosure to specific persons cleared to hear classified information, ensuring the protection of our Nation's secrets.

On January 22, 2008, the Attorney General, the Director of National Intelligence, the Secretary of Defense, and the Secretary of Homeland Security signed a letter objecting to this legislation. I am concerned by statements in this letter which claim that efforts to provide a secure reporting mechanism to Congress for whistleblowers with classified information are unconstitutional and jeopardize national security. While I agree that this information needs to be treated with the utmost respect and security, Congress has a distinct role in overseeing activities of the government, including oversight of matters involving classified information.

I'm not for a blanket privilege allowing whistleblowers to release classified information at will. However, it seems we need some mechanism to allow protected disclosures to Congress, absent interference from those who may want to stifle protected whistleblowing.

1. Do you believe whistleblowers that know of problems with matters of national security should be prevented from bringing that information to Congress?

It is vitally important that government employees have an opportunity to report misconduct when they see it, and that they be protected from retaliation when they do

so appropriately. The question of whether subordinate Executive Branch officials may transmit classified information to Congress without authorization is a complex one, raising separation-of-powers issues that may depend on the particular facts of the situation.

2. Do you believe that Congress has a right to classified information from individuals who believe that there is:

> "(I) any violation of any law, rule, or regulation; (II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; (III) a false statement to Congress on an issue of material fact"?

See answer above.

INDEPENDENCE OF ATTORNEY GENERAL/FREEDOM FROM POLITICAL INFLUENCE

1. If you are confirmed, how you will ensure that the Justice Department and the Attorney General will operate in a manner that is free from political and partisan influence? Will you put in place new procedures or safeguards? How will you make sure that the actions and decisions of the Justice Department and the Attorney General are accountable and transparent to the Congress and the American public?

The Attorney General is the people's lawyer and therefore different from other cabinet members. He or she must be beyond reproach because the public's confidence in the rule of law depends on having confidence that the law will be enforced in an even-handed and impartial way.

If confirmed, I will continue the safeguards reinstituted by Attorney General Mukasey with regard to contact with the White House and review all relevant policies and procedures to ensure the actions and decisions of the Justice Department and the Attorney General are accountable and transparent to the Congress and the American public.

2. When you were at DOJ, were your actions and decisions always devoid of political and/or partisan influence?

Yes.

3. Have you ever hired, refused to hire, or fired an individual based on his or her politics or political activities? In addition, have you ever made any employment decision based on an individual's political affiliations?

No. No.

BANKRUPTCY

Comprehensive bankruptcy reform was enacted a few years back, and because of it, I believe that the bankruptcy system has been made much better and fairer. Nevertheless, critics of this legislation want to weaken the statute.

1. Will you commit to actively support enforcement of the bankruptcy reform law, and make enforcement of the bankruptcy laws a priority for the U.S. Trustee's Office?

Yes.

2. Will you support and encourage greater enforcement actions by the U.S. Trustee's Office to prevent abusive or fraudulent bankruptcy filings? How?

I will consult with the U.S. Trustee's office to determine how best to prevent abusive or fraudulent bankruptcy filings.

3. Will you assist in efforts to fight attempts to undermine the bankruptcy reform law?

Yes.

DOJ OAAM AUDIT OF JUVENILE JUSTICE GRANTS

Last year, the Judiciary Committee started reviewing legislation to reauthorize the Juvenile Justice Delinquency Prevention Act. As part of that discussion, I reviewed some of the past audits the Inspector General conducted of Juvenile Justice grant expenditures and I was quite shocked at the findings. These reports showed a series of problems with grant expenditures by OJJDP grantees. I believe a top to bottom review of OJJDP grant funding is necessary to ensure that taxpayer dollars are being spent appropriately.

I was encouraged to learn that the Office of Audit, Assessment, and Management at the Office of Justice Programs has planned a two-part assessment of OJJDP grants. This review is similar to an amendment I proposed in Committee. This assessment is planned to begin in the first quarter of this year and will review the effectiveness of OJJDP as well as general compliance of grantees receiving awards. I believe this assessment will be an important tool to assist Congress as we review the grant management of OJJDP.

1. Will you commit to ensuring that this audit is completed as envisioned and is not impeded by the change in administration?

Yes. If confirmed, I will review the results of that assessment of OJJDP.

2. Will you make a commitment to consider all the recommendations that are made by OAAM, including any necessary reforms to OJJDP?

Yes. If I am confirmed as Attorney General, I will consider all the recommendations that are contained in the OAAM report – including any reforms recommended for OJJDP.

ANTI-TERRORISM ACT

In 1990, I sponsored legislation known as the Antiterrorism Act of 1990. This legislation created a civil remedy for any individual, their estate, survivors or heirs, who were injured or killed by an act of terrorism, to sue those who committed the act or sponsored the terrorist act. I drafted this law to empower victims of terrorism to take the fight back to the terrorists and hit them where it counts, in their pocket books and bank accounts. It helps victims seek justice by become an active participant in recovering funds from those who seek to harm Americans at home, or abroad.

This legislation is a vital tool in the war on terror. While money will never bring back a loved one, it can help by taking the money out of the pockets of dangerous terrorists and the state sponsors of terrorism which will help prevent other violent acts against Americans. I am concerned that as judgments against sponsors of terrorism pile up, there may be political efforts to have our government intervene and unduly influence the decisions of the courts or hamper enforcement of court judgments.

1. Do you agree with the purpose and history of the Antiterrorism Act of 1990?

I agree that Congress should support victims of international terrorism. Under 18 U.S.C. § 2333a, "any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefore in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees." I support this cause of action.

2. Will you pledge to support this law?

Yes. I will support 18 U.S.C. § 2333a.

3. Will you ensure that DOJ acts in accordance with the original intent of the Antiterrorism Act?

If confirmed as Attorney General, I will do my best to ensure that DOJ acts in accordance with legislative intent as expressed in the statute.

4. Will you pledge to support victims of terrorism who bring forth good faith claims and win judgments against terrorists and state sponsors of terrorism?

I will support victims of terrorism who have filed legally meritorious claims and obtained such judgments consistent with U.S. law.

DEA

During the last eight years, the Drug Enforcement Administration (DEA) has done an admirable job of enforcing our Nation's narcotics laws—despite facing an agency wide hiring freeze. However, the shift in focus at DOJ toward preventing terrorism and National Security issues has reassigned many FBI agents who formerly assisted in narcotics

investigations. I believe that an effective law enforcement effort is the cornerstone of any successful counternarcotics effort.

1. What are your goals for the DEA during your tenure as Attorney General?

I intend to continue the transformation of the DEA over the last decade if I am confirmed as Attorney General. The work of the DEA has changed considerably over the last ten years, and the agency has done an admirable job in modifying its approaches as law enforcement demands have evolved. In addition, the agency has restructured its domestic and foreign operations to address its increasing focus on international traffickers that pose the greatest danger to our country. Locally, nationally, and internationally, the DEA has developed a system to identify the most dangerous targets -- consolidated priority organization targets -- and has undertaken aggressive efforts to dismantle their command and control.

2. Do you anticipate the need for more agents or analysts at the DEA in order for the Agency to perform its mission?

I will consult with the professionals at the DEA to determine its resource needs, but it is essential that we expend sufficient resources to fulfill the mission of the DEA.

3. Do you anticipate the need to retask FBI agents to assist in narcotics investigations?

I will consult with DEA and FBI on the possibility of such re-tasking and, in any event, will work to ensure a cooperative relationship between DEA and FBI on issues that involve both.

4. What steps will you take to ensure that the DEA continues to receive the adequate funding and assets needed to address our Nation's drug problems?

Where additional resources are needed, I will be a strong advocate for DEA and all law enforcement personnel. If confirmed, I intend to work closely with the DEA to help ensure that it is fully supported in its critical efforts here and abroad. Under my leadership, the Department of Justice will evaluate the resources the DEA has at its disposal and seek additional resources as required to accomplish its mission.

5. The DEA has developed strong working relationships with many international partners. What steps will you take to strengthen and advance these relationships to ensure continued success for our international enforcement operations?

Identifying increasing links between international narcotics traffickers and terrorist organizations, the DEA has developed productive working relationships with the Departments of Defense and State to combat the international trafficking organizations. It has done so as the FBI understandably has been forced to allocate significant resources from drug investigations to its critical national security mission.

MARIJUANA CRIMES

According to the 2009 National Drug Threat Assessment, the level of domestic outdoor marijuana cultivation is high and could be increasing in the U.S. Some of this marijuana is being grown on public lands by drug cartels in National Parks in California and other Southwestern states. This increase in domestic growth is troubling given that the Threat Assessment also states that marijuana potency has increased to the highest levels ever recorded.

1. During your time as the U.S. Attorney for the District of Columbia in the 1990s, you emphasized marijuana cases and sought stiffer penalties for marijuana crimes. Given the new data on increases in marijuana cultivation and potency, do you plan to prioritize prosecutions of marijuana users and dealers? Why or why not?

Drug cartels that grow vast fields of marijuana and distribute it domestically and internationally pose a serious threat. If confirmed, I intend to prosecute them aggressively.

2. Do you believe that additional federal resources are needed to stop the domestic production of marijuana?

If confirmed as Attorney General, I intend to work with the DEA and other responsible agencies to assess the adequacy of the Department's resources to carry out this mission, and I will seek additional resources as needed to do so.

AGGRAVATED IDENTITY THEFT BY ILLEGAL ALIENS

1. If you are confirmed as Attorney General, would you support the use of criminal penalties for individuals that have stolen the identity of another individual though the fraudulent use of Social Security numbers? Why or why not?

I support identity theft prosecutions in appropriate cases. The decision of when to prosecute those kinds of cases needs to occur as part of a comprehensive and fully resourced strategy developed jointly between DHS and DOJ.

2. Do you believe that criminal sanctions are an effective tool that prosecutors should have available to them when an investigation uncovers the fraudulent use of actual Social Security numbers?

I do think that in appropriate cases, prosecutors should pursue criminal sanctions against those who use the personal information of another person for fraudulent ends.

3. Do you think the Justice Department should restrict the use of criminal charges against illegal aliens who claim they lacked knowledge that the false documents they used were those of a real individual? Why or why not?

Department of Justice policies should prioritize enforcement resources where they can have the most impact. One factor in such decisions is the degree of available proof of the requisite intent in identity theft cases.

DRUG VIOLENCE ALONG THE SW BORDER AND EFFORTS TO CUT DOWN GUN SMUGGLING

Week in and week out, we hear countless reports of drug related violence in Mexico and how it is beginning to spill over the Southwest border into our country. As drug cartels fight for vital smuggling lanes into the U.S., the violence has spiked leading to thousands of drug related homicides on both sides of the border. I am concerned that this increase in violence threatens to create a new, escalating level of violence in our border communities and against our dedicated law enforcement agents securing the border.

I understand that there are multiple initiatives ongoing that are designed to cut down on outbound proceeds that finance the violent drug cartels and the weapons they are supplied with. However, I have heard stories of how some efforts undertaken by different law enforcement agencies may be overlapping and causing duplication.

One example is two similar initiatives aimed at stemming the flow of illegal weapons to Mexico—"Armas Cruzadas," which is being run by agents of Immigration and Customs Enforcement, and "Project Gunrunner," operated by agents of the ATF. While I applaud the effort to crack down on illegal weapon smuggling, I am concerned that a lack of coordination will cause waste and may hinder our efforts.

1. If you are confirmed, what efforts will you take to ensure that similar missions at the Southwest Border are coordinated so that there is no overlap or duplication of efforts among federal law enforcement agencies?

I consider the improvement of collaboration and coordination between DOJ components and DHS components an immediate priority. If confirmed, I will work with DHS to improve such cooperation.

2. Is there more that can be done by DOJ and its subordinate agencies to crack down on violence at the border and stop it from spreading into our border communities? If so, what efforts do you propose?

First, DOJ components can work to improve cooperation with their counterparts at DHS. Second, we need to foster cooperation with law enforcement in Mexico, including supporting their effort to root out internal corruption. Along these lines, we need to reinforce our efforts to support the Mexican government in developing sustainable and honest legal institutions. Third, we need to further improve our intelligence-gathering and sharing, and also to improve surveillance tools along the Southwest border using the latest technology. Fourth, we should explore leveraging our partnerships with local law enforcement to enhance apprehension and prosecution of violent activity along the border.

3. Do you feel existing grant programs such as the Byrne/JAG program could be used to expand state and local cooperation at the Southwest border ensuring that gaps in the federal net are filled by our state and local law enforcement?

Cooperation with state and local authorities is an important component of effective law enforcement throughout the country, including along the border. The Byrne/JAG program is central that effort.

4. Will you utilize the existing authorities to expand efforts to stem violent crime on the Southwest border? Will changes be necessary to facilitate this effort?

I will utilize existing authorities to strengthen such efforts. I will consult with professionals at DOJ and DHS concerning the need for any additional authorities.

SUNSHINE IN THE COURTROOM

Last year, the Judiciary Committee reported favorably the Sunshine in the Courtroom Act of 2008. This legislation would provide the federal judiciary the authority, at the discretion of the Chief Judge of each judicial district, to allow media coverage of the proceedings inside the courtrooms.

1. Do you support efforts to bring transparency and accountability to the federal judiciary by allowing television and media coverage of trial and appellate proceedings? If not, why not?

I support transparency, both in the executive branch and in the judiciary. If confirmed, I will work with the Committee to address concerns raised by DOJ, the federal judiciary, or others with respect to such legislation.

2. Will you work with me to address any concerns DOJ has with this legislation so that we can bring transparency and accountability to the Federal Courts?

Yes.

PERFORMANCE-ENHANCING DRUGS/ STEROIDS

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 December 2007 Mitchell Report on steroids and other performance enhancing substances by Major League baseball players found that each Major League team had at least one member identified as a user of performance enhancing drugs. Despite this report, very few criminal charges have been filed against these professional athletes.

I'm concerned that this abuse by professional athletes could reinforce the view that there is no consequence for the abuse of these drugs and, consequently, lead to increases in abuse of steroids. For instance, the most recent National Institute on Drug Abuse 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. This is unacceptable, and action must be taken to punish those who break the law.

1. Do you believe that strong enforcement and prosecution of our laws prohibiting the use of illegal steroids and other performance enhancing drugs will send a message to professional sports leagues, as well as our youth?

Yes.

2. What can DOJ do to disrupt the flow of performance-enhancing drugs into this country?

DOJ can attack the flow of such illegal drugs and disrupt networks for disseminating such drugs in the same manner as it addresses other drug distribution networks.

Senator Grassley's Additional Written Questions for Eric Holder

1. In your response to my written question OLC Opinion on Ranking Member Access to Documents and Information 1, you stated that you "respect the important role of Congress under the Constitution" and "will work to ensure that the Department [of Justice] operates in a manner consistent with the legislative branch's legitimate oversight functions." While I appreciate your respect for Congress' oversight function, my question sought your opinion as to whether or not you supported the position taken by OLC in the December 5, 2001, Letter Opinion titled, "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." Do you support the position taken by OLC that, "the Privacy Act prohibits the disclosure of the Privacy Act-protected information to the ranking minority member [of a Congressional Committee]?" Why or why not?

Prior to confirmation, it would be inappropriate for me to provide a definitive view on the correctness of the opinion's interpretation of the statute in question. I will ensure, however, that the Department's positions on such questions will be the product of careful analysis and accord respect to Congress's legitimate oversight functions.

2. In your response to my written question OLC Opinion on Ranking Member Access to Documents and Information 2, you stated that "there may be occasions on which the executive branch must keep information confidential, as the courts have recognized." What types of information do you believe the executive branch must keep confidential from Congress? What cases support your assertions that certain types of information should be withheld?

There may be circumstances where a statute forbids the executive branch to disclose information within its possession, such as information that implicates the statutory privacy rights of individuals. I, of course, also want to be sure to reserve the authority of the executive branch to retain the secrecy of information the disclosure of which could jeopardize national security or executive branch law enforcement and litigation responsibilities. See also, United States v. Nixon, 418 U.S. 683 (1974)(recognizing executive privilege as a constitutionally valid doctrine); United States v. Reynolds, 345 U.S. 1 (1952)(recognizing the state secrets privilege).

3. In your response to my written question Pardons Victims 16, you state that "the U.S. Attorney's Office in Chicago was asked to contact the victims." Didn't you believe it was important for YOU to personally contact the families of the FALN victims about their views on the clemencies, particularly because you personally met with groups and individuals who supported the clemencies? Didn't you believe it was important to hear their views, especially since you were going against the recommendations of the U.S. prosecutors in the case?

Yes, I believe the victims of the criminal activity engaged in by the FALN should have had an opportunity to express their views directly to the Justice Department

during the clemency review process. Throughout my career in law enforcement, I have always worked hard to ensure that crime victims are treated respectfully. Nonetheless, I acknowledge that the Department should have done a more thorough job of reaching out to victims in this unusual case.

The FALN victims' opposition to clemency was well-known through press accounts. We followed the customary practice of the Office of Pardon Attorney, which was to ask the local U.S. Attorney's Office to notify the victim of the pendency of the clemency petition and ask for input, and their opposition was discussed in the options memorandum sent to the White House. But I recognize that these victims wanted and deserved to voice their views to the Justice Department directly.

The Department learned an important lesson in this regard as a result of the FALN clemency. Thereafter, we issued regulations that required the Justice Department to notify victims about the status of clemency petitions under certain circumstances, including when there was a likelihood that the clemency petition would be reviewed favorably by the Department. If confirmed, I will do my best to make sure that victims are apprised if there is any likelihood that the Justice Department will recommend the granting of a clemency petition.

4. In your response to my written question Pardons Quinn Notes, Email and Testimony 4c, you state:

> When I was a U.S. Attorney, I considered meetings with defense counsel to be worthwhile because prosecutors often benefit from hearing about the flaws, real or imagined, cited by defense counsel in a criminal case. The prosecutors in the Southern District of New York refused to do that in this case, which was their prerogative.

However, during your testimony before the House Committee on Government Reform, you were asked about a trip that the U.S. Attorney for the Southern District of New York had made to Switzerland to negotiate a settlement of the case:

> Mr. WILSON. Just shift for a minute, Mr. Quinn. What happened when Otto Obermeier went to Switzerland in the early 1990's? Tell us about the negotiations with Mr. Rich.
> Mr. QUINN. I wasn't on the case. I know that they had conversations, but I'm really not the person to tell you in detail about this.
> Mr. WILSON. You told us about the intransigence of the Southern District of New York, how they weren't working with Mr. Rich. Mr. Holder, you've been a U.S. attorney. How many—give us each time that you can remember when a U.S. attorney has flown to a foreign country to negotiate with a fugitive. How many occasions are you aware of?
> Mr. HOLDER. How many times did I do that?

> Mr. WILSON. No, any in the history of the United States, for a broad question.
> Mr. HOLDER. You just talked about Mr. Obermeier. Maybe that's what you're describing here. I'm not aware of any. I don't know of any.

In fact, according to the House Report (p. 132-133), the result of those negotiations was an offer by the prosecutors to drop the racketeering charges against Rich and Green as well as to allow them to be free on bail pending a trial. However, they chose to remain fugitives and refused to surrender even under those conditions.

a. Based on your testimony at the House Committee hearing, apparently you were aware of the prosecutors' efforts to reach a settlement in the Rich case prior to your involvement. Why did you respond to my question that "the prosecutors in the Southern District of New York refused to do that [meet with Rich's defense counsel] in this case, which was their prerogative"? Didn't the Southern District prosecutors in fact travel to Switzerland to meet with Rich's counsel?

My statement during my confirmation hearing about the Southern District's decision not to meet with Mr. Rich's attorneys only related to Mr. Quinn's request in late 1999 to meet with federal prosecutors in New York. I did not intend to imply, and do not believe that my response suggested, that the Southern District had *always* refused to meet with Mr. Rich's attorneys. With respect to my testimony before the House Government Reform Committee on February 8, 2001, excerpts of which you cite above, please note that at no time did I testify about my awareness of prosecutors' efforts to reach a settlement with Mr. Rich prior to 1999. Questions about that specific topic were directed solely to Mr. Quinn at the February 2001 hearing.

b. When and how did you first become aware of these previous settlements efforts?

I believe that Jack Quinn's December 1, 1999 letter to U.S. Attorney Mary Jo White, on which I was copied, stated that Mr. Rich's defense team had been involved in negotiations to resolve the case and that the last such discussions had ended in 1994.

c. Did no one in the Southern District inform you of the previous settlement efforts that had already taken place?

Shirah Nieman, Deputy U.S. Attorney for the Southern District of New York, copied me on her February 2, 2000 response to Mr. Quinn. Her letter included information about a 1987 meeting between that office and Mr. Rich's counsel. She did not characterize it as a "settlement" meeting, however.

d. Were you aware of the offer to drop the racketeering charges?

No. Neither Mr. Quinn's December 1999 letter, nor Ms. Neiman's February 2000 letter, indicated that the government had offered to drop the RICO charges.

e. Were you aware of the offer to allow Rich and Green to be free on bail pending trial?

No. Neither Mr. Quinn's December 1999 letter, nor Ms. Neiman's February 2000 letter, indicated that the government had offered to allow Mr. Rich to be free on bond pending trial.

f. Did Jack Quinn not inform you of the previous settlement offers by the Southern District?

I believe that Jack Quinn's December 1, 1999 letter to U.S. Attorney Mary Jo White, on which I was copied, stated that Mr. Rich's defense team had been involved in negotiations to resolve the case and that the last such discussions had ended in 1994.

g. In light of the history of settlement offers by the Southern District being rejected by Rich and Green, do you still believe that a settlement meeting with fugitives under these circumstances would be "worthwhile"? If so, why?

I did not ask the Southern District to consider a "settlement meeting" with Mr. Rich's attorneys. I merely asked the prosecutors to consider meeting with Mr. Quinn to discuss the case.

Questions for Attorney General Nominee Eric Holder from Senator Orrin Hatch

1. As you know, the Supreme Court held in *District of Columbia v. Heller* that the Second Amendment to the U.S. Constitution protects an individual's right to keep and bear arms. In your hearing on January 15, you did not change your personal view that the Second Amendment protects only a collective right connected to service in an organized militia, and you offered two examples of gun control measures which you believed would be constitutional under *Heller*. Since you were willing to offer such speculation regarding measures such as closing the so-called "gun show loophole," please provide your conclusion about whether the gun control measures listed below, which you have endorsed in the past, would be constitutional under *Heller*.

- Limiting handgun purchases to one per month
- Three-day waiting period for purchasing handguns, even with the federal instant background check in place
- Raising the age for handgun possession to 21
- Requiring that a record of every firearm sale be provided to the Bureau of Alcohol, Tobacco, Firearms, and Explosives

If confirmed as Attorney General, my first priority with respect to guns will be to ensure that the illegal possession and use of firearms are effectively prevented and forcefully prosecuted. In doing so, I will respect the constitutional right to bear arms, as recently articulated by the U.S. Supreme Court in the Heller decision.

I have supported legislation to reduce gun violence, but with respect to any such proposal I will consult with law enforcement authorities concerning the need for such provisions and with lawyers at the Department of Justice concerning the possible impact of any particular proposal on the rights recently enunciated by the Supreme Court in the *Heller* case.

2. In an October 2001 op-ed in the *Washington Post*, you equated gun shows with criminal enterprises designed to give criminals and terrorists easy and undetectable access to weapons. You even referred to the so-called "gun show loophole" as a "terrorist loophole." Yet a report that same year from the Justice Department showed that less than one percent of guns used in criminal activity, let alone terrorist activity, were purchased by the offender at a gun show. Do you still believe that gun shows facilitate terrorism?

I will review the report identified in this question and consult with law enforcement officials and other experts to examine the impact of gun shows and other activities on the use of guns in terrorism and criminal enterprises. I remain concerned with any activity that has the potential to get guns in the hands of terrorists and criminals.

3. The Interior Department recently changed the rules for carrying firearms in national parks and wildlife refuges. Citizens traveling on or through most land under the Interior Department's jurisdiction may now transport and carry concealed firearms for lawful purposes if allowed by the state laws in which the land is located. This eliminated a patchwork of regulations governing different federal land managed by different federal agencies. In the past, when you have advocated limiting handgun purchases to one per month, you stressed the need for a uniform approach, even at the state level. You will not be the Interior Secretary, but I am wondering what your view is of this new uniform policy, allowing the transport and carrying of lawfully obtained firearms on federal land.

I had had no occasion to analyze the new regulation. Any position I would take on this matter would take account of the safety of law enforcement officers working on federal lands and the safety of visitors to federal land, as well as the views of other stakeholders.

4. As Attorney General, you will have an important role to play in the judicial appointment process. Since the Judiciary Act of 1789, judges take an oath "to administer justice without respect of persons" and to do equal justice to the poor and to the rich. In contrast, some say judges should decide cases based on their personal empathy, values, or concerns, that is, what is in their heart. Which of these contrasting views of the judicial role is closest to your view? Should judges be impartial no matter which parties or interests are before them or should judges take sides depending on their personal empathy and values?

I believe that it is important to appoint judges who have the intellect and temperament required, and who are committed to following the law and dispensing justice in an impartial manner. I also believe that the federal bench should be composed of people with diverse backgrounds and life experiences.

5. Do you believe it is appropriate for judges to use the decisions of foreign courts or such things as public opinion in foreign countries to determine the meaning of the U.S. Constitution? Please explain the basis for your answer.

Our system of laws is based on the examples of many other nations' systems, including primarily the English system of common law, and while it can sometimes be constructive to examine the decisions of foreign courts, decisions of United States District and Circuit Courts should be based on the U.S. Constitution, laws and precedents.

6. As we have in the past, Chairman Leahy and I will be working in this Congress to reform the patent system. Protecting new ideas and encouraging investment in innovation and creativity are more important than ever for our economy. Last year, Congress passed the PRO-IP bill that Chairman Leahy, Senator Specter and I helped to fashion. It provides that Computer Hacking and Intellectual Property Crime Units are to be assigned to at least two Assistant U.S. Attorneys. Can I have your assurance that, if confirmed, IP prosecution will not take a back seat to other important matters and that you will continue developing a core of federal prosecutors specializing in IP prosecution?

I will ensure that protection of intellectual property and prosecutions of those who violate federal intellectual property law will remain a sufficient priority, and I look forward to working with the Committee on these issues. This was an issue I focused on when I was United States Attorney in the District of Columbia.

7. Attorney General Mukasey has decided that aliens have no constitutional right to challenge deportation orders based on lawyer error. This reversed a 15-year-old precedent. It is my understanding that the new opinion reduces, but does not eliminate, the chances of aliens succeeding on claims of ineffective assistance of counsel. Do you have an opinion on this recent decision?

The Constitution guarantees due process of law to those who are the subjects of deportation proceeding. I understand Attorney General Mukasey's desire to expedite immigration court proceedings, but the Constitution requires that those proceedings be fundamentally fair. For this reason, I intend to reexamine the decision should I become Attorney General.

8. As the ranking member of the Antitrust Subcommittee, I am concerned about executive agencies granting their own special exceptions to the antitrust laws. For example, the Department of Transportation is reviewing applications for antitrust immunity from the Star Alliance and the One World Alliance. Controversy exists regarding whether the

transaction involving DHL and UPS constitutes a merger. I feel strongly that Transportation should defer to Justice and use the same level of scrutiny and the same standards that have been applied in previous antitrust application. Can you tell me what the incoming administration's policy will be on this matter?

I agree that the antitrust laws should be applied consistently, regardless of which agency plays a leading role. I will work with the Department of Transportation and the Antitrust Division of the Department of Justice to ensure that the law is applied in a consistent and even-handed manner.

9. I remain very upset about the current inequitable treatment in the so-called Bowl Championship Series. Teams playing in these bowl games receive significant financial compensation. But recent events only underscore the continued unfair exclusion of teams that clearly should be playing in a National Championship game. My concern about this goes back some time and I chaired a hearing of this committee on the issue when I was chairman. More recently, the Attorney General of Utah announced that he is launching an investigation. Both the President-elect and Vice President-elect have criticized the BCS process. If you are confirmed, will you have the Department of Justice launch its own investigation?

As a sport fan, I too find frustrating the lack of a system in college football that results in a true championship game where the champion is decided on the field, as in other sports with playoff or other systems. Without prejudging whether an investigation is warranted, I will consult with the Attorney General of Utah about the basis of his investigation.

10. I have some questions about existing Department of Justice initiatives or programs. The first is enforcement of the obscenity and child pornography laws. I have criticized both Republican and Democratic administrations over their lax enforcement of the obscenity laws. I believe the current Justice Department's enforcement strategy is misguided. They target only the most extreme obscene material so that convictions are all but guaranteed but the impact on the industry is minimal because that material is not widely produced or consumed. In a memo you sent to U.S. Attorneys in June 1998, you urged a focus on major producers and interstate distributors and cases where there is evidence of organized crime involvement. With the development of the Internet, this corrosive and destructive material is even more widely and easily distributed. It harms individuals, families, and communities. How important will this be in your Justice Department? Do you have any thoughts on these enforcement strategy issues?

I agree that the development of the Internet has radically changed the dissemination of unlawful content and requires a reexamination of enforcement strategies. I also agree that protecting children and families is critical, and I will make that a priority. I will consult with Department officials and seek the views of others concerning the best means of effectively enforcing federal obscenity and child pornography laws.

11. There ought to be more unanimity regarding child pornography, but here too I have questions that arise from the Clinton Justice Department's record. I realize my questions stem from the first Clinton term, when you were a U.S. Attorney and not yet Deputy Attorney General, but that is the Department and the Attorney General you served. I wonder whether you would do things differently now. The Clinton Justice Department attempted to change how the federal child pornography statute is interpreted and applied. They tried to make the statute so narrow that it would be much more difficult to enforce. In fact, they attempted to make that change in a case titled *United States v. Knox*, where the child pornographer had already been convicted. The Clinton Justice Department went to the appellate court

and asked that the statute be construed differently. They also asked that the child pornographer's conviction, obtained when President George H.W. Bush was still in office, be overturned. Thankfully, the U.S. Court of Appeals rejected this bizarre new twist on the statute. The House voted 425-3 to say this is not how the statute should be enforced, and the Senate voted 100-0 to condemn what the Justice Department had done. This disgraceful move was initiated by the Justice Department. It was their agenda to change the law in a way that put children at risk. Were you aware of this very high–profile controversy, and did you have any opinion on it? Under your leadership, will you seek to maximize the protection of children in the decisions you make about cases, construction and application of statues, etc.?

I was not involved in the controversy referenced in the question. If confirmed, I will make protection of children a priority, consistent with the proper interpretation of statutes.

12. There has been much discussion about how the Civil Rights Division will operate under your leadership. While you have spoken about reinvigorating the traditional role of the division, its role has expanded in recent years. One new initiative, for example, is trafficking in human beings. The current administration has, properly in my view, framed this issue as modern-day slavery. Last month, Congress passed legislation reauthorizing the Trafficking Victims Protection Act, which I cosponsored. Do you agree that this should continue to be a priority for the Justice Department? Do you anticipate pursuing the issue in the same civil rights context?

Yes. **If confirmed, I will maintain a strong DOJ commitment to combat human trafficking.**

13. The civil rights division has also stepped up protection of another fundamental liberty, the right to exercise religion and be free from religious discrimination. Religious freedom is the first individual right mentioned in the First Amendment. The Bush administration made religious freedom a priority from the start, and created the position of Special Counsel for Religious Discrimination within the civil rights division. Will you direct the civil rights division to continue this important work, and will you maintain this special counsel position?

If confirmed, I will maintain a strong DOJ commitment to protecting religious liberty. It is too soon to say which particular positions will be maintained in the Division, but I look forward to a top-to-bottom review of the Division and its sections.

Questions from Senator Kohl to Attorney General Nominee Eric Holder

1. One of the very few industries to enjoy an exemption from antitrust law is the freight railroad industry. Because of this exemption, rail shippers have been victimized by the conduct of dominant railroads, and have no antitrust remedies. Higher rail shipping costs are passed along to consumers, resulting in higher electricity bills, higher food prices, and higher prices for manufactured goods. That's why I've introduced a bill to abolish this obsolete antitrust exemption for railroads.

   (a) Do you agree with me that this antitrust exemption should be repealed so that the railroads are subject to the same antitrust laws as virtually every other industry in the economy?

Antitrust laws are critical to protecting the public from the harms that come from a lack of competition; that is true in almost every industry. Antitrust exemptions should be reserved for those situations where they are, in Congress' view, needed to advance important public objectives. I will work with the career professionals at the Department of Justice to consider whether this situation merits such an exception.

   (b) Last year, we asked the Justice Department for a letter in support of our railroad antitrust bill. Can we expect your support should you be confirmed as Attorney General?

I am aware of the bill concerning freight railroads and of the support for it within the antitrust community. I will work with the career professionals at the Department of Justice and other agencies to provide the Committee with the Obama Administration's views.

2. Last summer gas prices reached record highs of over $ 4 per gallon and crude oil exceeded $ 140 per barrel. In the last few months, American consumers have enjoyed plummeting gas prices which are now less than $ 2 per gallon in most places, price declines caused by a sharp decrease in demand caused by the worldwide economic recession. But we shouldn't expect the good news on gas prices to last – in the last few months OPEC has made large oil production cuts totaling nearly 4 million barrels a day with the express purpose of raising oil prices. In the words of OPEC's President referring to these production cutbacks, "The stronger the decision, the faster prices will pick up."

   In the last few years, the Justice Department spent an enormous of time and effort prosecuting price fixing cartels. Yet the worst and biggest cartel in the world is

the OPEC oil cartel, and we've not taken any action against them. That's why I've introduced my NOPEC bill, which would permit antitrust actions by the Justice Department against the OPEC cartel.

Do you agree with me that the actions of OPEC would be illegal if it was a group of private companies? Would you support the Justice Department having the authority to bring antitrust lawsuits against OPEC member nations?

I am committed to enforcing the antitrust laws and protecting consumers from cartels of all kinds. Agreements to raise prices or cut supply by competitors raise serious antitrust problems. I know that the State Department and others have expressed concerns about the foreign policy impact of legislation that would permit antitrust claims against OPEC and similar entities. I will work with the State Department and the Committee to find appropriate means to protect the public from supra-competitive prices.

NOMINATION OF ERIC HOLDER TO SERVE AS U.S. ATTORNEY GENERAL
QUESTIONS FOR THE RECORD
SENATOR KYL

1. It is generally acknowledged that U.S. agents used waterboarding while interrogating three senior members of the Al Qaida terrorist organization, including Khalid Sheikh Muhammed, the architect of the September 11 attacks. During your hearing, it was stated by you and by some members of the committee that the United States has, in the past, prosecuted individuals for conducting waterboarding of prisoners. Others, however, have challenged that view and stated that the practices for which Imperial Japanese and other soldiers were prosecuted in the past consisted of water torture, not waterboarding. As I understand it, waterboarding is conducted by placing a damp towel on the victim's head and pouring more water on that towel, which evokes a gag reflex. Water torture, on the other hand, simply consists of drowning the victim by submerging his head in water.

Whether the United States has in the past prosecuted individuals for waterboarding is relevant to the debate about the reasonableness of past legal judgments concerning U.S. interrogation practices and about whether those practices departed from established norms.

Please investigate the relevant records and determine whether the United States has, in fact, prosecuted individuals in the past for waterboarding (rather than only for water torture). Please also provide relevant documents that answer this question. (Please feel free to answer this question after the Senate considers your nomination.)

I appreciate very much the invitation to respond to this question in the future, after the Senate has considered my nomination, because a complete answer will require substantial research and analysis that would be more appropriate for me to conduct after I assume my office, if confirmed.

2. You stated during your testimony, in response to a question from Senator Cornyn, that harsh interrogation techniques such as waterboarding do not produce reliable information. President Bush, in a speech delivered on September 6, 2006, described information that had been obtained from Abu Zubaydah, Ramzi bin al Shibh, and Khalid Sheikh Muhammad as a result of their interrogation. (The entire speech is available beginning at page 36 of U.S. Senate Committee Report 110-90.) According to the President, Abu Zubaydah revealed under interrogation that Khalid Sheikh Mohammed was the principal organizer of the September 11 attacks. Zubaydah also described a terrorist attack that Al Qaida operatives were planning to launch inside the United States—an attack of which the United States had no previous knowledge. Zubaydah described the operatives involved in this attack and where they were located. This information allowed the United States to capture these operatives—one while he was traveling to the United States. Zubaydah also revealed the identity of another September 11 plotter, Ramzi bin al Shibh, and provided information that led to his capture. U.S. forces then interrogated bin al Shibh. Information that both he and Zubaydah provided helped lead to the capture of Khalid Sheikh Mohammed.

Under interrogation, Khalid Sheikh Mohammed provided information that helped stop another

planned terrorist attack on the United States. K.S.M. also provided information that led to the capture of a terrorist named Zubair. And K.S.M.'s interrogation also led to the identification and capture of an entire 17-member Jemaah Islamiya terrorist cell in Southeast Asia.

The President also stated in his September 6 remarks that ''[i]nformation from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaida member or associate detained by the U.S. and its allies.'' He concluded by noting that Al Qaida members subjected to interrogation by U.S. forces:

> have painted a picture of al Qaeda's structure and financing, and communications and logistics. They identified al Qaeda's travel routes and safe havens, and explained how al Qaeda's senior leadership communicates with its operatives in places like Iraq. They provided information that * * * has allowed us to make sense of documents and computer records that we have seized in terrorist raids. They've identified voices in recordings of intercepted calls, and helped us understand the meaning of potentially critical terrorist communications. [Were it not for information obtained through interrogation], our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this [interrogation] program has saved innocent lives.

Recent news accounts have indicated that Abu Zubaydah, Ramzi bin al Shibh, and Khalild Sheikh Muhammed are the three men whom U.S. agents have subjected to waterboarding, among other coercive interrogation techniques. Presumably, U.S. agents resorted to these techniques because these men did not volunteer information when subjected to other, less harsh techniques.

Do you have any reason to believe that the information that Zubaydah, bin al Shibh, and Muhammed are described in the President's September 6, 2006 statement as having provided to U.S. interrogators was not accurate information?

From my current vantage point, without access to all of the relevant information, I have no way to judge authoritatively the particular issues described in your question. I do believe, from discussions with retired senior military personnel and others with relevant expertise and experience, that extremely harsh interrogation techniques may yield unreliable information, because the person under interrogation may be motivated to say whatever he or she thinks the interrogators want to hear in order to stop the pain. I also believe that there are other ways that interrogators can obtain timely, accurate and useful intelligence. But with respect to the particular interrogation and information in your question, I am not in a position to render an authoritative judgment.

3. The following three questions were proposed by Jack Goldsmith, the former head of the

Office of Legal Counsel, in a recent New York Times oped. I would like your answers to these questions:

A. Do you believe the president has authorities under the Constitution's executive power and commander in chief clauses on which Congress cannot impinge? What are they?

As Justice Jackson explained in the Steel Seizure case, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952), the President's power may be divided into three broad categories. First, when the President "acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.* at 635. Second, when the President "acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* at 637. Third and finally, when the President "takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.*

Although, as far as I know, the Supreme Court has never upheld an assertion of Presidential power in the third category under the Commander-in-Chief Clause, there are clearly situations in which the President may refuse to comply with a statutory provision. These include a legislative veto, see *INS v. Chadha*, 462 U.S. 919 (1983), or a statute purporting to limit the President's removal power in certain circumstances, see *Myers v. United States*, 272 U.S. 52 (1926). Moreover, although as far as I know the Supreme Court has never ruled on the issue, I believe that a statute designating the Secretary of Defense (or another subordinate official in the Executive Branch) as the Commander in Chief would also be unconstitutional.

B. Will you give legal approval to covert counterterrorism actions that you believe are lawful but which you know will engender legal and political controversy if made public? What factors other than your best legal judgment will you consider?

We need to be aggressive in the fight against terrorists, but I believe we can do so in a way that is consistent with our fundamental values. I also believe that we must exercise the lawful authority we have in a manner that is both practical and smart. Apart from legality, which is assumed by the question, I would want to consider among other things the complexity of a covert action, the risk of collateral damage to innocent parties, the risk to our personnel or those working on our behalf, the risk of harm to our country if the covert action is compromised or otherwise becomes overt, and other factors that depend on the circumstances of the particular operation. I would not be worried about controversies generated by decisions that I might take that I believe to be appropriate.

C. Attorney General Michael Mukasey has suggested that the threat of criminal

investigations is impairing the ability of the intelligence community to make good-faith decisions about how best to protect the country. How much does this worry you and what, if anything, will you do about it?

I would be extremely concerned about such impairment, and if I see evidence of it I will work to provide the necessary assurances. We owe our line personnel, who often risk their lives for this country, clear guidance and strong leadership. As I testified at my confirmation hearing, I believe deeply in the principle that no person is above the law. But decisions to prosecute must depend on the facts. Government officials must do everything they can to comply with the law. It is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself.

NOMINATION OF ERIC HOLDER TO SERVE AS U.S. ATTORNEY GENERAL
SUPPLEMENTAL QUESTIONS FOR THE RECORD
SENATOR KYL

1. In my written questions, I posed to you a question prepared by Jack Goldsmith, the former head of OLC, regarding the impact that the threat of criminal prosecution has on the intelligence officers called on to make difficult decisions about how best to protect the country. You replied that you would be "extremely concerned" that the threat of prosecution would impair the ability of these agents to make good-faith decisions, and that "[i]t is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself."

Since I sent you that question, I have become aware that former Attorney General Mukasey has expressed concern about the implications of your statement during your testimony that you consider waterboarding to be torture. According to an account of Mr. Mukasey's remarks in a January 17 Wall Street Journal article, Mr. Mukasey stated that "torture is a crime," and he suggested that your statement may place intelligence agents at risk for criminal prosecution.

I found your answer to the Jack Goldsmith question reassuring. Nevertheless, in light of the concerns that former Attorney General Mukasey has raised, I would like you to further clarify your answer.

In particular, I would like to know if it is your view that reasonable and good-faith reliance on Justice Department legal opinions is enough to protect an individual from a criminal investigation that will force that individual to obtain counsel and incur legal fees, or whether you believe that such reliance simply makes it likely that the Department ultimately will not bring charges because of the low likelihood of obtaining a conviction, but that a criminal investigation of the individual may nevertheless go forward. Obviously, a government agent who relied on such advice and whom the Department decides not to prosecute, but who nevertheless is the target of an investigation and is forced to incur thousands of dollars in legal fees, may regard his ultimate vindication as a pyrrhic victory. Nor is his fate likely to go unnoticed by other intelligence agents who are called upon to make controversial decisions regarding the war with Al Qaeda.

Stated otherwise, my question to you is as follows: in your view, if a government agent has reasonably and in good faith relied on Justice Department assurances that his actions are lawful, do you believe that it would be inappropriate for the Justice Department to commence a criminal investigation of that individual? Or do you instead believe that it is appropriate to investigate such an individual and force him to incur legal fees, but that the Justice Department is unlikely to bring a prosecution because obtaining a conviction would be "exceedingly difficult?"

Prosecutorial and investigative judgments must depend on the facts, and no one is above the law. But where it is clear that a government agent has acted in "reasonable and good-faith reliance on Justice Department legal opinions" authoritatively permitting his conduct,

I would find it difficult to justify commencing a full-blown criminal investigation, let alone a prosecution.

2. According to news accounts published this morning, the Obama Administration has requested a four-month stay of the military-commissions trials at Guantanamo so that it may review the procedures used in those trials.

A. What harm do you believe may be caused to detainees by allowing their trials to go forward under the current rules?

As explained in the January 22, 2009 Executive Order on Review And Disposition Of Individuals Detained At The Guantánamo Bay Naval Base And Closure Of Detention Facilities, "It is in the interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantánamo, and of whether their continued detention is in the national security and foreign policy interests of the United States and in the interests of justice. The unusual circumstances associated with detentions at Guantánamo require a comprehensive interagency review." Such a review is required under Section 4 of the Executive Order. To permit and facilitate this review, Section 7 of the Executive Order provides that the "Secretary of Defense shall immediately take steps sufficient to ensure that during the pendency of the Review described in section 4 of this order, no charges are sworn, or referred to a military commission under the Military Commissions Act of 2006 and the Rules for Military Commissions, and that all proceedings of such military commissions to which charges have been referred but in which no judgment has been rendered, and all proceedings pending in the United States Court of Military Commission Review, are halted."

B. If a change in military-commission rules by the new Administration makes it impossible to go forward with the military-commission prosecution of a detainee now charged with violations of the laws of war, and that detainee appears to be an active and committed member of Al Qaeda, will you support the detention of that individual as a war prisoner so long as Al Qaeda continues to threaten acts of war or terrorism against the United States or its allies?

The disposition of detainees will depend on the review described above. I believe, however, that under applicable Supreme Court law the detention of involved individuals during the pendency of a conflict is permissible.

3. The Nuremberg war crimes tribunals were used to try Nazi war criminals in Germany between 1945 and 1949. Several dozen defendants were convicted, many of whom were sentenced to death.

Do you believe that the Nuremberg tribunals were illegal or unconstitutional?

The tribunals satisfied the constitutional and other legal standards of the time.

4. During your Judiciary Committee hearing, I asked you about the Justice Department's new regulations for implementing chapter 154 of title 28, relating to counsel for state capital prisoners. You stated: "I will take my obligations seriously under those regulations and look at the evidence that the states provide with me that they have complied with the regulations. And to the extent the states do [comply], I will give the relief that is dictated by those regulations."

I appreciate your answer. Will you also commit to make chapter 154 certification decisions in a timely manner?

The regulations for implementing Chapter 154 were recently enjoined by a federal court. The Department must await resolution of that litigation before taking action under Chapter 154. When the Department eventually implements Chapter 154, I will ensure that it does so in a timely manner.

Written Questions for Eric Holder submitted by Senator Specter on behalf of Senator Martinez

1. During late 1999 and early 2000, while you were serving as Deputy Attorney General, the Department of Justice became involved in the Elian Gonzales matter. Please describe your level of involvement in that matter.

I was a principal adviser to Attorney General Reno in connection with the Elian Gonzalez matter. I discussed options with the Attorney General and other officials who were involved in trying to resolve that matter.

2. As Deputy Attorney General (DAG), you must have been involved in shaping Department policy. What factors influenced the Department of Justice's decision to reverse its previous policy and take the question of Elian's custody out of the Florida state family court system?

The decision to have federal agents enter a private residence is a serious one, and in the case of Elian Gonzales that decision was made after careful consideration. We had determined that Elian should be returned to his father as a matter of parental rights, and a federal court had determined that the INS should have custody pending its review of the INS' decision on his asylum petition. We had also come to believe that his Miami relatives were taking every possible action to delay his return and in fact did not intend to return him. On this basis, we made the difficult decision to forcibly enter his relatives' home and take custody of him.

It is worth noting that the 11th Circuit ultimately concluded that the INS had acted properly in denying asylum to Elian, and recognized that the decision to respect his father's wishes was a matter of foreign policy that needed to be determined by the Executive branch and no other branch of government.

a. Why did you, and others at the Justice Department, think the Florida family court – which routinely weighs the best interests of the child in custody matters – was ill-equipped to handle this matter?

While the Florida family court was competent to adjudicate the narrow child custody issue, and while that issue in certain cases could affect the outcome of the immigration proceeding, it was neither competent nor authorized to consider the related immigration questions. A federal court had already ordered that his custody be placed with the INS pending resolution of his asylum petition. Whether it was appropriate for him to be in the United States was a threshold question that needed to be resolved independently of the family court proceeding. Since Elian had no legal basis to be in the United States and his father sought his return, it was appropriate for the Department to take and maintain custody of him.

b. What advantage did the federal government have over the state courts in weighing the necessary evidence?

Both the Florida family court and the federal courts were equally capable of considering evidence, however, the Florida family court had no authority to adjudicate his immigration status.

3. In an interview conducted on the same day as the raid you stated that "The INS has the ability to we ordered to be done today [(*i.e.*, forcibly remove Elian Gonzales from his uncle's home)]. The INS has vast discretion in these matters, and you do not require a judge to issue orders . . ." Is it still your position today that, in the absence of an imminent risk, armed federal agents can enter a residence without a court order?

I continue to believe that the immigration function affords substantial powers to the federal government. At the time, Elian's family in Miami was continuing to defy both the federal court and his father's wishes, facts given short shrift by many who were critical of the INS' actions. At the time, we did have an administrative warrant to take custody of Elian, a search warrant to enter his relative's home and also authority from the federal court to assume custody over Elian. These provided sufficient legal basis to enter his relative's home and take custody, and also would under current law.

4. On April 10, 2000, you told *Agence France Presse* that "[t]he government does not plan to rip [Elian] out of the house in the middle of the night." Yet, in the predawn hours of April 22, Elian was, in fact, ripped from his relative's house. Please describe how you were mistaken in the government's intentions or what changed between April 10 and April 22 to cause the government's plan to change?

As time passed we became increasingly concerned about the deterioration of conditions within the house where Elian was staying. We were in contact with child psychologists in that regard. The rescue only occurred after long months of court proceedings, unsuccessful negotiations with the family and after it was authorized by judicial officers

5. From your role in the Elian Gonzales matter, under what circumstances do you believe that the Justice Department should supersede or intervene in a state family court to settle a custody dispute involving a minor child?

The question of when a federal court should supervene a state court in a custody proceeding is never a simple matter. Frequently, the immigration question and the related custody question are entwined. However, in a case where the child has a competent parent, who is not the subject of any allegations or evidence that he or she has abused or neglected the child, the immigration question should ordinarily be resolved in accordance with the will of that parent.

QUESTIONS FOR THE RECORD
SUBMITTED BY SENATOR JEFF SESSIONS

Guns

1. In light of the *District of Columbia v. Heller* decision, do you intend to pursue the gun control reforms you supported during your tenure as Deputy Attorney General, including: (1) a mandatory 72-hour waiting period on handgun purchases; (2) a nationwide one-gun-per-month limit on individual handgun purchases; (3) an increased age requirement for purchasing handguns from 18 to 21; (4) mandatory safety locks, and (5) a national firearm registry?

2. For each of the specific proposals listed above, please explain whether you believe they would pass constitutional muster under the *Heller* decision?

If confirmed as Attorney General, my first priority with respect to gun control legislation will be to ensure that the illegal possession and use of firearms are effectively prevented and forcefully prosecuted. In doing so, I will not interfere with the constitutional right to bear arms, as recently articulated by the U.S. Supreme Court in the *Heller* decision.

I have supported legislation to reduce gun violence, but with respect to any such proposal I will consult with law enforcement authorities concerning the need for such provisions and with lawyers at the Department of Justice concerning the possible impact of any particular proposal on the rights enunciated by the Supreme Court in the *Heller* case.

Immigration

1. Do you recognize that as head of the Justice Department the Attorney General has the responsibility to see that federal immigration laws are enforced?

The Attorney General has considerable responsibility for enforcement of both civil and criminal immigration laws. Adjudication of many categories of immigration cases is the responsibility of the Attorney General delegated to the immigration courts and the Board of Immigration Appeals (BIA). Significant resources in the Department's Civil Division are dedicated to defending the decisions of the BIA as well as various immigration –related decisions of the Department of Homeland Security. Finally, the United States Attorney's Offices prosecute a considerable number of criminal immigration offenses. In short, the Attorney General is involved in practically every aspect of immigration enforcement, a responsibility that I take seriously and intend to fulfill, if confirmed.

2. Operation Streamline has been highly successful in both Yuma, Arizona and Del Rio, Texas. The success of this prosecution program is remarkable. According to the DHS briefing paper on the Operation, "Since its implementation, arrests this

fiscal year [07] have decreased 50% in Del Rio and 68% in Yuma." Will you work to expand Operation Streamline?

Together with the Secretary of Homeland Security, I intend to closely review all aspects of immigration enforcement to make sure that our enforcement resources and policies are fully coordinated and effective. Programs like Operation Streamline have a role to play in reducing illegal entry at certain border crossings and in curtailing criminal behavior in border cities. It is critical that they be part of an integrated enforcement strategy that takes account of judicial resources and detention space.

3. You stated to the Conference of the Immigration and Naturalization Services (INS) and the International Association of Chiefs of Police (IACP) Conference on June 26, 1998, that these groups "must work together to attack both border issues and local law enforcement problems." You also stated: "The border is not exclusively a federal or state obligation. The border is a shared responsibility among federal, state, and local authorities, and we have only begun to work out a systematic way to manage it together." You have a history of supporting joint federal and state task forces.

   a. Do you support a role for state and local law enforcement, consistent with federal law, of federal immigration laws? Would you support further cooperative efforts?

   b. Will you commit appropriate DOJ resources to working with, and training of, state and local governments in enforcing our immigration laws?

Immigration is a federal authority and responsibility. At the same time, in many parts of our country, there is a correlation between illegal immigration and criminal activity. In this respect, I think there is a role for state and local law enforcement, consistent with federal and state law, to support federal enforcement of immigration laws.

a. Based on the above, I support further cooperative efforts to the extent that state and local law enforcement authorities determine that they are in their interest.

b. The 287(g) program has now been in effect for several years. Many of the jurisdictions that participate in the program report positive results from that participation, a fact that supports continuing and perhaps expanding the program. However, given the small number of jurisdictions that have elected to participate, this is an important juncture to also evaluate the overall national impact of the 287(g) program both from the federal perspective of immigration control and from the state and local perspective of street crime control.

4. Is illegal entry by unlawful means an important national issue? If confirmed as Attorney General, will you make it a Justice Department priority to further reduce illegal entries into the United States?

I share the national consensus that the integrity of our borders is an important priority. I support a comprehensive strategy to address immigration issues that addresses not only illegal entry itself but also its causes. A number of weapons need to be deployed and reinforced, including improved enforcement against employers, increased use of smart technology to police the Southwestern border, and enhanced resources for the adjudication process.

Fairness Doctrine

1. At your hearing both Senator Specter and I asked about your views on the Fairness Doctrine, and you stated you had not considered the issue. Now that you have had the opportunity to review the issue more fully, would you support such a policy? Would it be constitutional?

If a law or regulation is enacted that seeks to implement some version of the fairness doctrine, I will work with other agencies in the new administration and the Department's Office of Legal Counsel to reach a considered view about the constitutionality of the specific law or regulation under consideration.

Independence and Pardons

1. Included among the series of pardons granted by President Clinton at the end of his administration were Susan Rosenberg and Linda Sue Evans, two Weather Underground terrorists. Andy McCarthy, who was a federal prosecutor in the Southern District of New York, recounts that Susan Rosenberg was indicted in the 1980s for her connection in the Brinks robbery, which killed two New York State troopers and a security guard.[1] Rosenberg spent years as a fugitive "plotting to kill more police officers, military personnel and American government officials."[2] When caught, she had "an arsenal worthy of a small army and w[as] in the throes of plots to bomb more government buildings and slaughter more innocent people."[3] She was sentenced to 58 years, and the judge recommended against parole. As McCarthy recounts, Rosenberg "expressed remorse about only one thing: she hadn't had the courage to shoot it out with the police who'd apprehended her."[4]

   Linda Sue Evans, Susan Rosenberg's accomplice, was also linked to domestic terrorism. According to McCarthy:

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[1] Andrew C. McCarthy, "Opposed to Holder without Apology," National Review.com (Nov. 25, 2008).
[2] *Id.*
[3] *Id.*
[4] *Id.*

> At the time of her arrest, Evans, who had harbored a fugitive fellow Weatherman terrorist from the Brinks murders and used a fake ID to buy a gun for Rosenberg, possessed hundreds of pounds of explosives with which she and her comrades were plotting to bomb the U.S. Capitol and various military installations."[5]

Both Rosenberg and Evans were given commutations of their sentences by President Clinton.

McCarthy criticizes you for your role in these pardons:

> It takes courage to stand up to a president who is doing something wrong. Holder exhibited cowardice. Apologists like Lanny Davis . . . now say Holder had nothing to do with the terrorist pardons. That is simply preposterous. The terrorists' petitions, unlike the Rich petition, were formerly filed with the Justice Department. Holder was the official who ultimately had to make a recommendation to Clinton. . . . [T]he press has reported that Holder signed off on them.[6]

Please explain your role, if any, and recommendation on these two clemency requests. In doing so, please note that President Clinton waived executive privilege regarding all matters relating to his pardons and commutations in a February 27, 2001 letter from David Kendall to Congressman Dan Burton.

a. What role did you play regarding the pardons of members of the Weather Underground?

The Justice Department recommended that the President deny the petitions of Susan Rosenberg and Linda Sue Evans, the two women who were members of the Weather Underground domestic terrorist group.

b. Did you recommend the 58-year sentence of Susan Rosenberg be commuted? If not, what was your recommendation?

No. Even though the Justice Department's review of the Rosenberg petition was not yet complete in the last days of President Clinton's term, upon learning through press reports that the Rosenberg petition was being considered by President Clinton, I approved the transmission of a draft report to the White House so that the President would know of the Justice Department's opposition.

c. Did you recommend the 40-year sentence of Linda Sue Evans be commuted? If not, what was your recommendation?

No. I signed a negative recommendation and sent it to the White House.

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[5] *Id.*
[6] *Id.*

2. What, if anything, did President Clinton ask you to provide him regarding the FALN clemency request? Did he ever explain why he was interested in the FALN clemency request? If so, what were his reasons?

I never spoke directly to President Clinton about the FALN clemency request.

3. How many times did you visit the White House from July 2000 until the end of the Clinton Administration? How many times did you speak with President Clinton during that time?

I have no way of estimating how many times I visited the White House during that period, nor how many times I spoke with President Clinton.

Questions Posed by Legal Experts in the *New York Times*

1. On the eve of your confirmation hearing, the New York Times published a list of questions proposed by legal experts. I am interested in your answers to the following questions:

a. From Jeffrey Rosen, a law professor at George Washington University and the legal affairs editor of The New Republic:

i. "What will you do when liberals, over Mr. Obama's objections, encourage Congress, the courts and the Justice Department to pursue investigations and prosecutions concerning the Bush administration's surveillance and interrogation policies?"

As I testified at my confirmation hearing, I believe deeply in the principle that no person is above the law. But decisions to prosecute must depend on the facts. Government officials must do everything they can to comply with the law. It is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself.

Where there are ongoing investigations, for example regarding the destruction of certain CIA tapes, I will let those investigations run their course and see where the facts lead.

b. From Noah Feldman, a Harvard law professor and fellow at the Council on Foreign Relations:

i. "Given that government interrogators believed they were acting under color of law when they used waterboarding and other harsh techniques when dealing

with terrorism suspects, is it appropriate to consider charging them with crimes?"

See answer above.

ii. "Does the president have the power to detain terrorism suspects without trial in the United States? If so, for how long?"

The Supreme Court has granted certiorari *Al-Marri v. Pucciarelli* (08-368), in which the question presented concerns the President's authority to order the seizure in the United States and long-term detention in this country of an individual suspected of, but not charged with, war crimes. Given the legal complexity of this issue, and the fact that the government's brief is due in the Supreme Court in February, I believe it would be premature for me to express a final judgment on this issue at this time. If confirmed, I will study the issue closely, consult with appropriate officials and career staff at the Department of Justice and perhaps other agencies, before deciding on the government's litigating position in this case.

c. From Eugene Volokh, a professor of law at the University of California, Los Angeles, and the founder of the Volokh Conspiracy blog:

i. "Do you believe law-abiding Americans have an individual constitutional right to keep firearms for self-defense?"

The Supreme Court in the Heller case established that there is an individual right to bear arms and if I confirmed as Attorney General, I will uphold the Constitution as interpreted by the Court.

ii. "Some say the war on drugs causes more violence than it prevents. An attorney general must exercise prosecutorial discretion about which laws the Justice Department should focus on enforcing. What do you think is the best way to decrease violence related to drugs and the war on drugs?"

Federal law enforcement efforts to combat drug trafficking and related violence remain vitally important in furthering public safety. Anti-drug enforcement also strengthens national security by weakening the links between international narcotics trafficking organizations and terrorist groups. At the same time, we need a multi-front approach to reduce drug use. Effective law enforcement must be complemented with effective treatment and prevention programs. We need to revitalize our justice grant programs to equip local communities with all the tools they need to achieve these goals.

d. From Charles Stimson, the deputy assistant secretary of defense for detainee affairs from 2006 to 2007 and a senior legal fellow at the Heritage Foundation:

   i. "Mr. Obama has said that he wants to build American capacity and partnerships to capture or kill terrorists around the world. What role, if any, do you see for traditional military detention for future prisoners and for some of the detainees held at Guantánamo?"

As I testified at my confirmation hearing, "I don't think there's any question but that we are at war," and as a legal matter Congress has enacted the Authorization to Use Military Force (AUMF), authorizing the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks" 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." 115 Stat. 224 (2001). As the Supreme Court recognized in *Hamdi v. Rumsfeld*, 542 U.S. 507, ___, 124 S. Ct. 2633, 2640 (2004) (internal quotation omitted), interpreting and applying the AUMF, "[t]he capture and detention of lawful combatants and the capture, detention, and trial of unlawful combatants, by universal agreement and practice, are important incident[s] of war."

Of course, as the Court in *Hamdi* also recognized, "[e]ven in cases in which the detention of enemy combatants is legally authorized, there remains the question of what process is constitutionally due to a citizen who disputes his enemy-combatant status." *Id.* at 2643. In *Hamdi*, the Court held that "a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Id.* at 2648.

With respect to the detainees at GTMO, I cannot today provide answers to all of the difficult problems that Congress and others have been grappling with for years, but I can describe the principles that will guide my approach, if confirmed. We will undertake a comprehensive review of the detainees immediately upon taking office, and that review will be guided by the following four basic principles:

1. **protecting the security of the American people;**
2. **ensuring that those who have committed offenses against the United States are brought to justice;**
3. **ensuring that those who can be safely sent to other countries are transferred under appropriate conditions; and**
4. **ensuring that all of our actions comply with the laws of war and the Constitution.**

The Attorney General and the Executive Branch as a whole have been given an enormous amount of authority under existing law to keep the American people safe

without violating individual rights. I am committed to the full use of those legal authorities.

ii. "If there is a decision to try some detainees in traditional courts-martial, do you think any of the military rules of evidence or rules for courts-martial would need to be modified under the doctrine of impracticability? If so, which ones?"

See answer above. Pending completion of the review described above, I do not know whether such modifications will be necessary. President-elect Obama and I have both expressed grave concerns about the Military Commissions Act, which sets a lower standard for the use of coerced confessions than the standard normally applicable in courts martial. I would want to study this issue closely, and learn more about the kinds of interrogations that were in fact conducted, and the evidence at issue, before offering a final judgment.

Written Questions for Eric Holder from Senator Specter

Marc Rich Pardon

1. You testified that your position on the Marc Rich pardon was "neutral leaning towards favorable if there was a foreign policy benefit that might be gained. And that was on the basis of the prime minister of Israel weighing in and supporting the pardon." Former White House Counsel Beth Nolan testified before the House Committee on Government Reform that, when she spoke to you on January 19, 2001, you told her that you were leaning favorable because of Prime Minister Barak's support for the Rich pardon.

   a. Who had told you that Prime Minister Barak supported the Rich pardon?

I learned of Prime Minister Barak's support on January 19, 2001 from either Jack Quinn or Beth Nolan.

   b. Did you receive information about the facts of the Rich case from anyone other than Mr. Rich's attorney, Jack Quinn?

No.

   c. If so, who else provided you with information about the case? If not, how could your recommendation be "neutral, leaning towards favorable" when the only information you had regarding the case came from Mr. Rich's advocate?

I used the term "neutral" initially to describe my position on the Rich pardon because I did not have a basis to form an opinion. I used that term, inartfully, to indicate I did not have sufficient information upon which I could make a judgment. I used that term in speaking with Ms. Nolan earlier in January. On January 19, 2001 Beth Nolan called to inquire about my position and, because I had learned of Prime Minister Barak's support earlier that day, I told her I was "neutral, leaning towards favorable if there was a foreign policy benefit." I told Ms. Nolan that, while I could not judge the foreign policy arguments, I was struck by the fact that Mr. Barak supported the pardon. I acknowledge that I made mistakes in how I handled the Rich pardon, including the fact that I should not have spoken to the White House about the case without knowing all the facts.

FALN Clemency

2. It has been widely reported in the press that the FBI, the Bureau of Prisons, and the attorneys who prosecuted the FALN terrorists opposed clemency for the terrorists. It has also been reported that former Pardon Attorneys Margaret Love and Roger Adams were opposed to clemency. At your hearing, you said that you "weighed what the view was in law enforcement, from the U.S. attorneys, from the investigative agencies, and obviously took into consideration what the pardon attorneys were saying, both of them." But, you "balanced that against the people who were advocating for it, an impressive group of people." You mentioned some of these advocates at your hearing, and some Senators mentioned others.

a. Please list all those people advocating for clemency, the affiliations of these individuals, and identify where you obtained the list of advocates.

All of the advocates of whom I am aware were contained in a list entered into the hearing record by Senator Whitehouse. The list was compiled by the Presidential Transition office.

b. To your knowledge, had any of those advocating for clemency thoroughly reviewed the cases of the FALN terrorists?

I do not have personal knowledge of the nature of the review undertaken by each of the many individuals and organizations that advocated in support of clemency for the FALN prisoners.

c. Was their knowledge superior to that of the FALN prosecutors, investigators and other Justice Department personnel? If not, why did you heed the recommendation of less informed interest groups and public figures over the advice of career prosecutors, investigators and Department of Justice officials?

I do not have personal knowledge of the extent of the knowledge of the individuals and organizations that advocated in support of clemency for the FALN prisoners but certainly I did not "heed" their recommendations "over" the advice of career prosecutors and other Department of Justice officials, or otherwise give their views preferential treatment. Indeed, many of these clemency supporters advocated unconditional and immediate release, which I did not support. Rather, in preparing options for President Clinton to consider, I merely considered the views of supporters along with those of many others who held different views. I also weighed the strong opposition from law enforcement and the public statements of victims of FALN violence.

3. Based on your testimony before the Committee, it does not appear that you were well informed about the facts of the cases against those offered clemency. You were unaware that the FALN threatened to kill the sentencing judge, you had not seen the video of FALN members making bombs, and you did not know that some of the terrorists offered clemency were leaders in the FALN and Los Macheteros organizations.

a. Given this apparent lack of knowledge about the terrorists, do you still believe you were well-enough informed to recommend releasing the terrorists?

Yes.

b. Were you aware that the FALN members were not tried for the bombings in New York City, in part, because they had already been convicted and sentenced to lengthy sentences for their Chicago and Connecticut criminal activities? If you had known that their convictions may not have reflected the full scope of their criminal activities, would you have recommended clemency?

In deciding how to view the clemency requests I focused on that which was in the record provided me and that which was most provable- the court records. I do not know what the strength of the cases that you indicate might have been brought in other jurisdictions was. It is therefore very difficult to to say how the possibility of trying these other matter would have impacted my judgment.

c. You testified that you took the victims into account in making your decision. Did you ever meet with victims of the FALN or contact them regarding the clemency decision?

I did not meet with, or contact, any victims of the FALN. I was, however, well aware of their strong objection from numerous press accounts and their opposition was discussed in the options memorandum that was sent to President Clinton.

4. In October 1999, Attorney General Reno released the five-year interagency counterterrorism and technology crime plan. The report stated that, "Factors which increase the present threat from these groups [the FALN and Los Macheteros] include ... the impending release from prison of members of these groups jailed for prior violence."

a. Were you aware of this report when you recommended clemency for the FALN terrorists?

Yes.

b. At a press conference following the release of this report, you said that that the report was talking about "the possibility that people from among other groups, the FALN, were going to be released over the next few years." What exactly did you mean? Who were the other people to be released?

The report was talking about members of FALN who were scheduled to get out of prison over the next few years due to completing their sentences.

5. At your hearing, I questioned you about directing then-Pardon Attorney Roger Adams to write a favorable recommendation on clemency for the FALN terrorists. You said that "[t]he name that is on the memo [that goes to the White House] is mine.... It says from the Deputy Attorney General to the President." Were there times, however, when you declined to sign pardon or clemency recommendations or denials sent to the White House during your tenure as Deputy Attorney General? If so, please explain this deviation from the practice described in your testimony.

I authorized the sending of negative pardon recommendations to the White House that I did not sign in instances where there was not enough time to do a full report or where I thought the White House needed to know factual information, including opposition from those in law enforcement, regardless of the form that the submission took. I think I did this with regard to the Vignali, Rosenberg and Evans matters.

Second Amendment Rights

5. You testified that the Supreme Court in *Heller* "made the determination that the Second Amendment conferred an individual right. I will obviously respect that. And any actions I take as attorney general will take that into account."

   a. What do you mean by the statement that you will take the *Heller* decision "into account"?

I mean that as Attorney General of the United States, I would understand that the *Heller* decision is the law of the land.

   b. As Attorney General, isn't it your duty to defend the individual constitutional right to bear arms affirmed by the Supreme Court?

Yes, as that right is set forth in the *Heller* decision.

Although you made reference to the doctrine of *stare decisis* in your testimony, if you had reason to believe that a future Supreme Court would be amenable to overruling the decision in *Heller*, and the Court granted certiorari on a case you considered appropriate to consider the issue, would you encourage the Administration to take the position that *Heller* should be overruled?

As Attorney General of the United States, I would adhere to the requirements of the United States Constitution as interpreted by the Supreme Court. As I mentioned in my testimony before the Judiciary Committee, I believe that, post-*Heller*, the available options to regulate firearms are narrowed, but not entirely eliminated. Reasonable, common-sense restrictions remain possible. My intention as Attorney General would be to act in accordance with the Supreme Court's rulings on this question.

Political Campaign Position

6. You served as national co-chairman of Obama for America (2007-2008), one of the highest positions on the campaign. You were also one of three individuals initially chosen to vet and recommend a vice-presidential nominee for the Democratic ticket. As you may know, in 1976, the Senate adopted an amendment offered by then Senator Lloyd Bentsen (D-TX) that stated, "an individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign manager, national chairman of the finance committee, chairman of the national political party, or other comparable high level campaign role involved in electing the President should be those considered to have played a leading partisan role." This followed Watergate and other instances during the Kennedy and Truman Administrations when individuals with leading roles in successful national campaigns became the Attorney General. Do you see any merit in such a proposal?

The Attorney General is the people's lawyer and therefore different from other cabinet members. He or she must be beyond reproach because the public's confidence in the rule of law depends on having confidence that the law will be enforced in an even-handed and impartial way. I am committed to that proposition, and nothing in the various roles I have had in the past will affect that commitment or my independence. While I believe the

President should have the authority to nominate a person of his choosing to be Attorney General, inquiries into the independence of the Attorney General, based on campaign or other activities, are certainly appropriate in the confirmation process.

Obscenity

7. It has been a high priority of the Department of Justice to enforce obscenity, child exploitation and trafficking laws. Created in 1987, the mission of the Department's Child Exploitation and Obscenity Section (CEOS) is to "protect the welfare of America's children and communities by enforcing federal criminal statutes relating to the exploitation of children and obscenity."

    a. Given all of the other priorities you have set forth for the Department under your leadership, will CEOS be given the necessary resources under this incoming Administration?

If confirmed, I look forward to working with Congress to ensure that all Department subcomponents, including CEOS, have the necessary resources to accomplish their respective missions. I am confident that the incoming Administration shares this view.

    b. Given the prevalence of sexually explicit images in culture, in the media, and on the internet, how strictly will you direct the CEOS to construe the three-part test for obscenity set forth in *Miller v. California*, 413 U.S. 15 (1973)?

While sexually explicit images may be prevalent in culture, media, and the internet, it is my understanding that the test for obscenity set forth in Miller remains the standard by which depictions are judged and it should be enforced in accordance with legal precedent.

Antitrust

8. On December 17, 2008, OPEC, which controls about 40 percent of world oil supplies, announced its biggest single production cut ever. The members of OPEC have for years conspired to manipulate oil prices. U.S. antitrust laws explicitly prohibit conspiracies in restraint of trade, which include agreements to cut production in an effort to cause prices to rise. Under the Foreign Sovereign Immunities Act, foreign states are immune from prosecution under the antitrust laws for their governmental activities, but not for their commercial activities. However, in a case I believe was wrongly decided, International Association of Machinists v. OPEC, a California district court held that the cartel activity by OPEC members was governmental activity, not commercial activity. The Ninth Circuit affirmed this decision on appeal. That is why Senator Kohl and I have introduced the "No Oil Producing and Exporting Cartels Act" or "NOPEC," which would reverse these court decisions and give the Justice Department authority to prosecute members of OPEC for their cartel activities. As Attorney General, would you support having the authority to take such action against OPEC cartel activity?

I am committed to enforcing the antitrust laws and in protecting consumers from cartels of all kinds. I know that the State Department and others have expressed concerns about the foreign policy impact of legislation that would permit antitrust claims against OPEC and similar entities. I will work with the State Department and the Committee to find appropriate means to protect the public from supra-competitive prices.

9. There have been a number of instances recently in which the Federal Trade Commission has differed either substantively or procedurally in its enforcement of the antitrust laws from the Justice Department. The two agencies publicly squared of over the Department's recently issued interpretation of Section 2 of the Sherman Act, the statute that prohibits monopolization. The FTC recently issued new procedural rules that seem likely to result in different interpretations of the antitrust laws and different outcomes for similarly situated defendants. The agencies frequently squabble over which will review particular mergers, leading to significant delays in merger approval. These disagreements over, or variations in, the enforcement of the antitrust laws have serious costs, including uncertainty for business, and create the perception among businesses, the bar, foreign governments and other observers that the law is not being applied consistently and fairly. If you are confirmed as Attorney General, how would you address these disagreements or the divergence between the Justice Department and the Federal Trade Commission's enforcement of the antitrust laws?

I agree that the public is best served by having the FTC and the Antitrust Division agree on basic principles of antitrust law so that results do not differ depending on which agency is charged with particular enforcement action or merger review. I also believe that the two entities must work together cooperatively with a minimum of dispute. As Attorney General, I will direct the Assistant Attorney General of the Antitrust Division, once confirmed, to work with the FTC to attempt to resolve any divergence of views and to develop processes and procedures to minimize delays in the clearance process.

Judges

10. If confirmed as Attorney General, you will be overseeing the Department of Justice's role in judicial selection. I would therefore like to ask you some questions about your understanding of the judicial role.

    a. Do you think that it's ever proper for judges to indulge their own policy preferences in determining what the law means?

No. Judges should decide cases based on the facts presented and the applicable law.

    b. If so, under what circumstances?

11. President Obama has said that "the criterion by which [he'll] be selecting [his] judges" is "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."

    a. Do you agree with that statement?

I believe that it is important to appoint judges who have the intellect and temperament required, and who are committed to following the law. I also believe that the federal bench should be composed of people with diverse backgrounds and life experiences.

b. Do you think that it's ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?

It is important for judges, as for all public servants, to bring to their jobs an ability to understand the life experiences of the people who appear before them, but judges should make their decisions based only on the facts presented and the applicable law.

Public Corruption Prosecution Improvements Act

12. The Public Corruption Prosecution Improvements Act (PCPIA) was introduced in the Senate on August 2, 2007 and passed the Judiciary Committee by voice vote on December 10, 2007. The PCPIA expands the illegal gratuities statute. In *United States v. Sun Diamond Growers*, 526 U.S. 398 (1999), a unanimous Supreme Court held that, to establish a violation of 18 U.S.C. § 201(c), the government must prove "a link between the thing of value conferred upon a public official and a specific official act for or because of which it was given." Section 12 of the PCPIA would eliminate the requirement that such a nexus be proven, allowing prosecution merely "for or because of" an official's position. In *Sun Diamond,* the Supreme Court reasoned that a link between the gift and an official act was needed to avoid criminalizing "replica jerseys given [to the President] by championship sports teams each year during ceremonial White House visits…"; "a high school principal's gift of a school baseball cap to the Secretary of Education"; or "a group of farmers… providing a complimentary lunch for the Secretary of Agriculture." 526 U.S. at 408-407.

a. In your view, was the *Sun Diamond* decision properly decided based upon the text of 18 U.S.C. § 201(c)?

The Supreme Court's decision in *Sun Diamond* is the controlling interpretation of Section 201, and as Attorney General, I will enforce the law consistent with that decision.

b. Do you believe the amendments proposed by the PCPIA would risk criminalizing the acceptance by public officials of trivial gifts commemorating an event or occasion even where there is no corrupt intention by the public servant in accepting the honoraria?

I have not studied carefully the relevant provisions of the PCPIA. I can, however, say that a criminal public corruption prosecution should not lie in the absence of corrupt intent in an elected official's receipt of a trivial commemorative gift, or in the mere contribution of funds to a political candidate who shares the contributor's view on a particular issue.

c. Do you believe the PCPIA could criminalize currently legal political contributions made by parties with an interest in the outcome of legislative or executive branch actions even where there is no *quid pro quo* between donations and official acts?

I will review the PCPIA, and specifically Section 12 of that legislation, to determine whether its provisions are drafted so broadly as to potentially ensnare an innocent political leader or constituent engaging in lawful human interaction or political activity without corrupt intent or purpose.

Human Trafficking

13. Last year, Congress reauthorized the Trafficking in Persons Protection Act. Combating human trafficking was an important priority of the Bush Justice Department. If you are confirmed as Attorney General, will combating human trafficking remain a priority?

I will maintain a strong DOJ commitment to combat human trafficking.

14. Some in Congress have argued that the Civil Rights Division of the Department of Justice allocates too many resources to human trafficking. As a result, they claim, the Department has been less effective in enforcing anti-discrimination statutes. If you are confirmed, you will need to determine how the Department's finite resources are allocated. Do plan on decreasing the resources dedicated to human trafficking prosecutions?

It is critical that the Department effectively enforce both Congress' anti-discrimination statutes and prosecute human trafficking. I am concerned that insufficient resources have been dedicated to Civil Rights generally and will work with Congress to ensure that adequate resources are provided for enforcement across all of the statutes enforced by the Civil Rights Division.

Elian Gonzalez

15. On April 25, 2000, Professor Laurence Tribe of Harvard Law School wrote an editorial in *The New York Times* that was highly critical of the "armed seizure" of Elian Gonzalez. In the article he wrote:

> Under the Constitution, it is axiomatic that the executive branch has no unilateral authority to enter people's homes forcibly to remove innocent individuals without taking the time to seek a warrant or other order from a judge or magistrate (absent the most extraordinary need to act). Not only the Fourth Amendment but also well-established constitutional principles of family privacy require that the disinterested judiciary test the correctness of the executive branch's claimed right to enter and seize. ... no judge or neutral magistrate had issued the type of warrant or other authority needed for the executive branch to break into the home to seize the child. The agency had no more right to do so than any parent who has been awarded custody would have a right to break and enter for such a purpose. Indeed, the I.N.S.

had not even secured a judicial order, as opposed to a judicially unreviewed administrative one, compelling the Miami relatives to turn Elian over. The Justice Department points out that the agents who stormed the Miami home were armed not only with guns but with a search warrant. But it was not a warrant to seize the child. Elian was not lost, and it is a semantic sleight of hand to compare his forcible removal to the seizure of evidence, which is what a search warrant is for.

a. Given the comments of Professor Tribe, how would you describe the legal authority on which the Department of Justice relied to take Elian Gonzales?

I have tremendous respect for Professor Tribe and for his analysis of constitutional questions. However, Professor Tribe makes a distinction that the law does not recognize in the immigration context by disputing the authority of an administrative warrant. An administrative warrant has no less force than one issued by a federal magistrate. The INS' taking of Elian into custody rested on solid legal pillars: 1) the court's order that INS take custody of Elian; 2) the administrative warrant for his seizure; 3) a judicial search warrant for his relatives' home; and 4) his family members' refusal to release him. Also, notwithstanding Professor Tribe's argument, there is no dispute that if the INS had encountered Elian in a public environment, they could have taken custody of him. Once they had the lawful right to be in the relatives' home, they had the right to take custody even if one disputes the authority of the administrative warrant. One may have a fair debate whether the law should require more, but his seizure was certainly constitutional and lawful.

b. Professor Tribe goes on to say: "Ms. Reno's decision to take the law as well as the child into her own hands seems worse than a political blunder. Even if well intended her decision strikes at the heart of constitutional government and shakes the safeguards of liberty." What is your response to Professor Tribe's criticism?

For the reasons stated in 1a., I do not believe that the Attorney General took "the law into her own hands" and further believe that the actions involved in Elian's seizure were lawful.

Chiquita

16. As an attorney at Covington & Burling, you represented Chiquita Brands International against criminal charges and five related civil lawsuits seeking redress for the banana company's abetting of murder and terrorism in financing Colombia's notorious paramilitary death squads, the United Self-Defense Committee (AUC), a designated foreign terrorist organization. According to court documents, Chiquita paid AUC more than $1.7 million from 1997 to 2004, and $825,000 of that sum was paid between September 10, 2001, when the AUC was designated a terrorist organization, and February 2004. Throughout the litigation, Chiquita has maintained that the money it paid to the AUC was protection money. In fact, you said that Chiquita faced "a moral dilemma of the highest order" and that the "company did what it had to do to save the lives of its employees while disclosing fully its actions to U.S. authorities and appealing for their reason and guidance." However, Roscoe

Howard Jr., the former U.S. Attorney for the District of Columbia who prosecuted the case until he left his position in 2004, said that he considered the Chiquita investigation to be a "murder investigation…[e]ven though Chiquita didn't murder anyone, that's what the money was used for to buy weapons." Columbia's Attorney General Mario Iguaran, someone you are certain to work with if confirmed, reportedly believes that Chiquita's payments to AUC were done to ease labor problems and ensure there was no interference with the production of bananas, not to protect workers. He has been quoted as saying the companies "didn't pay for security, but for blood." How do you respond to these characterizations of Chiquita's payments to the AUC?

17. It has been reported that one of the arguments you made in a brief seeking dismissal of a civil suit against Chiquita was that there was "clearly no defined rule of international law prohibiting material support of terrorism."

    a. Can you please supply this brief to the Committee?

I am submitting a copy of the brief under separate cover.

    b. Do you believe this zealous advocacy on behalf of a client will affect your willingness to use all tools at your disposal, including the civil law, to combat terrorism?

Chiquita consistently has maintained that payments made by its former Colombian subsidiary to the AUC were made for the purpose of protecting Chiquita's employees and property from threats of violence. Indeed, in its formal charging papers, the Department of Justice acknowledged that the leader of the AUC sent a clear but unspoken message that failure to make payments could result in physical harm to the company's employees. After a four-year investigation, the Department of Justice found no evidence whatsoever indicating that Chiquita shared any ideological alignment with the AUC.

The Colombian Attorney General's Office has commenced an investigation into payments made by companies in the banana and other industries to paramilitary groups in Colombia, including payments made by Chiquita's former Colombian subsidiary. To my knowledge, the Colombian Attorney General has reached no conclusions concerning Chiquita or any of its current or former officers, directors, or employees.

Fairness Doctrine

18. The 1940s regulation that created the Fairness Doctrine was held to be unconstitutional by a 1986 decision of the Federal Communications Commission. The Department of Justice reached the same conclusion in 1987 when it advised the President to veto a bill that would have codified the Fairness Doctrine by statute. I voted to uphold the President's veto. Do you believe that a new law or regulation to re-impose the Fairness Doctrine contravenes the First Amendment?

If such a law or regulation comes under consideration, in confirmed as Attorney General, I will work with other agencies in the new administration and the Department's Office of Legal Counsel to reach a considered view about the constitutionality of the specific law or regulation under consideration.

19. In June 2004, you made a speech at a meeting of the American Constitution Society, which Sen. Sessions quoted at your hearing. In the context of identifying the obstacles to persuading the American people to support a liberal policy and political agenda, you said: "In the short term, this will not be an easy task. With the mainstream media cowered by conservative critics, and the conservative media disseminating the news in anything but a fair and balanced manner, and you know what I mean there, the means to reach the greatest number of people is not easily accessible." Can you assure the Committee that you will be apolitical and impartial concerning the Fairness Doctrine issue, despite the apparent bias reflected in these comments?

If confirmed, I will be fair and impartial about any issues related to the Fairness Doctrine, as well as all other issues that come before the Department of Justice.

Holder Memo Questions

20. The Justice Department's policy of seeking waiver of the attorney-client privilege from organizations under investigation originated under the memorandum that you signed on June 16, 1999, and that bears your name.

    a. Is there any real justification for having a waiver on anything other than a purely voluntary basis?

I agree that the waiver of a corporation's attorney-client privilege -- or, rather, the provision to law enforcement of the underlying facts and information that may have been the product of privileged work -- should be done on a voluntary basis.

    b. Doesn't it undermine the voluntariness of waiver when a company's representatives have reason to believe the charges against it will be reduced in exchange for such a waiver?

I also agree that the threat of criminal prosecution made against a corporation in an effort to persuade it to waive its attorney-client privilege does undermine the voluntariness of its agreement to do so.

c. Should a refusal to waive the attorney-client or work product protections voluntarily ever be a factor prosecutors consider in deciding whether to indict a corporation?

In certain circumstances, a corporation's refusal to provide facts and information to law enforcement can be relevant to an assessment whether the corporation has cooperated fully with law enforcement.

d. In *Upjohn v. United States,* 449 U.S. 383 (1981), the Supreme Court noted that the purpose of the attorney-client privilege "is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice."[1] Are those goals undermined by allowing prosecutors to issue waiver requests in a context where failing to comply could subject the corporation to indictment or stiffer penalties?

Forcing a corporation to waive its attorney-client privilege under threat of criminal indictment raises concerns under *Upjohn* and can discourage full and candid communications between a corporation and its attorney.

e. Attorney General Mukasey stated in his nomination hearing during a discussion of this topic, "Absent privilege, the right to counsel is nearly meaningless. You can't get counsel – you can't be expected to disclose the facts to your lawyer so as to get good counsel if what you think you're doing is disclosing them, ultimately, to the prosecutor." Do you agree with that statement?

I agree with Judge Mukasey's statement that without the privilege, the right to effective counsel is impaired. For this reason, among others, a request of a corporation for information or facts adduced in a privileged context should be made in very limited circumstances. This was the intent of the memorandum I signed in 1999.

f. Do you think the policy articulated in the Holder Memorandum was sufficiently sensitive to this basic right?

I believe the policy the Department of Justice set forth in the memorandum I signed in 1999 was sensitive to the basic rights of the attorney-client privilege. I do not believe the practice that developed in the last number of years amongst certain prosecutors or in certain jurisdictions has been true to the intent of that memorandum.

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[1] 449 U.S. at 389.

When the so-called Holder Memo was issued on June 16, 1999, we did not contemplate nor envision what the practice in the field appears to have become in certain jurisdictions or by certain prosecutors, namely the blanket demand that corporations waive their attorney-client privilege as a litmus test of the corporation's good citizenship. In stark contrast, we were focused on those corporations that had expressed their commitment to cooperating with law enforcement; when law enforcement could not access certain facts or information important to our investigation, we authorized prosecutors to ask the cooperating corporation whether it would be willing to provide those facts and that information to the investigators, consistent with the corporation's expressed desire to be helpful. The disparity between our practice and what has developed over the ensuing nine years in the field is significant.

I believe you are right in posing the questions you do with respect to the waiver of a corporation's attorney-client privilege. The attorney-client privilege has special and unique status in our legal system, and deservedly so. Its judicial underpinnings are well established and deeply rooted.

21. According to a transcript from your law firm, Covington and Burling, you discussed the attorney-client issue in a December 22, 2006 conference call in which you were asked about how the issue should be handled in the aftermath of the so-called McNulty Memo, a successor to the Holder Memo. You stated that going forward, this issue would be handled with a view of whether the McNulty memo proved "effective or not in terms of changing this culture of waiver."[2]

    a. What did you mean by the phrase "culture of waiver?" Do you believe the Holder Memorandum played a significant role in creating that culture?

When I referred to the "culture of waiver" in my discussion of the attorney-client issue several years ago, I was speaking of what I alluded to above, namely the practice that certain prosecutors or certain jurisdictions have engaged in these past few years of requesting a corporation to waive its privilege as a litmus test of the corporation's cooperation or of its good citizenship. This is not what the memorandum I signed in 1999 permitted or expected, not is it what we experienced at that time.

    b. Wouldn't the best way to address this issue be to have a uniform federal policy precluding waiver requests except in limited circumstances (*e.g.*, in cases where the defendant asserts an "advice of counsel" defense or the prosecution has credible evidence that the fraud or crime exceptions to the privilege pertain)?

I do agree that the Department of Justice should review this issue carefully, as a top priority in the prosecution of white collar crime, and determine whether new policies should be instituted to ensure that federal law enforcement's request for

[2] The Impact of the McNulty Memorandum, Covington and Burling LLP, Dec. 22, 2006, at 7.

facts or information learned in a privileged context be made in limited circumstances.

c. Do you support the Attorney-Client Privilege Protection Act I introduced to end waiver requests and consideration of waivers as part of a cooperation matrix?

While I am not sufficiently familiar with the specific provisions of the Attorney-Client Privilege Protection Act, I believe that the opportunity to institute appropriate prosecution policies should be extended before legislative action is considered.

Detainees

22. You have recently been an outspoken critic of the government's counterterrorism policies. In a June 13, 2008, speech before the American Constitution Society, you roundly criticized several "steps taken in the aftermath of the [9/11] attacks" as "both excessive and unlawful." One of these policies was denial of "the writ of habeas corpus to hundreds of accused enemy combatants." You asserted, "Guantanamo Bay is an international embarrassment. Some of our closest allies now see this prison as a symbol of what America has become."[3] I too have been critical of the Administration's position on habeas corpus, but it appears that your criticism of the Bush Administration's policies may neglect their precursors in the Clinton Administration.

a. It was a policy of the Clinton administration to use Guantanamo to hold Cuban refugees it did not choose to admit, correct? (I realize the refugees could choose to return to Cuba, but many of them did not see that as a viable alternative.)

Yes, GTMO was used before and during the Clinton administration to hold persons trying to gain access to the United States. Of course, as you point out in your question, that use is different than the facility's use during the Bush administration.

b. The Justice Department argued in a 1994 brief before the Eleventh Circuit that refugees in that context enjoyed no cognizable rights – be they the substantive right against repatriation or procedural due process rights such as the right to counsel. Nor, according to the Justice Department, did the refugees derive any enforceable rights from the Immigration and Nationality Act or Article 33 of the 1951 United Nations Convention Relating to the Status of Refugees.[4] This argument prevailed when the Eleventh Circuit decided the issue in *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412 (11th Cir. 1995). Do you believe this was the correct position?

GTMO is a special case because it is U.S. administered and controlled. As a party to the 1967 Protocol relating to the Status of Refugees, the U.S. has an obligation not to return refugees under Article 33 of the 1951 Convention relating to the Status of Refugees.

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[3] Speech before the American Constitution Society Annual Convention, June 13, 2008.
[4] Brief for Appellants, Cuban American Bar Ass'n v. Christopher, 1994 WL 16506602, ** 21-35 (11th Cir. 1994).

23. During a CNN television interview you gave on the program *American Morning* on January 28, 2002, you suggested that the government should have latitude "to interrogate" detainees "and find out what their future plans might be, where other cells are located." Under the Geneva Convention, you added, "you are really limited in the amount of information that you can elicit from people." You then flatly stated of the detainees, "It seems to me that given the way in which they have conducted themselves, however, that they are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war." Yet in your June 2008 speech, you asserted, "I never thought I would see the day when a Justice Department would claim . . . that the Supreme Court would have to order the President of the United States to treat detainees in accordance with the Geneva Conventions."

    a. Doesn't your June 2008 statement contradict your 2002 statement that the detainees "are not, in fact, people entitled to the protection of the Geneva Convention?"

The interview and speech are consistent, and I stand by each of them. In both, I said that we have authority to detain enemy combatants under the law of war; that we need not treat detainees as POWs under the Geneva Conventions; but that we must treat them humanely and that we cannot torture them or hold them in dark places beyond the rule of law. Such tactics are not only *unjust*, they are *ineffective*. I believed that in 2002, I believed it in 2008, and I believe it today. There is a difference between adhering to the Geneva Conventions, which have broad application to armed conflicts, and adhering to the special provisions of the Conventions that apply to prisoners of war, a narrow subset of persons engaged in such conflicts.

24. You testified during your hearing that Guantanamo should be closed, but you expressed some uncertainty as to what to do with the detainees now there. For those that cannot be repatriated to other countries or tried in Article III courts, you mentioned the possibility of using military courts or commissions. You added, however, "I don't think that the military commissions that we now have in place have all of the due process requirements that I would like to see contained in them." What in your view constitutes the minimum of due process that should be required for such tribunals?

    a. 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?

With respect to the lawfulness of detention, at least, the answer to that question may depend on the circumstances of the detainee and his capture. As the Supreme Court recognized in *Hamdi v. Rumsfeld*, 542 U.S. 507, ___, 124 S. Ct. 2633, 2640 (2004) (internal quotation omitted), "[t]he capture and detention of lawful combatants and the capture, detention, and trial of unlawful combatants, by universal agreement and practice, are important incident[s] of war." At the same time, however, the Court also recognized that "[e]ven in cases in which the detention of enemy combatants is legally authorized, there remains the question of what process is constitutionally due to a citizen who disputes his

enemy-combatant status." *Id.* at 2643. In *Hamdi*, the Court held that "a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Id.* at 2648.

The standards that might apply to other detainees (e.g., non-citizens) detained in other circumstances (e.g., not near an active battlefield) may or may not be different. I note that the Supreme Court has granted certiorari *Al-Marri v. Pucciarelli* (08-368), in which the question presented concerns the President's authority to order the seizure in the United States and long-term detention in this country of an individual suspected of, but not charged with, war crimes. Given the legal complexity of this issue, and the fact that the government's brief is due in the Supreme Court in February, I believe it would be premature for me to express a final judgment on this issue at this time. If confirmed as Attorney General, I will study the issue closely, consult with appropriate officials and career staff at the Department of Justice and perhaps other agencies, before deciding on the government's litigating position in this case.

b. 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? How do you plan to address these issues going forward?

With respect to trials of combatants, President-elect Obama and I have both expressed grave concerns about the Military Commissions Act, which sets a lower standard for the use of coerced confessions than the standard normally applicable in courts martial. I would want to study this issue closely, and learn more about the kinds of interrogations that were in fact conducted, and the evidence at issue, before offering a final judgment.

More generally, with respect to the detainees at GTMO, I cannot today solve all of the difficult problems that Congress and others have been grappling with for years, but I can say something meaningful about what my approach and the principles that will guide it. If I am confirmed as Attorney General, my staff and I will undertake a comprehensive review of the detainees immediately upon taking office, and that review will be guided by the following four basic principles:

1. **protecting the security of the American people;**
2. **ensuring that those who have committed offenses against the United States are brought to justice;**
3. **ensuring that those who can be safely sent to other countries are transferred under appropriate conditions; and**
4. **ensuring that all of our actions comply with the laws of war and the Constitution.**

The Attorney General and the Executive Branch as a whole have been given an enormous amount of authority under existing law to keep the American people safe without violating individual rights. I am committed to the full use of those legal authorities.

Extraordinary Rendition

25. In your testimony, you stated, "It simply should not be the policy or the practice of the United States of America to turn over a prisoner, a captured person, to a nation where we suspect or have reason to believe that that person will be tortured." Former officials of the Clinton administration have stated that the practice known as extraordinary rendition was regularly practiced during that administration. Richard Clarke, the counterterrorism coordinator for the National Security Council, wrote that renditions – which he defined as "operations to apprehend terrorists abroad, usually without the knowledge of and almost always without public acknowledgment of the host government" – "were becoming routine" by "the mid-1990s." He added that "Sometimes FBI arrest teams, sometimes CIA personnel, had been regularly dragging terrorists back to stand trial in the United States or flying them to incarceration in other countries."[5] Michael Scheuer, former chief of the CIA's Bin Laden Unit, testified that when the CIA initiated a rendition program in 1995, President Clinton and several of his top advisors "made it clear that they did not want to bring those captured to the U.S. and hold them in U.S. custody."[6] Mr. Clarke stated that "President Clinton approved every snatch" – another term for rendition – "that he was asked to review. Every snatch CIA, Justice, or Defense proposed during my tenure as [Counterterrorism Security Group] chairman, from 1992 to 2001, was approved."[7] Former CIA Director George Tenet asserted the following in 2002: "In conjunction with the FBI, CIA had rendered 70 terrorists to justice around the world" prior to September 11. "Al-Qa'ida might have been able to operate freely in Afghanistan, but the terrorists knew they were fair game elsewhere."[8]

    a. During your tenure as U.S. Attorney and Deputy Attorney General, to what extent were you aware of participation in the practice of extraordinary rendition by the administration generally, and by the FBI or other components of the Justice Department specifically?

Although this was some years ago, I believe I was aware that the FBI or other components of the Justice Department participated in renditions.

    b. You testified at your hearing that as U.S. Attorney, you "ordered renditions, but this was to bring people from a foreign country to this country for trial." Was that the extent of your involvement in ordering renditions as U.S. Attorney and as Deputy Attorney General?

I cannot recall the details of renditions I ordered, but as I testified and as I believe, the practice of rendition to face charges in a fair jurisdiction is an appropriate practice. The Supreme Court has held that such rendition neither offends due process nor requires dismissal of an indictment. Ker v. Illinois, 119 U.S. 436 (1886); Frisbie v. Collins, 342 U.S. 519 (1952).

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[5] Richard A. Clarke, AGAINST ALL ENEMIES: INSIDE AMERICA'S WAR ON TERROR 143 (2004).
[6] Prepared Statement of Michael F. Scheuer, Former Chief, Bin Laden Unit, Central Intelligence Agency, Joint Hearing before the Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Europe of the Committee on Foreign Affairs, House of Representatives, 110th Cong., 1st Sess. 15 (2007).
[7] Clarke at 145.
[8] George J. Tenet, DCI Remarks at the Nixon Center, Distinguished Service Award Banquet, Dec. 11, 2002.

c. Apart from whether you directly ordered renditions, did you ever authorize the practice of rendition or otherwise express an opinion endorsing the legality of the practice? If so, do you believe you made the correct decision?

I did then and still do believe that the rendition of Omar Mohammed Ali Rezaq was legal and correct. I believe that the practice of rendition to face charges in a fair jurisdiction is an appropriate practice. The Supreme Court has held that such rendition neither offends due process nor requires dismissal of an indictment. *Ker v. Illinois*, 119 U.S. 436 (1886); *Frisbie v. Collins*, 342 U.S. 519 (1952).

d. In retrospect, do you believe that the Clinton administration's practices with respect to rendition were lawful? If so, do you believe they were otherwise consistent with American values?

I do believe that the Clinton administration's practices with respect to rendition were lawful and consistent with American values, because they were for the practice of bringing defendants to face charges in a fair jurisdiction. My concern would be with renditions by the U.S. to countries where we have reason to believe people would not be treated fairly. We must ensure that rendition is never used to outsource torture or to undermine our commitment to ensure that persons in our custody are treated in a just and humane manner.

Inherent Presidential Authority

26. In November 1994, President Clinton's Assistant Attorney General for the Office of Legal Counsel, Walter Dellinger, signed an opinion letter to the White House Counsel in which he said the following:

> The President has enhanced responsibility to resist unconstitutional provisions that encroach upon the constitutional powers of the Presidency. Where the President believes that an enactment unconstitutionally limits his powers, he has the authority to defend his office and decline to abide by it, unless he is convinced that the Court would disagree with his assessment.[9]

a. Do you agree with this statement?

As I discussed at the hearing, the President's power is at its lowest ebb when he acts contrary to a statute duly enacted by Congress, but the Constitution is the supreme law of the land. There are circumstances where a President can refuse to comply with a statutory provision. These include a legislative veto, see INS v. Chadha, 462 U.S. 919 (1983), or a statute purporting to limit the President's removal power in certain circumstances, see Myers v. United States, 272 U.S. 52 (1926). Moreover, although as far as I know the

[9] Memorandum for Abner J. Mikva, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199, 201, Nov. 2, 1994.

Supreme Court has never ruled on the issue, I believe that a statute designating the Secretary of Defense (or another subordinate official in the Executive Branch) as the Commander in Chief would also be unconstitutional.

b. Were you aware of this position during your tenure in the Justice Department?

I was aware of the general principle.

27. A few months earlier, in July 1994, Deputy Attorney General Jamie Gorelick argued before the House Select Committee on Intelligence that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes. The Committee at the time was considering legislation to subject such searches to approval from the FISA court. That issue arose when attention was drawn to the practice of intelligence agents conducting clandestine searches within the United States. Such searches extended not only to foreign embassies, but to U.S. citizens within our borders. The warrantless searches of the office and home of Aldrich Ames, a U.S. citizen, in June and October 1993 gave rise to concerns that courts might strike down this practice.[10] Deputy Attorney General Gorelick's testimony before the Senate Intelligence Committee maintained, "the Department of Justice believes, and the case law supports, that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes and that the President may, as has been done, delegate this authority to the Attorney General." She stated further, "it is important to understand that the rules and methodology for criminal searches are inconsistent with the collection of foreign intelligence and would unduly frustrate the President in carrying out his foreign intelligence responsibilities." In the Department of Justice's view, she testified, it did not matter whether searches were "conducted for foreign intelligence purposes in the United States or against U.S. persons abroad. . . . [w]e believe that the warrant clause of the Fourth Amendment is inapplicable to such searches."[11]

a. Do you agree with this statement?

Consistent with judicial precedents, I do believe the President has the authority, in the absence of a conflicting statute like FISA, to conduct warrantless foreign intelligence surveillance under certain conditions. As the Second Circuit explained in United States v. Duggan, 743 F.2d 59, 72 (2d Cir. 1984), "virtually every court that had addressed the issue had concluded that the President had the inherent power to collect foreign intelligence information, and that such surveillances constituted an exception to the warrant requirement of the Fourth Amendment") (citing cases).

b. Were you aware of this position during your tenure in the Justice Department?

Yes, I was generally aware of it.

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[10] Smith, *Administration Backing No-Warrant Spy Searches*, WASHINGTON POST, July 15, 1994.
[11] Statement of Jamie S. Gorelick, Deputy Attorney General, Before the Permanent Select Committee on Intelligence, U.S. House of Representatives, Concerning Warrantless Physical Searches Conducted in the U.S. for Foreign Intelligence, July 14, 1994.

28. In 2000, Assistant Attorney General Randolph D. Moss issued an opinion letter to the Office of Intelligence Policy and Review entitled "Sharing Title III Electronic Surveillance Material with the Intelligence Community," which addressed the statutory provisions governing wiretaps in criminal investigations. That opinion included the following language:

> [I]n extraordinary circumstances electronic surveillance conducted pursuant to Title III may yield information of such importance to national security or foreign relations that the President's constitutional powers will permit disclosure of the information to the intelligence community notwithstanding the restrictions of Title III. . . . Where the President's authority concerning national security or foreign relations is in tension with a statutory rather than a constitutional rule, the statute cannot displace the President's constitutional authority and should be read to be "subject to an implied exception in deference to such presidential powers." *Rainbow Navigation, Inc. v. Department of the Navy*, 783 F.2d 1072, 1078 (D.C. Cir. 1986) (Scalia, J.). We believe that, if Title III limited the access of the President and his aides to information critical to national security or foreign relations, it would be unconstitutional as applied in those circumstances.[12]

a. Do you agree with this statement?

I do agree that a statute cannot impermissibly infringe the President's constitutional powers, including his authorities in the areas of national security and foreign relations. Statutes that attempt to restrict the President's ability to share critical national security information with his own intelligence agencies in extraordinary circumstances pose special concerns. At the same time, the President's powers are, as Justice Jackson explained, at their lowest ebb when he acts in a manner that conflicts with a congressional enactment.

b. Were you aware of this position during your tenure in the Justice Department?

Yes, I was generally aware of it.

29. During your previously cited June 2008 speech, you stated, "I never thought I would see the day when a Justice Department would claim . . . that my government would act in direct defiance of federal law by authorizing warrantless NSA surveillance of American citizens."

a. Do you see the resemblance between the above-cited language from the various Justice Department opinions during the Clinton Administration and the rationale advanced by the Bush administration to justify its NSA surveillance program when that program was discovered to be operating without adhering to the Foreign Intelligence Surveillance Act (FISA)?

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[12] Memorandum for the Counsel Office of Intelligence Policy and Review from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, Sharing Title III Electronic Surveillance Material with the Intelligence Community, 2000 WL 33716983, *9, Oct. 17, 2000.

The point I was making in that speech is a fundamental one. There is a critical difference between the President's authority to take certain actions in the absence of a staute, and his authority to take the same action in violation of statute.

b. Is it your position today that, as Attorney General, you will not endorse the level of inherent presidential authority asserted in the above-cited Clinton Administration opinions?

No, that is not my position.

Signing Statements

30. 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.[13]

a. Do you agree with that statement?

There are legitimate circumstances in which the President upon signing a bill into law may issue a statement publicly setting forth his intention not to comply with an unconstitutional statutory provision. Such action is consistent with longstanding Executive Branch practice. But such statements should be rare and a last resort.

b. In a 1994 opinion letter to the White House Counsel, Mr. Dellinger further 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."[14] Do you agree?

Whenever the President determines that a statutory provision is unconstitutional, he should convey that determination to Congress in some manner. Transparency is imperative. The executive should work with the Congress well before bills reach the President's desk to resolve constitutional concerns. Such efforts help to ensure, as much as possible, that signing statements are not necessary. When the President determines that an

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[13] 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).

[14] 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.

existing statutory provision is unconstitutional, he should work with Congress to enact any necessary legislative changes.

Death Penalty

31. As a general matter, do you believe the death penalty is a deterrent against violent crime?

I am not a proponent of the death penalty and, in particular, believe that its deterrent value is questionable, especially in light of its reported uneven application.

32. When it comes to seeking the federal death penalty, do you plan to defer strongly to U.S. Attorneys' recommendations?

If confirmed as Attorney General, I would enforce the laws as they are enacted by the United States Congress and interpreted by the courts. I will give strong consideration to U.S. Attorneys' recommendations in this and other areas.

Written Follow-up Questions for Attorney General Designate Eric H. Holder, Jr. from Senator Specter

1. According to an article entitled "Unpardonable: Holder's Marc Rich Shuffle" published by *National Review* on January 21, 2009, as U.S. Attorney for the District of Columbia, in April 1995, you announced (via a press release[1] issued by your office) a $1.2 million civil settlement with a government contractor on the grounds that it was "indirectly owned by fugitive Marc Rich." The company, Clarendon Ltd., was supplying coin metal to the U.S. Mint in contracts valued at $45 million. Your office charged that the company was barred from doing business with the federal government because Marc Rich, who was under federal indictment, had a "substantial indirect ownership" of the company. On April 13, 1995, the *Wall Street Journal* reported your determination to accept the Clarendon settlement in lieu of further charges: "U.S. Attorney Eric Holder said the agreement ends an investigation into the company's contracts to supply $45 million in coinage metal to the U.S. Mint." The statement is attributed to you and not anyone else in your office.

   In 2001, you testified before this Committee that, "within the Deputy Attorney General's Office when we first heard about this matter back in, I guess the latter part of 1999, none of us were familiar with Mr. Rich." You also testified in 2001 before the House Committee on Government Reform that you had only a "passing familiarity with the underlying facts of the Rich case." When I asked you at your confirmation hearing if you stood by your earlier testimony, you responded that you did.

   a. Given the foregoing facts regarding your time as U.S. Attorney and your involvement in the Clarendon settlement, how do you explain your testimony that you were unfamiliar with Mr. Rich?

      The Clarendon Ltd. matter was one of approximately 28,000 cases annually that were handled by my office when I served as the U.S. Attorney for the District of Columbia. I have no recollection of being personally involved in the Clarendon Ltd. case. I did not personally sign the Clarendon Ltd. settlement agreement. As the document notes, it was signed on my behalf by the Assistant U.S. Attorney prosecuting the case, Barbara Van Gelder. The press release was issued by my office and in my name, as was customary, but I had no involvement in its preparation nor does it contain any quote from me. Similarly, the April 13, 1995 *Wall Street Journal* article does not contain any quote from me.

   b. Did you factor in your knowledge, if any, of Marc Rich gleaned from your tenure as U.S. Attorney when you indicated to White House Counsel Beth Nolan that you were "neutral leaning towards favorable" on the pardon?

      I had no recollection of the Clarendon Ltd. matter at the time so I did not factor it into my discussions with Ms. Nolan.

[1] Press Release, Eric Holder, Jr., United States Attorney for the District of Columbia (April 12, 1995).

c. Why or why not?

Because I was personally uninvolved in the Clarendon Ltd. matter, I did not have a recollection of the case at the time I spoke to Ms. Nolan.

2. In Frances Townsend's responses to questions for the record, which were submitted following her testimony, she states that on the morning of January 20, 2001, she was in her office at the Justice Department when she received a call from you, that you indicated that you were likewise in your office, and that you "had just gotten a call from the White House regarding a pardon application for a Mr. Marc Rich." Specifically, she stated that you told her you had "just gotten a call from the White House regarding a pardon application for a Mr. Marc Rich," and you asked her "whether [her office, the Office of Intelligence Policy and Review] had any information that might be relevant to the President's consideration." She stated that she indicated to you that she was unable to check historical records at that time but was not aware of any files related to Mr. Rich and suggested that you consult with the pardon attorney. She further stated that she "did not ask and [you] did not indicate if [you] had any prior discussions with the White House regarding Mr. Rich's pardon application."

This is the first the Committee has heard of any contacts between you and Ms. Townsend on the Rich matter. You never mentioned the conversation with Ms. Townsend during your testimony before this Committee either on January 15, 2009, or on February 14, 2001. Nor did you mention it during your testimony before the House Committee on Government Reform in 2001.

a. Did you call Ms. Townsend on the morning of January 20, 2001?

I do not remember speaking with Ms. Townsend about Marc Rich on the morning of January 20, 2001.

b. At what time did you call her?

See answer to Question 2(a).

c. Did you call her after you spoke to Roger Adams at approximately 1 a.m.?

See answer to Question 2(a).

d. Did you tell Mr. Adams or Ms. Nolan that you were going to call Ms. Townsend?

See answer to Question 2(a).

e. Please recount the substance of the conversation with Ms. Townsend.

See answer to Question 2(a).

f. What information were you hoping to learn from Ms. Townsend?

See answer to Question 2(a).

g. If you did talk to Ms. Townsend, why did you fail to mention this phone call during your prior testimony?

See answer to Question 2(a).

h. You previously testified that when you received a telephone call from Pardon Attorney Roger Adams at 1 a.m. on the morning of January 20, 2001, you thought the pardon of Marc Rich was a "forgone conclusion" at that point, and at your confirmation hearing you stated: "The way I viewed those calls at that point, I thought we were dealing with a fait accompli, that the President of the United States on the last day in office at 11 o'clock at night, or whenever it was I got that call, had made up his mind and that the decision was a final one." If that was the case, why did you call Ms. Townsend regarding the Rich pardon?

See answer to Question 2(a).

i. Did you follow Ms. Townsend's suggestion and call Pardon Attorney Roger Adams?

I do not remember speaking with Ms. Townsend about Marc Rich on the morning of January 20, 2001 and, therefore, do not recall any suggestion that she made.

j. Given that Ms. Townsend said she was "unable to check the historical records at that time" what further steps, if any, did you take to obtain this information?

I do not remember speaking with Ms. Townsend about Marc Rich on the morning of January 20, 2001. I do not recall whether any actions were taken to obtain historical records regarding Mr. Rich on that date.

3. In 2001, you testified before this Committee that you were "not sure if it was Ms. Nolan or Mr. Quinn who brought to [your] attention that Prime Minister Barak had weighed in strongly on behalf of the [Rich] pardon request." Similarly, in response to my written question asking who "told you that Prime Minister Barak supported the Rich pardon," you said that you "learned of Prime Minister Barak's support on January 19, 2001 from either Jack Quinn or Beth Nolan."

However, Ms. Nolan testified before the House Committee on Government Reform that, when she called you on January 19 2001 to inquire whether you were in favor of the pardon, you told her that you had heard Mr. Barak was supportive of the Rich pardon. She testified "he said that …he had heard that Mr. Barak was interested, that if that were the case, while he couldn't judge the foreign policy arguments, he would find that very

persuasive and that … he described it as neutral leaning toward or neutral leaning favorable."

a. Given Ms. Nolan's testimony, would you agree that it appears you did not learn of Barak's support from her?

I do not recall whether I learned of Prime Minister Barak's support from either Jack Quinn or Beth Nolan but I have no reason to question the testimony of Beth Nolan.

b. Did you obtain the information regarding Mr. Barak's support for the Rich pardon from Mr. Quinn?

I do not recall but I have no reason to question the testimony of Beth Nolan.

4. In response to a question from Senator Grassley, you stated: "All I did with regard to Mr. Quinn as I've done for any number of lawyers initially was to try to set up a meeting that he wanted to have with the people in the Southern District of New York to review his case. The lawyers in the Southern District of New York refused to do that and that was the end of it. I didn't pressure anybody. I didn't question their judgment." However, according to Jack Quinn's notes, on November 8, 1999, you called him to tell him that you and other senior Justice Department staff "all think" it is "ridiculous" that U.S. Attorney Mary Jo White was refusing to meet on the status of the government's case against Mr. Rich. Did you make that statement?

I understand that Mr. Quinn's notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but, to the extent I offered my opinion about the Southern District's position, it would have been only with respect to their position on meeting with Mr. Quinn and I would have expressed my view that meetings with defense counsel are worthwhile because prosecutors often benefit from hearing about the flaws, real or imagined, cited by defense counsel in a criminal case.

a. Mr. Quinn's notes also state that on March 25, 2000, you told him "we're all sympathetic" to his case and that the "equities [are] on your side." Did you make that statement?

I understand that Mr. Quinn's notes of that conversation indicate that I said something to that effect. I do not have a specific recollection of that conversation but, to the extent I indicated that I was "sympathetic" or thought "equities [are]e on your side." it would only have been to Mr. Quinn's desire to meet with the Southern District prosecutors and not related to the merits of the case. I also understand that around this same time Rich's defense team communicated by email and disapprovingly referred to me as "a second level bureaucrat who has proved to be a weak link."

b. Did you think statements such as these indicate that you were questioning the judgment of U.S. Attorney Mary Jo White in her decision not to meet with Quinn while Rich remained a fugitive?

No.

5. Former FBI Director Louis Freeh testified at your nomination hearing that: "The pardon of Mark Rich was a corrupt act."

a. Do you agree with this characterization? If so, whose corrupt act was it?

President Clinton's decision to pardon Marc Rich was deeply flawed. I do not have knowledge of all of the considerations that President Clinton took into account in making his decision so I am unable to judge whether it was a "corrupt act."

b. Mr. Freeh testified that while he saw the Rich pardon as a corrupt act, he did not view it as your corrupt act. However, he did make the following statement: "Eric Holder made some terrible mistakes, which he told you about yesterday, in allowing himself to be used and co-opted with respect to the facilitation of that pardon." Do you agree with this characterization?

I acknowledge my mistakes and take full responsibility, as I always have, for my actions in connection with the Rich mattter. Moreover, I recognize that my mistakes contributed in some way to the President's flawed decision. In my oral testimony I believe I explained fully the mistakes I made and the lessons I learned from this experience.

6. With respect to the FALN clemency, Mr. Joseph Conner testified at your confirmation hearing on Friday, January 16, 2009, that you had "mentioned ... that Cardinal O'Connor supported clemency. That's not true. I have a letter from the cardinal specifically saying he didn't, because I contacted the cardinal at the time."

a. Did you know Cardinal O'Connor did not support clemency?

I understand that Cardinal O'Connor wrote a letter to Attorney General Janet Reno in March 1996 that stated: "I ask your consideration of these cases for determination of where injustice has been done or where justice has been served by time already spent in prison . . . there may be grounds for clemency." Only after the President's clemency decision was announced did Cardinal O'Connor's in September 1999 state that he did not ask for the release of the FALN prisoners.

b. Why or why not?

I believe Cardinal O'Connor's March 1996 letter to Attorney General Reno reasonably could be interpreted as being supportive of clemency. He later

clarified his position about the clemency decision the month after the President's decision was announced.

7. In your response to Senator Cornyn's written question 6 regarding when you decided that a new recommendation in the FALN matter should be issued, you state "[a]t some point after I became Deputy Attorney General I asked the Office of the Pardon Attorney to review the case. After reviewing the work of the OPA, I concluded a new recommendation should be issued." During you 1999 testimony on the FALN clemency, you told this Committee that "a recommendation was made to the President in December 1996 and ... there were subsequent communications thereafter." Now you acknowledge that these "subsequent communications" included a new recommendation or options paper. Did this "options paper" supersede the 1996 report?

I do not believe the options memorandum "superseded" Ms. Love's 1996 report. The 1996 report was still on file at the White House and the options memo supplemented that report.

a. If so, why did you fail to acknowledge its existence to the Committee in 1999?

In 1999, the President asserted executive privilege regarding deliberations about the FALN and Los Macheteros commutations. I was unable to testify about the specific nature of the "subsequent communications" that occurred after the 1996 report.

b. If you cite Executive Privilege as the reason, why can you now discuss this paper?

In February 2001, after my 1999 testimony on FALN matters, President Clinton advised Chairman Burton that he would not assert executive privilege over testimony by White House staff about pardon and commutations that he had granted. Prior to my confirmation hearing, President Clinton's counsel confirmed that I too was able to testify about the commutations. I am not authorized to testify about the options paper.

8. On January 9, 2009, the *L.A. Times*, released a 1998 memorandum authored by Pardon Attorney Roger Adams, which argued against granting clemency to the 16 FALN terrorists. One of the reasons Mr. Adams cited in his negative recommendation was Segarra-Palmer's status as "the head of the Los Macheteros, believed to be a far more violent organization than the FALN and to be responsible for murdering a number of American servicemen."[2] Mr. Adams contended that the same offer of clemency should not be extended to all 16 terrorists because, among other things, they "exercised different levels of responsibility within the organizations." He cited Segarra-Palmer as an example of someone who was known to head the organization and had a different level of responsibility and culpability. Mr. Adams therefore recommends "denying commutation of any portion of Segarra-Palmer's 55-year sentence." Notwithstanding Adams' recently

[2] *Memorandum from Roger Adams to Eric Holder Re. Puerto Rican Nationalists*, Aug. 31, 1998.

released memo, in your hearing testimony, you stated that it was "not [your] understanding" that any of the FALN terrorists were "heads of the organization."

a. Did you have an opportunity to review Mr. Adams memo between January 9, when it was released publicly, and your hearing?

Yes.

b. Did you disagree with Mr. Adams' assessment that Segarra-Palmer was "the head of the Los Macheteros?"

Mr. Adams did not make the assessment himself that Mr. Segarra-Palmer was the "head of the Los Macheteros." Rather, I understand that Mr. Adams was repeating information contained in Mr. Segarra-Palmer's presentence report.

c. Did the recommendation in favor of clemency that you provided to the White House recommend clemency for Segarra-Palmer?

I believe that I advised the White House that I supported the offer of clemency offered to Mr. Segarra-Palmer, which required him to stay in prison another 5 years.

d. Did you recommend a grant of clemency to Segarra-Palmer with different parameters than the grant eventually offered by President Clinton?

I do not believe so.

9. In response to my prior written questions about the FALN clemency, you stated in your written answers that you "focused on that which was in the record provided me and that which was most provable – the court records."

a. What was that record "provided" and who provided it to you?

The Office of Pardon Attorney prepared the options memorandum and the record that accompanied it. My understanding is that the factual investigation undertaken by the Office of Pardon Attorney in the ordinary course would have included contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as prison progress reports detailing the prisoner's adjustment to incarceration, his participation in work, educational, vocational, counseling, and financial responsibility programs; and the prisoner's disciplinary history. OPA also would check automated legal databases for any court opinions relating to the petitioner's conviction. Although I do not recall the specific contents of the "record" that was prepared by the OPA for the FALN case, I have no reason to doubt that Mr. Adams compiled these documents.

b. Did you consider a record in addition to the one provided by the Pardon Attorney and law enforcement?

I considered the record that was compiled and provided to me by the Office of Pardon Attorney. I do not presently have a recollection of the full contents of the record that was before me.

c. If you did consider materials provided by clemency advocates, how much weight did you give that information since, as you note in your written responses, you did not have "personal knowledge of the review undertaken by each of the many individuals and organizations that advocated in support of clemency for the FALN prisoners?"

I considered the record that was compiled and provided to me by the Office of Pardon Attorney, which may have included information from clemency supporters, although I do not have a specific recollection of that.

d. If you did review the court records, did you see the direct examination of Freddie Mendez, the cooperating FALN member, where he mentions that Oscar Lopez-Rivera is "like a leader in the FALN?"[3]

I considered the record that was compiled and provided to me by the Office of Pardon Attorney. I do not presently have a recollection of the full contents of the record that was before me. Due to the press of business in the office of the Deputy Attorney General, it would not have been usual or customary for me to read trial transcripts related to clemency matters.

e. Did you review the portion of Mr. Mendez's testimony where he states that Ricardo Jimenez, one of the terrorists offered clemency, told him that he placed bombs in the washroom of the Cook County Building?[4]

Due to the press of business in the office of the Deputy Attorney General, it would not have been usual or customary for me to read trial transcripts related to clemency matters.

f. If you did review all of these facts, how did you conclude that clemency for these individuals was reasonable?

I thought that the president's determination was a reasonable one, given the offenses of which they were convicted and the fact that they had served lengthy prison sentences. As I said at my hearing, I reached this conclusion several years before the attacks of September 11, 2001. Today I might view the matter differently.

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[3] *United States v. Oscar Lopez*, No. 80 CR 736, Direct Examination of Freddie Mendez, at 375 (July 23, 1981)
[4] *Id.* at 404-412.

10. At your confirmation hearing, Former Director Freeh testified that he "couldn't think of a more compelling case to go to an independent prosecutor" than the Al Gore campaign finance case. How do you reconcile Mr. Freeh's statement with your decision not to appoint a special prosecutor?

I respect Judge Freeh and his assessment was given great weight. Attorney General Reno and I considered the views of then-FBI Director Freeh and those of the career attorneys in the Public Integrity Section, which were in conflict, and we made the determination that the analysis by the Public Integrity Section was more persuasive.

11. I also asked Mr. Freeh about a memo authored by him and sent to Mr. Esposito in which Mr. Freeh stated: "I also advised the Attorney General of Lee Radek's comment to you that there was a lot of 'pressure' on him and PIS regarding this case because the 'Attorney General's job might hang in the balance' (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely." When I questioned you at the hearing about your decision not to appoint a special prosecutor you stated: "We had career lawyers at the Public Integrity Section who had a time for review. Attorney General Reno and I looked at those conflicting recommendations or conflicting views of the case made the determination that we thought that what was expressed by the Public Integrity Section was stronger, was more reflective of both the facts and the existing law, which is not, in anyway, to take away from the Louis Freeh and Chuck LaBella." Did you consider the memo authored by Mr. Freeh when you were weighing the recommendations of the Public Integrity Section?

I have no reason to believe that we did not consider the 1996 memo that Louis Freeh sent to then-FBI Deputy Director William Esposito that recounted remarks allegedly made to Mr. Esposito by Lee Radek at a meeting at which Director Freeh was not present. I am aware that Lee Radek publicly has stated that he has "no recollection of ever saying I was under pressure because the attorney general's job hung in the balance. Nor is it something I would have said because it has no basis in fact."

a. Mr. Freeh further testified that the "statement was alarming enough, together with all the other information we had, that I renewed my recommendation that this case go to an independent prosecutor." Do you agree with Mr. Freeh that the statement was alarming?

Mr. Radek has denied making the statement.

b. Do you agree that the statements by Radek raise at least an appearance of improper political influence?

Mr. Radek has denied making the statement.

c. If you do agree there was an appearance of impropriety, doesn't that reinforce Messrs. Freeh, LaBella, and Conrad's recommendation that appointment of an independent counsel was necessary?

No.

12. Is it your position that the President lacks Article II power to authorize torture in any and all circumstances?

Torture is prohibited by statute, and the President's power is at its lowest ebb when he acts contrary to a statute. I cannot improve upon the answer given by then-Senator Obama, when asked by the Boston Globe whether the President has authority to instruct his subordinates to employ an interrogation technique that is prohibited by statute: "No. The President is not above the law, and not entitled to use techniques that Congress has specifically banned as torture. We must send a message to the world that America is a nation of laws, and a nation that stands against torture. As President I will abide by statutory prohibitions for all US Government personnel and contractors."

13. You testified at your hearing that "water boarding is torture."

a. Please explain the legal analysis by which you reach that conclusion, including citation to any controlling constitutional, treaty, and statutory provisions.

Waterboarding and other forms of the "water cure" have long been understood as classic forms of torture, used regularly by many of the world's most notorious torture regimes, including the Spanish Inquisition and the Khmer Rouge. As far back as 1926, the Supreme Court of Mississippi referred to the water cure as "a specie of torture well known to the bench and bar of the country." *Fisher v. State*, 110 So. 361, 362 (1926).

Against this background, I believe waterboarding satisfies the statutory definition of torture in 18 U.S.C. § 2340, that is, "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control."

b. Do you believe reasonable minds can disagree as to your conclusion?

I am reluctant to characterize persons who disagree with me as unreasonable, but for the reasons stated above I do think it is clear, and has historically been uncontroversial, that waterboarding is a form of torture.

c. If it were established by what you would consider a properly constituted military tribunal that evidence was obtained as a result of water boarding, should that evidence be admissible?

No. Even under the Military Commissions Act, evidence obtained by torture is not admissible. *See* 10 U.S.C. § 948r(b).

14. During a CNN television interview you gave on the program *American Morning* on January 28, 2002, you explained with reference to detainees classified as unlawful combatants that "one of the things we clearly want to do with these prisoners is to have an ability to interrogate them" and that "under the Geneva Convention . . . you are really limited in the amount of information that you can elicit from people."

    a. This statement suggests you believe that there is a need for some flexibility in the interrogation of unlawful combatants such as the detainees at Guantanamo. Is that correct?

I was speaking of special protections for "prisoners of war" under the Geneva Conventions. I do not believe that members of al Qaeda are entitled to those special protections because they do not qualify as "prisoners of war." See Part II of the Geneva Convention relative to the Treatment of Prisoners of War, August 12, 1949 (6 UST 3316).

    b. What range of interrogation techniques did you have in mind when you made this statement? Please identify the provisions of the Constitution, U.S. treaties, and statutes that impose constraints upon such interrogation techniques.

See answer to a., above.

    c. To what extent are there different constraints governing permissible interrogation techniques for prisoners of war as opposed to those classified as unlawful combatants?

See answer to a., above. Note that prisoners of war are not the only category of lawful combatants.

    d. Do you believe that interrogations conducted by the Central Intelligence Agency and other intelligence agencies should be limited to utilizing interrogation techniques authorized by the United States Army Field Manual on Human Intelligence Collector Operations?

I agree with the Executive Order on Ensuring Lawful Interrogations, signed by the President on January 22, 2009.

15. In response to one of my written questions about the practice of rendition, you stated: "I cannot recall the details of renditions I ordered, but as I testified and as I believe, the practice of rendition to face charges in a fair jurisdiction is an appropriate practice." In a March 11, 2005 op-ed in the *New York Times* entitled "A Fine Rendition," however, former CIA officer Michael Scheuer asserts that officials in the Clinton White House and Justice Department:

> "...knew that taking detainees to Egypt or elsewhere might yield treatment not consonant with United States legal practice. How did they know? Well, several senior C.I.A. officers, myself included, were confident that common sense would elude that bunch, and so we told them - again and again and again. Each time a decision to do a rendition was made, we reminded the lawyers and policy makers that Egypt was Egypt, and that Jimmy Stewart never starred in a movie called "Mr. Smith Goes to Cairo." They usually listened, nodded, and then inserted a legal nicety by insisting that each country to which the agency delivered a detainee would have to pledge it would treat him according to the rules of its own legal system."

a. Given Mr. Scheuer's statements, do you believe that every rendition you approved was designed to render someone to "a fair jurisdiction"?

I cannot recall the details of renditions I may have approved or worked on, but as I testified and as I believe, the practice of rendition to face charges in a fair jurisdiction is an appropriate practice.

b. Were you ever advised, directly or indirectly, by the CIA that detainees were being rendered to countries that "might yield treatment not consonant with United States legal practice"?

I do not recall any such advice

QFRs from Senator Whitehouse to Eric Holder

1. What do you understand the practice of "extraordinary rendition" to be, and will you commit to end it?

Rendition involves the involuntary transfer of an individual from one foreign country to another. Based on what has been publicly reported, it is not a practice that began with the Bush Administration, but the Bush Administration took it to new levels.

There may be circumstances where the careful use of this practice is appropriate for national security reasons, such as to permit a person to be tried in a foreign country for serious crimes. But we must ensure it is never used to outsource torture or to undermine our commitment to ensure that persons in our custody are in treated in a just and humane manner

2. Will President Obama issue signing statements that assert the right to disregard provisions of law he regards as an unconstitutional infringement on his Article II powers?

Signing statements should be a last resort. The executive should work with the Congress well before bills reach the President's desk to resolve constitutional concerns in order to obviate the need for such signing statements. In my view, the Bush Administration issued signing statements containing constitutional objections with unprecedented and unjustified frequency.

Of course there are legitimate circumstances in which the President upon signing a bill into law may issue a statement publicly setting forth his intention not to comply with a clearly unconstitutional statutory provision. Such action is consistent with longstanding Executive Branch practice dating back at least to President Tyler. See, Presidential Authority to Decline to Enforce Unconstitutional Statutes, 18 Op. O.L.C. 199 (1994)

One clear example when such a signing statement is justified is when Congress includes in omnibus legislation a legislative veto, which the Supreme Court has clearly ruled to be unconstitutional. This approach is consistent with the President's constitutional obligation to take care that the laws be faithfully executed.

3. What do you believe are the limits of who may be treated as an enemy combatant?

As the Supreme Court made clear in the Hamdi case, the President does possess authority to detain enemy combatants in armed conflicts, consistent with the laws of war and the Constitution. There is a large volume of pending litigation concerning the scope of that detention power, and therefore it would be inappropriate to attempt to describe the extent of that authority in a comprehensive manner. As I explained at the hearing, I will ensure that the detention power is exercised in a manner that protects out national security and honors our values.

SUBMISSIONS FOR THE RECORD

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December 22, 2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

As the National President of the Federal Law Enforcement Officers' Association (FLEOA), the largest nonpartisan, nonprofit professional organization exclusively representing federal law enforcement officers, I am writing to you to support President-elect Obama's nomination of Eric H. Holder, Jr. for the position of Attorney General of the United States. Since this matter is scheduled to come before your committee for review, I ask that Mr. Holder's candidacy be treated with fairness and nonpartisan reasonableness. During the course of his long, distinguished career with the Department of Justice (DOJ), Mr. Holder has dedicated himself to the rule of law, irrespective of partisan influence. I therefore ask that your committee commence its hearings in the spirit of nonpartisanship and objectively evaluate the credentials of Mr. Holder.

One remarkable credential of Mr. Holder's that is readily apparent is his 25 years of qualitative experience working in the Department of Justice. Ideally, the position of Attorney General should be held by someone who has the institutional knowledge that is needed to oversee the many components within the DOJ. Mr. Holder clearly excels in this regard. Having served in a variety of leadership positions within the DOJ, Mr. Holder has accumulated a wealth of relevant experience. During his tenure, he has gained invaluable experience while serving as a Judge of the Superior Court in D.C., the U.S. Attorney for the District of Columbia, the Deputy Attorney General and as Acting Attorney General. Should Mr. Holder's nomination be confirmed, it is anticipated that he will immediately and effectively assume the position of Attorney General without losing his way along a meandering, time consuming, learning curve.

The sum of Mr. Holder's experience in the DOJ adds up to someone who is ready to lead as our nation's top law enforcement official. To his credit, Mr. Holder's accomplishments are not rooted in any single political ideology. During the latter part of the 90's, Mr. Holder put forth certain law enforcement views that transcended any partisan position. He was a strong advocate for requiring internet service providers to retain data for a reasonable period of time so law enforcement officers would be able to retrieve evidence through due process. Mr. Holder also established himself as a strong proponent for reasonable regulation of the internet in order to combat pornography. In April of 2000, Mr. Holder demonstrated his support for the safety of law enforcement officers when he authorized them to enter potentially volatile premises armed in order to take safe custody of Elian Gonzalez. This decision was criticized by the news media, but Mr. Holder nonetheless did what was in the best interests of the safety of the federal agents.

After the horrific events of September 11th, 2001, Mr. Holder exuded strong leadership qualities that recognized the value of American lives and their safety. Mr. Holder had the courage to question whether the Guantanamo detainees were entitled to prisoner of war status, and whether they should be granted protections derivative of the Geneva Convention. During a national crisis, we need an Attorney General who can think reasonably outside his/her partisan box. They must be able to make decisions that follow the rule of law and are in the best interests of the American citizenry. Mr. Holder has shown that he is a capable of doing this.

In spite of partisan criticism, Mr. Holder has been a strong supporter of the Patriot Act. He was a part of the 2005 legal team that called for the reauthorization of the Patriot Act, and was mindful of the need to provide federal law enforcement officers with the necessary tools to accomplish their formidable mission. We respect Mr. Holder's right to question the manner in which the outgoing administration implemented certain provisions in the Patriot Act. While we don't support circumventing the laws of our nation, we do support the need for law enforcement to be able to respond effectively to exigent circumstances, in particular, those that may impact on national security. The membership of FLEOA would be committed to working closely with Mr. Holder to ensure a proper level of review, i.e., discreet congressional intelligence committee reporting, while preserving federal law enforcement's ability to act in a reasonably expeditious manner.

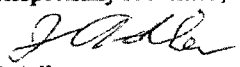
There has been some controversy regarding Mr. Holder's involvement in the 2001 pardon of tax evasion fugitive Marc Rich. For the record, FLEOA opposed the pardon of Rich and his dastardly attempts to evade our due process of law. However, I accept Mr. Holder's explanation as to the extent of his involvement, and respect his position that, in hindsight, he would have made a greater effort to vet the proposed pardon through DOJ channels. Ultimately, the decision to pardon Rich was made by former President Clinton who had access to all the relevant facts of the case.

While the news media has been consumed by the Rich pardon, less attention has been paid to Mr. Holder's leadership ability and strong interpersonal skills. Since the cowardly attacks on our homeland on September 11th, 2001, it has become apparent that interagency cooperation is imperative to our country's homeland security. Mr. Holder has the requisite demeanor and leadership ability to unite the law enforcement components within the DOJ. He has proven himself to be dedicated to the rule of law while being passionate about the safety of Americans. It is anticipated that Janet Napolitano will be confirmed as the next Secretary of the Department of Homeland Security, and we are encouraged by the open relationship that exists between her and Mr. Holder.

Ranking Member Specter was quoted as saying, in part, that it's important "the Attorney General of the United States does not bend his views to accommodate his appointer..." I agree with that statement. However, I am confident that Mr. Holder will balance his decisions with a recognition that he first serves the American people, and then the President. As National President of a nonpartisan organization, I anticipate that Mr. Holder would serve with the utmost integrity that is essential for the position of Attorney General. His past performance has shown that he respects the input from law enforcement stakeholder organizations and is a strong proponent of keeping the lines of communication open.

On behalf of FLEOA'S 26,000 members, it is my privilege to submit this letter in support of the nomination of Eric H. Holder, Jr. I stand ready to assist your committee in any way possible during the scheduled hearings. In the end, I think an objective review of Mr. Holder's qualifications will lead the committee to the proper conclusion.

Respectfully submitted,



J. Adler
National President

January 9, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

RE: Confirmation of Eric H. Holder, Jr. as the Attorney General of the United States

Dear Senators Leahy and Specter:

I am reluctantly writing today both to endorse and to urge the swift confirmation of Mr. Eric H. Holder, Jr. as the 82nd Attorney General of the United States of America based on his extraordinary professional qualifications, his public record of achievements, and the widely acknowledged need to restore order and credibility in our Department of Justice. But I am also respectfully requesting that you probe, as required by your constitutional duties, whether the manner in which Mr. Holder's has recently conducted his fiduciary responsibilities for the Board of Trustees of the Morehouse School of Medicine is either an unfortunate unique exception, totally out of character for Mr. Holder, or whether this conduct is in fact an accurate and sad reflection of Mr. Holder's character and personal integrity. Although I do not know Mr. Holder, based on what I have read and learned about Mr. Holder's public life I am hoping for the former. But if your examination proves me wrong, it would then be important for the Senate to determine to what degree such conduct may temper its consent to invest Mr. Holder with the ultimate authority to enforce our nation's laws and to protect our civil rights, regardless of politics or race.

Since the year 2004, a corrupt group of current and former employees and Trustees of the Morehouse School of Medicine conspired to illegally interfere with my application for a Georgia medical license in order to have my employment at the Morehouse School of Medicine terminated because I would not play for pay. They accomplished their goal by fabricating false allegations of "unlicensed practice of medicine", which is a felony in the State of Georgia, accusing me of "illegally treating patients at Grady Memorial Hospital in Atlanta" and "forcing other Morehouse School of Medicine doctors to sign for those alleged patient encounters in order to defraud third party payers including Medicare and Medicaid". Then they disseminated the false criminal allegations to the Georgia Composite State Board of Medical Examiners through a disgruntled former employee of the Morehouse School of Medicine who herself has an extensive

criminal record, and who eventually received a cash settlement from the Morehouse School of Medicine in spite of the fact that her allegations were thoroughly investigated and totally disproven. But they manipulated at least two members of the Georgia Composite State Board of Medical Examiners (who were also an employee and a Trustee of the Morehouse School of Medicine) to act against my licensure application based on the false allegations of "unlicensed practice of medicine", hiding all the exonerating evidence, and without disclosing their own personal and financial conflicts of interest as required by their oath of public office.

To this date, the Georgia Composite State Board of Medical Examiners and their counsel from the Office for the State Attorney General continue to hide all exculpatory evidence from their own inept and biased investigation, and they have never elected to charge me or to attempt to prove their case in court as I requested in multiple occasions. But they continue to publish defamatory reports labeling me as guilty of a felony that I have not committed, and without ever taking any responsibility for the corrupt illegal conduct of the Georgia Composite State Board of Medical Examiners and their business associates at the Morehouse School of Medicine. Of note, the main public outlet for dissemination of these defamatory reports is the public database of the Federation of State Medical Boards that is also currently chaired by another current Trustee of the Morehouse School of Medicine, also with personal knowledge that the criminal allegations against my profession and my character were totally false.

In 2005 I reported the conflicts of interests between Morehouse School of Medicine and the Georgia Composite State Board of Medical Examiners to the two Assistants Attorney General working as counsel for the Georgia Composite State Board of Medical Examiners, but instead of taking corrective action they have actually continued to work to cover up the corrupt actions of these individuals. In 2007 I reported the same corrupt conflicts of interests between Morehouse School of Medicine and the Georgia Composite State Board of Medical Examiners to the U.S. Attorney for the Northern District of Georgia and to the Office of the State Attorney General. At that time the U.S. Attorney politely referred me to the jurisdiction of the State Attorney General, while at the same time the State Attorney General declined to intervene through a communication from his Senior Assistant Attorney General in charge of Special Prosecutions, the Unit that is supposedly in charge of conducting "investigations into allegations of illegal conduct by state officials or employees or private individuals or firms dealing with state government", as indicated in the website for the Office of the State Attorney General.

With such limited recourse for resolving this matter and vindicating my name, on December 5, 2008, I filed an application for criminal warrants against seven individuals, including current and a former employees and Trustees of Morehouse School of Medicine (two of them a former and a current member of the Georgia Composite State Board of Medical Examiners), the Executive Director of the Georgia Composite State Board of Medical Examiners, and the two Assistants Attorney General working as counsel for the Georgia Composite State Board of Medical Examiners. Perplexingly, and in response to my application for criminal warrants, I received a copy of an Entry of Appearance by the Senior Assistant Attorney General in charge for Special Prosecutions in which he indicates to the court that, instead of conducting "investigations into allegations of illegal conduct by state officials...", that in fact he will be appearing as the advocate for the Executive Director of the Georgia Composite State Board of Medical Examiners, and for the two Assistants Attorney General working as counsel for the Georgia Composite State Board of Medical Examiners.

I have recently brought this matter to the attention of both the State Attorney General and the U.S. Attorney for the Northern District of Georgia, again, and to the State Bar of Georgia. Since the announcement by President-elect Obama, I have also brought this matter to the attention of the President-elect's nominee for the cabinet position of U.S. Attorney General, Mr. Eric H. Holder, Jr., not only because he is a current member of the Board of Trustees for the Morehouse School of Medicine, but because at least some of these events have taken place during his fiduciary watch as one of their Trustees.

My hope remains that Mr. Holder has had an opportunity to carefully study my correspondence and that he is in fact actively considering and seeking any opportunities to assist in the protection of my civil rights and the public vindication of my name, regardless of politics or race. And based on what I have read and learned about Mr. Holder's public life, including documents related to his upcoming confirmation hearings, I am more and more convinced that Mr. Holder's colleagues in the Morehouse School of Medicine and the government of Georgia must have kept him in the dark about the specifics of these matters. But to remain trusting of Mr. Holder's character and strength for being our national independent champion for civil rights and public integrity, and to remain hopeful that Mr. Holder will indeed restore order and credibility to our system of justice, I must insist on having answers from Mr. Holder, if not directly to me then to the Senate Committee on the Judiciary.

In corroboration of my account of the facts I am willing and able to provide, in addition to any other documents and testimony that you may request: my communications pleading accountability and assistance from the Board of Trustees of the Morehouse School of Medicine; the sworn deposition of Dr. James R. Gavin, III, a former President and Chief Executive Officer of the Morehouse School of Medicine, and the only person that has demonstrated the courage and integrity to stand against these appalling violations of my civil rights, regardless of politics and race; the amended federal lawsuit against Morehouse School of Medicine and several individual conspirators, that since has been settled; a Motion for Interlocutory Injunction against the Georgia Composite State Board of Medical Examiners that I filed in 2007 and that I will be seeking to reinstate given the Board's persistent refusal to amend all defamatory reports; and my recent correspondence to Mr. Eric H. Holder, Jr., for which I am still waiting for any response.

Thank you in advance for your thoughtful and honorable consideration of this matter.

Sincerely,

Samuel M. Aguayo, M.D.

Staff Physician
at the Atlanta Veterans Affairs Medical Center
Former Professor, Chairman of the Department of Medicine, and Associate Dean for Veterans Affairs
at the Morehouse School of Medicine

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January 9, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senator Leahy and Senator Specter:

I am writing to express enthusiastic support for the nomination of Eric Holder to be Attorney General. He has been a respected lawyer, distinguished judge, successful prosecutor, and very effective Deputy Attorney General.

Yet, I write today to praise him for leadership in an area in which his role is less well known. As Deputy Attorney General, Eric Holder was one of our earliest champions in attacking child sexual exploitation and child pornography. Eric represented the US at an international meeting in Vienna, Austria on "Combating Child Pornography on the Internet." Immediately, he recognized the enormity of the challenge and became an early and fervent leader in addressing it.

Eric was an advocate and supporter of NCMEC's CyberTipline, created in 1998, which has handled 565,000 reports of online child sexual exploitation. He visited NCMEC, met with key staff and reviewed our procedures and operations. In 1998 Congress passed a law requiring Internet Service Providers to report suspected child pornography to law enforcement via the CyberTipline. Eric was personally involved in the negotiations between the Justice Department, NCMEC and the ISPs regarding what should and could be reported to NCMEC. He was a principal architect of a system that has resulted in thousands of arrests and successful prosecutions, and rescued countless children from this insidious abuse.

Eric Holder cares about victim families. In one NCMEC case, he contacted a foreign Justice Minister and asked his help in returning a US child. He has represented NCMEC as private counsel in cases in which our efforts to reunite families have been challenged by foreign nationals or courts.

Eric Holder is a man of impeccable integrity who will be an extraordinary Attorney General.

Sincerely,

Ernie Allen
President & CEO

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

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PRESIDENT

RICHARD L. TRUMKA
SECRETARY-TREASURER

ARLENE HOLT BAKER
EXECUTIVE VICE-PRESIDENT

LEGISLATIVE ALERT!

(202) 637-5057

January 30, 2009

Dear Senator,

On behalf of the AFL-CIO, I urge you to support the nomination of Eric Holder Jr. to be Attorney General of the United States. We believe Mr. Holder's independence, experience, temperament, and stellar legal credentials make him uniquely qualified to lead the Department of Justice at this critical time.

Mr. Holder's skills are particularly suited to lead the Justice Department in the wake of recent controversies about the politicization of the Department's enforcement activities. He is a highly qualified veteran of the Department who is well respected in the legal community not only for his legal skills but also for his ability to apply the law in a fair and impartial manner. He has also earned a reputation as an aggressive foe of public corruption, and has approved meritorious investigations of both Democratic and Republican officials.

As a United States Attorney in the District of Columbia, Mr. Holder emphasized the prosecution of hate crimes and spearheaded initiatives to protect women and children from domestic abuse. Mr. Holder has also been a strong advocate throughout his career for equal employment opportunity and gender and racial diversity in the legal and other professions.

We believe that Eric Holder has the talent, skills, and commitment to be an exemplary Attorney General.

Sincerely,

William Samuel, Director
GOVERNMENT AFFAIRS DEPARTMENT

American-Arab Anti-Discrimination Committee
1732 Wisconsin Ave., NW | Washington, DC 20007 | **www.adc.org**
Tel: 202-244-2990 | Fax: 202-244-7968 | Email: adc@adc.org

January 12, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
United States Senate- 433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary
United States Senate -711 Hart Senate Office Building
Washington, DC 20510-3802

RE: ADC's support for the confirmation of Eric Holder as the next Attorney General of the United States

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the American Arab Anti-Discrimination Committee (ADC), the largest grassroots organization dedicated to advancing and defending the civil rights and liberties of Arab-Americans, I write to express support to the historic nomination of Eric Holder as the next Attorney General of the United States.

The erosion of civil liberties during the past eight years has particularly affected the Arab-American community, which was the target of repeated racial profiling programs in the name of national security, namely the National Security Entry-Exit Registration System (NSEERS) and Operation Frontline. Such initiatives did not yield any results; instead they succeeded in marginalizing a community in its entirety. Much of these initiatives also have outstanding unresolved issues and residual effects affecting the community to this day.

In light of the past eight years and the programs implemented under the outgoing leadership of the Department of Justice, what is crucially needed is a restoration of faith and integrity to the Department. Mr. Holder's past experience in and commitment to civil rights are precisely what can fill that need. During his tenure as Deputy Attorney General, Mr. Holder was helpful in addressing the concerns of the Arab-American community regarding the use of secret evidence in deportation cases, and constructive in understanding the value of outreach efforts to the Arab-American community. The ADC looks forward to continuing these outreach efforts with Mr. Holder, in his capacity as Attorney General.

Finally, the ADC urges the Committee to promptly confirm Mr. Holder, in order to enable him to start working on restoring the civil rights and liberties, and upholding the rule of law and Constitution. The ADC is also submitting a list of questions regarding outstanding issues affecting the Arab-American community, as they will need to be addressed by the next Attorney General.

Questions for Attorney General Nominee Eric Holder:

1. **The December 2008 AG Guidelines:** The Department of Justice issued new Attorney General Guidelines in December 2008. These guidelines ban the use of racial profiling in federal law enforcement investigations, yet exempt national security investigations from such ban. This means that the new Guidelines will authorize the use of race, religion, ethnicity and national origin as factors when determining who will be subjected to national security investigations. This particular section of the Guidelines drew criticism not only from civil rights advocates but also from Members of the House who asked

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to have the Guidelines revised in order to "require a factual predicate for the basis for initiating assessments," and to "prohibit profiling on the basis of race, religion, ethnicity, national origin and religion" since it "exacerbate[s] mistrust in communities whose cooperation the FBI needs."

- What are your views on the Department of Justice's guidelines regarding the authorization of using racial and ethnic profiling in national security investigations?
- What would you do to ensure justice, should abuses take place in light of these guidelines?
- Would you support legislation such as the End Racial Profiling Act (ERPA) to help protect individuals from unlawful profiling?

2. **Operation Frontline:** On October 20, 2008, ADC and Yale Law School's National Litigation Project learned of a program entitled "Operation Frontline," which was conducted by Immigration and Customs Enforcement (ICE) under the Department of Homeland Security in cooperation with the FBI prior to the 2004 Presidential elections and targeted immigrants solely from Muslim-majority countries. The FBI's cooperation came into play by having its 2004 Threat Task Force provide ICE with information for use in developing further background information about any individuals identified but not meeting the terrorism nexus criteria to be investigated under the Task Force. The records on the Operation released by ICE indicate that not a single individual was charged with a terrorism-related crime. Instead, this Operation ultimately made a negative impact on the relationship of trust and open-communication between the community and federal agencies.

- What would you do as Attorney General to improve communication with communities whose cooperation is needed, and how would you halt future operations based solely on racial profiling criteria?

3. **Hate Crimes Statistics:** In October 2008, the FBI released its *Hate Crime Statistics 2007* report. The current reporting form provides a box only for "Anti-Hispanic" and "Anti-Other Ethnicity" in the Bias Motivation section, under the "Ethnicity/National Origin" rubric. ADC has repeatedly called for the inclusion of the "anti-Arab" rubric for the past few years since, in the aftermath of the September 11th terrorist attacks, the nation witnessed a disturbing increase in attacks against American citizens and others who appear to be of Arab descent.

The 2007 FBI report documented that the number of hate crimes directed at individuals on the basis of their national origin/ethnicity totaled 2,263. However, while we do not know exactly how many of these crimes were "backlash incidents" directed at individuals in the aftermath of the September 11 terrorist attacks, it is still very likely that a considerable portion of the dramatic increase in these types of bias crimes were in connection with bias-motivated attacks against individuals of Arab descent.

- Would you be in support of the FBI to include an additional box in this section in order to help track "Anti-Arab" crimes?

4. **Enforcement of federal immigration laws by local and state police:** There have been efforts in Congress to mandate local and state police enforcement of federal immigration laws. Many local and state police associations have come up against these efforts because they believe this would harm their community policing efforts, decrease the possibility that victims of violence would contact the police, and place an overwhelming burden on already under-funded and overstressed resources.

- Would you support such immigration-focused law enforcement expansion?

Please do not hesitate to contact me should you have any questions, or if the ADC can provide the Committee with information deemed helpful for the confirmation proceeding.

Sincerely,

Kareem Shora, J.D., LL.M
National Executive Director

ADL Anti-Defamation League®

December 23, 2008

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Anti-Defamation League, we write in support of President-Elect Obama's nomination of Eric H. Holder, Jr. to be the Attorney General. We have the highest regard for Mr. Holder and believe that he is uniquely qualified to serve our nation as Attorney General.

Rather than focus on the range of experiences and personal qualities which make Mr. Holder the right person for this position, we thought we would take this opportunity to offer the perspective of an organization that works closely with both the law enforcement and the civil rights communities. We have seen Mr. Holder in action from both perspectives, and particularly in connection with his work on hate crimes, he has demonstrated an ability to understand the appropriate balance. Appreciating and achieving that balance is not easy, but it is critical to the success of any Attorney General.

After his appointment as US Attorney for the District of Columbia in 1993, the League's Washington DC Regional Office worked closely and cooperatively with Mr. Holder to strengthen the enforcement of the District of Columbia's hate crimes law. The result was the creation of the District of Columbia Bias Crimes Task Force, an innovative and highly effective coalition of law enforcement and community organizations which became the model for the Hate Crimes Working Groups which were established in all ninety-four U.S. Attorney's Offices in the nation – police, prosecutors, and community groups. The groups have been successful because they have understood that good community relations, and respect for individual civil rights, are critical to the successful prosecution of hate crimes.

Mr. Holder's work on hate crimes broadened when he serves as Deputy Attorney General. In that role, he supported a wide array of hate crime prevention initiatives within the Department of Justice and testified in support of expanded federal hate crime jurisdiction, a top domestic priority for the League, in May, 1999. In addition, Mr. Holder played an important role in promoting an aggressive Justice Department response to domestic and international terrorism.

Eric Holder has the experience, disposition, and skills necessary to lead the Department at this crucial time. We urge the Committee to act promptly and favorably on his nomination.

Sincerely,

Glen S. Lewy
National Chair

Abraham H. Foxman
National Director

GSL/AHF:dj

cc: Jess N. Hordes, ADL Washington Representative

ASIAN AMERICAN JUSTICE CENTER

ADVANCING EQUALITY

December 15, 2008

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the Asian American Justice Center (AAJC) to endorse Eric Holder for the position of United States Attorney General. AAJC is a national organization dedicated to defending and advancing the civil and human rights of Asian Americans.

Mr. Holder has excellent qualifications for this job. He has served the public for over 25 years, including as Deputy Attorney General, United States Attorney for the District of Columbia, and Associate Judge for the Superior Court of the District of Columbia. He has also served as a line attorney in the Department of Justice. However, more important than serving in these positions is how he conducted himself when in those roles. He has engaged in all his responsibilities with utmost professionalism and integrity.

As a civil rights organization, AAJC is particularly interested in his record on those issues, especially as they affect the Asian American and Pacific Islander communities. On that score, Mr. Holder is once again superb. For example, as U.S. Attorney, Mr. Holder emphasized the need to prosecute hate crimes. Additionally, we applaud Mr. Holder's efforts to outreach to community organizations while U.S. Attorney, including to the Asian American community.

Finally, AAJC urges the Senate Judiciary Committee to move expeditiously on Mr. Holder's nomination. The new Attorney General has a tremendous challenge ahead of him on civil rights enforcement and many other vital issues facing the Department of Justice. The country needs him to begin work as soon after January 20th as possible.

Please do not hesitate to contact me should you have any questions or if AAJC can provide the Senate Judiciary Committee with additional information that is helpful to its process.

Very truly yours,

Karen K. Narasaki
President and Executive Director

cc: President-elect Barack Obama
Eric Holder, Attorney General Designee

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

12/16/2008 1:12PM

THE BAR ASSOCIATION *of the* District of Columbia

January 16, 2009

The Honorable Patrick J. Leahy, Chair
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Washington, DC 20510

Re: Endorsement of Eric H. Holder, Jr. for Attorney General

Dear Chairman Leahy and Ranking Member Specter:

We, the Bar Association of the District of Columbia ("BADC"), write to endorse and recommend wholeheartedly and without reservation, Eric H. Holder, Jr. as the next Attorney General of the United States. We believe that Mr. Holder, who has a long history of public service as a lawyer in the District of Columbia, has the intellect, experience, integrity and commitment to the public necessary to make an outstanding Attorney General. We urge the Senate Judiciary Committee and the full Senate to confirm Mr. Holder.

The BADC was founded in 1871 and is the third oldest bar association in the nation. We are an entirely voluntary organization of approximately 3000 lawyers who tirelessly devote hours of their time to various pro bono and public service projects in the District. During his career, Mr. Holder has been very supportive of the D.C. community and some of these projects. For example, in the 1990s, the BADC started a project known as "Operation Crackdown" to get D.C. lawyers to work with local residents to shut down neighborhood crack houses. Mr. Holder supported this project and encouraged prosecutors in his office to do so. In addition, Mr. Holder initiated the first "Community Prosecution" sections in the U.S. Attorney's Office for the District of Columbia, allowing federal prosecutors to get to know local residents so that they could improve their chances of effectively fighting crime in individual communities.

In addition to this legal work, while U.S. Attorney for the District of Columbia, Mr. Holder adopted a local elementary school, Park View Elementary School. He personally visited and tutored at the school, in addition to encouraging his 300 plus person office to volunteer to tutor and mentor students at the school. The program was very successful and has had a real impact on the school.

For his great legal work, his public service and his commitment to Washington, D.C. residents, the BADC awarded Judge Holder its Lawyer of the Year Award in 1997.

Since that time, Mr. Holder has served as Deputy Attorney General of the United States and as a private practice lawyer. Yet, despite his stature, he has always remained committed to helping those less fortunate and, in particular, the citizens of D.C. While Mr. Holder may have made isolated mistakes in the past, it is clear from his long career of public service and his actions toward others that he has the tremendous character, integrity and understanding necessary to make an outstanding Attorney General.

For these reasons, we endorse Eric H. Holder, Jr. for U.S. Attorney General and recommend that the U.S. Senate Judiciary Committee and Senate confirm him as soon as possible.

Sincerely,

Ralph P. Albrecht
President

James G. Flood
President-Elect

BOB BARR
Member of Congress, 1995 - 2003

January 8, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

IN RE: Nomination of Hon. Eric Holder as Attorney General of the United States

Dear Chairman Leahy and Ranking Member Specter:

It is with a great deal of professional pride and personal pleasure that I write you in strong support of The Honorable Eric Holder to serve as Attorney General of the United States.

In the best of times, Eric Holder would be an excellent choice to serve as Attorney General. However, in these times of tremendous international and domestic turmoil, in which the line between military operations and law enforcement actions has become blurred to the point our precious civil liberties are at great risk, the choice of Mr. Holder could not be timelier or more crucial.

My awareness of Eric Holder dates back to my days as the presidentially-appointed United States Attorney for the Northern District of Georgia

900 Circle 75 Parkway, Suite 1280 • Atlanta, Georgia 30339 • 770/836-1776 • Fax 678/384-5745

(1986-90), during which time Eric served in the Public Integrity Section of the Department of Justice and then as a Superior Court Judge for the District of Columbia. I knew him them by his excellent reputation. I dealt directly with Mr. Holder on several occasions during my tenure as a member of the House Judiciary Committee (1995-2003), when my service overlapped with that of Mr. Holder who served as the U.S. Attorney for the District of Columbia and then, beginning in 1997, as the Deputy Attorney General.

Mr. Holder and I may have had disagreements over *policy* matters during the time he served in the administration of President Clinton. However, I never had reason to question his personal and professional integrity, or his deep understanding of and commitment to our Constitution and especially the Bill of Rights. I have always been impressed by his knowledge and understanding of the workings of the Department of Justice, including importantly the need for Department officials to serve the interests of *all* of the American people and not just those of the president they serve.

These attributes will greatly benefit Eric Holder if he is confirmed as Attorney General, particularly insofar as unfortunate actions of recent years have significantly harmed the morale of personnel at the Department of Justice. Rebuilding that morale at Main Justice and in U.S. Attorney offices across the country must be a top priority of the incoming administration; and Mr. Holder is masterfully equipped to do just that. Importantly, we can all have confidence he will do so with full and proper regard and respect for the Bill of Rights and our precious civil liberties as American citizens. In so doing, he will restore public confidence in the Department of Justice, which in recent years has dropped to a distressingly low level.

In the years since leaving the Department of Justice and entering the world of private law practice, Eric Holder has continued to manifest these positive qualities, as I have had the pleasure of remaining in contact with him

America will benefit greatly if Eric Holder is permitted to serve as Attorney General of the United States. I respectfully urge swift and positive action by the Judiciary Committee and confirmation by the full Senate.

Please do not hesitate to call on me if I might be of further assistance. In the meantime, and as always, I remain with warm personal regards,

very truly yours,

BOB BARR
Member of Congress, 1995-2003
United States Attorney, N.D.GA., 1986-1990

January 7, 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 Mr. Chairman and Senator Specter:

We are pleased to be able to write in support of Eric Holder, a man who stands with the most qualified who have been privileged to be nominated to be Attorney General of the United States. President-Elect Obama's nomination of Eric as the historic appointment of our first African-American Attorney General should be hailed as a milestone. He is an extraordinary lawyer and an even better person. We would hope that Eric would be confirmed swiftly as a key component of the President's National Security Team.

Eric Holder has a lifetime of public service to this country. His 30 year professional career has been consistently characterized by unfailing integrity and a commitment to political independence. Eric began his career as a federal prosecutor in the Public Integrity Section of the U.S. Department of Justice. There he tried many cases and prosecuted successfully widely heralded public corruption cases against officials from both political parties. Thereafter, Eric was appointed a D.C. Superior Court Judge by President Reagan and served with distinction on the Bench for five years. As a Judge, Eric had a sterling reputation for being both tough on crime but fair to all litigants. He was then appointed the United States Attorney for the District of Columbia in 1993. As Washington, D.C.'s U.S. Attorney Eric ran one of the largest and most important prosecutorial offices in the country from 1993-1997. While U.S. Attorney he oversaw the prosecution and conviction of ex-Congressman Dan Rostenkowski (D. Ill.) among other substantial achievements. Once again, his reputation was tough on crime but always fair and professional. From 1997 to 2001 Eric served as Deputy Attorney General, the critically important number two job at the Department of Justice. There he gained invaluable experience for his current nomination and developed a bipartisan reputation, making difficult decisions such as recommending that Kenneth Starr's investigation of a sitting Democratic President be expanded.

From 2001 to the present Eric has practiced law as a Partner in the prestigious Washington, D.C. law firm of Covington & Burling. There he has experienced our criminal justice system from the other side of the fence as one of Washington's leading white collar defense counsel. While at Covington Eric also represented major companies and executives in a wide variety of complex litigation and internal investigations.

While everyone seems to agree with us that Eric is extraordinarily well qualified to be Attorney General, some have raised questions about certain Presidential pardons issued by President Clinton on the day before he left office. Mentioned most prominently was the Marc Rich pardon. The short answer to any and all of these questions is that the power to issue a Presidential Pardon is a clear plenary power of any President. It is his or hers alone to execute and justify. A Presidential

pardon is then unreviewable. Virtually no one disputes that Eric was an outstanding Deputy Attorney General in every respect, President Clinton's pardons notwithstanding.

Due to his character and experience, Eric today enjoys the endorsement of literally thousands of law enforcement officials from across the country, including NAPO (National Association of Police Organizations), NDAA (National District Attorneys Association), PERF (Police Executive Research Forum), NSA (National Sheriffs' Association), NAAUSA (National Association of Assistant U.S. Attorneys) and NOBLE (National Organization of Black Law Enforcement Executives). From his experience Eric fully understands and appreciates the constant threat posed by Al Qaeda and Islamic extremists. As former federal prosecutors and senior officials of the Department of Justice we are profoundly aware of the challenges that the Department and the country are facing. Eric Holder is the right man at the right time to protect our citizens in the critical years ahead.

In closing, we note that not only is Eric superbly qualified to be Attorney General, but he is a truly good man. He is the father of three children and the devoted husband of Dr. Sharon Malone. As a kid from New York City's public schools who made it to and through Columbia University and its Law School, Eric is indeed another great American success story. We urge his rapid confirmation as our next Attorney General of the United States.

Sincerely,

William P. Barr
Former General Counsel, Verizon Corp.
Former Attorney General of the United States

Joseph E. diGenova
diGenova & Toensing
Former United States Attorney for the District of Columbia

Manus M. Cooney
President, The TCH Group
Former Chief Counsel, Senate Judiciary Committee

Stuart M. Gerson
Epstein Becker & Green, P.C.
Former Acting Attorney General and Assistant Attorney General of the United States

Makan Delrahim
Brownstein Hyatt & Farber Schreck, LLP
Former Staff Director Senate Judiciary Committee and
Former Deputy Assistant Attorney General of the United States

Michael J. Madigan
Orrick, Herrington & Sutcliffe LLP
Former Federal Prosecutor and Chief Counsel, Senate Special Investigation, Committee on Governmental Affairs

Michael O'Neill
George Mason University
Former Chief Counsel and Staff Director,
Senate Committee on the Judiciary
Former Commissioner, United States
Sentencing Commission

Victoria Toensing
diGenova & Toensing
Former Deputy Assistant Attorney General of
the United States and
Chief Counsel, Senate Intelligence Committee

George J. Terwilliger III
White & Case
Former United States Attorney for the
District of Vermont
Former Deputy Attorney General of the
United States

Charles R. Work
McDermott Will & Emery
Former Federal Prosecutor and
Former President, District of Columbia Bar

cc: Judiciary Committee Members

GUNVICTIMS.ORG

December 5, 2008

To Members of the United States Congress and Interested Others;

We are writing in strong support for the nomination of Eric Holder to be the next Attorney General of the United States of America.

A significant portion of the Attorney General's responsibilities is in direct relationship to victims of violent crime, and there is no larger sub-set of victims than victims of gun violence. We who have had family members shot and killed, or who have been shot and survived, represent approximately 70% of all violent victimization in the United States. We are a nation that desperately needs leaders that understand that guns are dangerous and they need to be kept out of the hands of dangerous people.

Eric Holder has an extraordinary record of expertise and sound policy when it comes to matters of gun violence – a significant aspect of the criminal justice system. We are confident that his leadership on Law and Policy in areas of gun violence will be exemplary and we are most grateful for his willingness to serve the nation's most brutalized victim population in this manner.

Please do not hesitate to call on us for any support or additional information.

Sincere Regards,

Jennifer Bishop
National Program Director for Victims and Survivors
The Brady Campaign To Prevent Gun Violence

January 5, 2009

Senator Patrick Leahy
Chairman
Judiciary Committee
Dirksen Senate Office Building, Room 224
Washington, D.C. 20510

Senator Arlen Specter
Ranking Member
Judiciary Committee
Dirksen Senate Office Building, Room 152
Washington, D.C. 20510

Re: Nomination of Eric Holder for Attorney General

Dear Chairman Leahy and Ranking Member Specter,

As organizations that have been working for decades to end domestic violence, dating violence sexual assault and stalking, we are writing to express our strong support for the nomination of Eric Holder for Attorney General. Many of us worked with or presented before Mr. Holder when he was a judge and U.S. Attorney in Washington, D.C. and based on our knowledge of his record and own personal experiences ask that you confirm him as quickly and with as much support as possible. Victims of violence, including women and children who have been brutalized by family violence and sexual abuse, need his leadership at the Department of Justice.

As you know, Mr. Holder was a D.C. Superior Court judge for five years beginning in the late 1980s, and in 1993 became the U.S. Attorney for the District of Columbia. While U.S. Attorney, Mr. Holder created a specialized domestic violence unit to more effectively handle cases of violence against women and their children. In that work he showed himself to be thoughtful, fair and determined to help those who had been victimized receive justice and those who were accused receive fair treatment. He also developed a comprehensive strategy to improve the way child abuse cases were handled to minimize harm to traumatized children and supported a strong victim assistance program. He has always recognized the importance of respecting victims both as an act of compassion and more importantly good law enforcement.

In 1997, President Clinton appointed Mr. Holder to serve as Deputy Attorney General. While at the Justice Department he launched the Safe Start Initiative to help children exposed to violence, including programs for children exposed to domestic violence. We know services for children exposed to domestic violence is one of the single most effective strategies for preventing physical, sexual and youth violence and we hope as Attorney General Mr. Holder will further develop and expand the program.

We also greatly appreciate the role Mr. Holder has played in Concerned Black Men, an organization that works to engage men as positive leaders and role models for younger men and boys, and we look to his leadership in challenging head-on social norms that encourage boys and young men to see violence toward women and one another as essential elements of manhood.

We know you will hear extensively about Mr. Holder's acute legal mind, leadership abilities, and tough law enforcement background. We would like you to also know that he has demonstrated over the years a great compassion for victims of crime, a willingness to hold offenders

accountable and the good sense to simultaneously invest in prevention programs focused on vulnerable youth as a means to ultimately breaking the cycle of violence. We ask that you support his nomination as vigorously as possible.

If you have any questions please do not hesitate to contact Kiersten Stewart at the Family Violence Prevention Fund, [redacted].

Sincerely,

Break the Cycle
Family Violence Prevention Fund
National Alliance to End Sexual Violence
National Center for Victims of Crime
National Congress of American Indians Task Force on Violence Against Native Women
National Latino Alliance for the Elimination of Domestic Violence
National Network to End Domestic Violence
National Organization of Sisters of Color Ending Sexual Assault
Pennsylvania Coalition Against Rape
Sacred Circle

January 14, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Specter,

We write in support of Eric Holder to be confirmed as the next Attorney General of the United States. We believe that his 24 years of public service as a prosecutor in the Justice Department's Public Integrity Section, a trial judge appointed by President Reagan, United States Attorney, and Deputy Attorney General makes him superbly qualified to serve as the nation's next chief law enforcement officer.

We had the privilege of serving in the Justice Department following the terrorist attacks of September 11th. The threat of a terrorist attack is as real now as it was in 2001. While next week's inaugural will mark a change in Administrations there will be no change in the desire of some to do great harm to the United States. We support Mr. Holder's nomination because we believe he understands the grave and continuing threat posed by al Qaeda and will do all within his power to ensure the continuing safety of the American people.

Mr. Holder's record of accomplishment is formidable, and reflects his sound judgment, integrity, and strength. Moreover, we believe he is a wiser man as a result of the Rich pardon matter, and is more likely to demonstrate greater sensitivity and courage related to the imperative of political independence at the Justice Department. If confirmed, we believe he will serve with distinction as the Attorney General of the United States.

Sincerely,

Dan Bryant
Senior Vice President
Global Public Policy and Government Affairs, PepsiCo
Former Assistant Attorney General
Office of Legal Policy, and Office of Legislative Affairs

Chris Wray
Partner, King and Spalding
Former Assistant Attorney General
Criminal Division

Statement of Debra Burlingame
Co-founder, 9/11 Families for a Safe & Strong America
January 15, 2009

Senate Judiciary Committee Confirmation Hearing for Eric Holder

Chairman Leahy, Ranking Member Specter and Members of the Senate Judiciary Committee:

I am writing to share my views about the nomination of Eric Holder to the position of United States Attorney General. For the last seven years, I have taken a keen interest in the workings of my government. After the widespread institutional failures of the U.S. government to protect the lives and property of its citizens from terrorist attack on September 11, 2001, it was no longer acceptable to me to be a passive observer, to accept at face value what public officials tell us about the policies and decisions they make. 9/11 reminded us all that the decisions made in Washington have real world consequences for those far removed from the center of power.

On September 11, 2001, my brother, Captain Charles F. Burlingame, III, was murdered in the cockpit of his hijacked commercial airliner which was then crashed into the Pentagon, killing all 59 of its passengers and crew, and 125 men and women working at the Department of Defense. After that difficult day, I made a personal vow to become a better citizen, which starts with becoming better informed. Since then, I have contributed in the best way I know how, sharing what I have learned with others. It is in that spirit which I write to you today.

I am well aware of Eric Holder's academic credentials, his record of accomplishments and the high regard in which he is held by some of his colleagues and associates. His qualifications for the position to which he has been nominated are plainly evident. However, Mr. Holder's record is clouded by actions which even his supporters admit constitute serious errors in judgment, most notably, the role he played in a series of highly controversial Presidential pardons which issued while he held the position of deputy attorney general at the Department of Justice (DOJ).

I believe the facts surrounding Mr. Holder's conduct with respect to these pardons seriously call into the question his judgment, character and independence, and cast doubt about his willingness or ability to serve both the President and the American people with equal dedication and vigor.

The pardons to which I refer were those of fugitive Marc Rich, wanted for racketeering, fraud and illegal trade with Iran while it held 52 American embassy personnel hostage; the commuted sentences of Weather Underground terrorists Susan Rosenberg and Linda Evans who were implicated in the killing of two New York state troopers and a Brinks security guard; and the clemency for 16 unrepentant terrorists of the Puerto Rican separatist groups, the FALN and Los Macheteros ("The Machete Wielders"), a

clandestine "people's army" responsible for more than 130 bombings which killed six people and injured scores of others in Chicago and New York.

All of these pardons stunned and outraged the U.S. Attorneys who prosecuted these cases. The pardons undid years of effort to bring these people to justice, including that of the federal marshals who chased Marc Rich all over Europe, of the FBI agents who dedicated years of their lives to stopping the carnage wrought by the FALN, of the prosecutors who tried the cases and wrote thousands of pages of responses to the motions and appeals filed on behalf of the accused by their lawyers.

Additional fury arose over the fact that the pardon process itself grossly departed from standards and procedures that had been in place at the Justice Department for more than 150 years. The pardons were carried out in secrecy. A review of the record clearly reveals Mr. Holder's role in circumventing the Justice Department by steering lawyers for potential clemency recipients directly to the White House, effectively preventing the U.S. Attorney's offices and those who had a personal stake in the President's decision from being heard at all, including the three New York City police officers who were permanently blinded or maimed by FALN bombs planted at One Police Plaza and the families whose lives were shattered when their loved ones were murdered in the Fraunces Tavern bombing. None were given an opportunity to be heard and no one--prosecutors, FBI, presiding judges, Bureau of Prisons, or victims—found out about the clemencies until they were announced to the public.

Unforgivably, the victims learned about the imminent release of these violent criminals through the media. It must have been excruciating for the victims in that one month period, after President Clinton announced his "conditional clemency offer," as they waited for the FALN prisoners to decide whether the renunciation of violence was worth the price of freedom. They never renounced violence. They never expressed remorse for their crimes. They were released anyway. One can only imagine the magnitude of that betrayal.

The circumstances surrounding Mr. Holder's intervention on behalf of Marc Rich was described by a federal prosecutor as "one of the most disgraceful chapters in the history of the Justice Department." To be sure, the Rich clemency tarnished the reputation of all those who played a role in it. The pardon diminished respect for the Office of the Presidency and shook public confidence in the Justice Department's ability to administer equal justice under the law.

But the FALN pardons were distinctly a far graver matter because they represented a serious threat to public safety and national security. What is most disturbing when reading the record tens years later is Mr. Holder's inability or refusal to recognize, in the first instance, the threat to the public that releasing these terrorists posed. FBI Director Louis Freeh wrote in a letter to House Judiciary Committee Chairman Henry Hyde that six weeks before the pardons were announced "the FBI pointed out to the DOJ that as active members of Puerto Rican terrorist groups, these individuals sanctioned, supported and/or directly or indirectly participated in activities resulting in no few than nine

fatalities, hundreds of injuries, millions of dollars of in property damage, and armed attacks on U.S. government facilities."

Freeh further noted that "DOJ was advised the FBI had reason to expect the release of these individuals would 'psychologically and operationally enhance' the ongoing violent and criminal activities of Puerto Rican terrorist groups." He emphasized to DOJ that "any such pardons of the 'currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement.'"

To this day, Mr. Holder has never publicly taken a position on the FALN pardons with any particularity, except to say that the President had absolute power to give them. Citing Executive privilege more than a dozen times during his appearance before the Senate Judiciary Committee in 1999, Mr. Holder declined not only to discuss the pardons, but also the facts of the underlying FALN cases "which are inextricably woven into the facts of the clemency."

Even the committee's questions as to whether he suggested to the President that the pardons be conditioned on the prisoners' assistance in open FALN cases, including giving information leading to the arrest of an FALN confederate on the FBI's Ten Most Wanted List, was thought by Mr. Holder to be something "the President doesn't have to consider." He declined to say whether the issue of cooperation in ongoing cases is, as a general matter of DOJ policy, requested of clemency petitioners. The record of his testimony is truly embarrassing to read.

Mr. Holder not only failed to oppose the President in what was widely regarded as a travesty of justice, we now know that he improperly facilitated the pardons themselves, then aided and abetted the President's refusal to be publicly accountable for them by gagging the entire Justice Department using the claim of Executive privilege.

The FALN pardons were one of the most egregious examples of the abuse of raw presidential power that occurred during Bill Clinton's presidency. The pardons advanced no public policy, acknowledged no sincere expression of remorse or evidence of rehabilitation. They corrected no miscarriage of justice and, most significantly, they were not requested by the prisoners themselves. While it is true that the Constitution gives the president plenary power to confer pardons without review, it does not require that the Justice Department assist the President in his recklessness and conspire with him in endangering the public.

Mr. Holder could have let the original 1996 Justice Department recommendation against clemency stand. He could have publicly opposed the clemencies. He could even have threatened to resign if the clemencies went forward. These are kind the principled stands an independent attorney general with honesty and integrity must be prepared to make on behalf of the American people when the situation calls for it.

Today, an Obama transition team spokesman has defended Mr. Holder by saying the FALN sentences were excessive. Whether the statement represents Mr. Holder's position

is not clear. It does not advance his cause. It merely refutes the claim that he has "learned from his mistakes." Ten years ago the Sentencing Commission was consulted—not by Mr. Holder—but by members of Congress, and it was learned that the sentences for all the FALN prisoners were not only in line with other crimes of that magnitude, but that they would be harsher if sentenced under current guidelines, which provide for no parole.

In considering Mr. Holder's nomination for Attorney General, it is imperative that the committee consider the parallels between the FALN and the terrorist threats we face today. The FALN was a highly organized, clandestine organization with a command structure that coordinated its violent operations with other Puerto Rican nationalist groups. Its members were trained in countersurveillance, counterinfiltration and identity disguise. They were highly trained and motivated.

At the time Mr. Holder was pushing for the release of these terrorists in September of 1999, the suicide pilots for the 9/11 attacks had been selected and were already here or on their way here. Domestic and transnational terrorism was ramping up, as illustrated by the 1993 World Trade Center bombing, the 1995 Tokyo subway Sarin attack, the 1995 Oklahoma City bombing, the 1995 "Bojinka" conspiracy to hijack airplanes and crash them into buildings, the 1996 Khobar Towers bombing, the 1996 Summer Olympics bombing, Osama bin Laden's 1996 and 1998 "Declarations of War" on America, the 1998 East African embassy bombings, the 2000 USS Sullivans bombing attempt, the 2000 USS Cole bombing, and the 2000 Millennium bombing plot. It is within this context which the FBI stated that "the release of these individuals will psychologically and operationally enhance the ongoing violent and criminal activities of terrorist groups, not only in Puerto Rico, but throughout the world."

None of that appears to have made a difference in Mr. Holder's decision to push for the release of 16 unrepentant FALN terrorists with American blood on their hands.

As I write this, five "high value" detainees currently held at Guantanamo Bay, Cuba stand accused under the Military Commissions Act of conspiring in the 9/11 attacks, but the future of that trial is in limbo. Likewise, the disposition of 250 detainees classified as unlawful enemy combatants, 100 of whom have pending habeas corpus petitions, remains in question. The issues surrounding the detainees at Guantanamo Bay are extremely complicated, legally unprecedented and emotionally charged. They have also become so highly politicized that whoever accedes to the position of attorney general will no doubt be severely tested. Whoever is confirmed as attorney general will surely fail both President Obama and the American people if his lodestar is political expedience and personal ambition

Mr. Holder is an intelligent, talented and skilled attorney whose lifetime of experience as a prosecutor who specialized in official corruption, as a champion of victims rights, as a Superior Court judge and as an advisor to the U.S. Sentencing Commission provided him with everything he needed to determine that the pardons and the process that the President of the United States was asking him to support as deputy attorney general was a

gross affront to the principle which Mr. Holder maintains has guided his career—that the Department of Justice first and foremost represents the people of the United States.

I respectfully submit that the nomination Eric Holder for Attorney General should not be put forward.

Sincerely,

Debra Burlingame
Mount Vernon, NY

DAN BURTON
6TH DISTRICT, INDIANA

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January 12, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing to share with you my concerns regarding the nomination of Eric Holder to serve as Attorney General of the United States.

I spent a significant portion of my time as Chairman of the House Government Reform Committee conducting oversight of the Department of Justice – under both Democratic and Republican administrations. This was not something I set out to do when I assumed the chairmanship of the Committee, but it became necessary due to the increasing politicization of the Justice Department under Attorney General Reno. I found that time and time again, Attorney General Reno allowed political considerations to affect her judgment. The need for vigorous oversight of DOJ did not diminish when President Bush was elected. I held the Bush Justice Department to the same standards that I held the Clinton Justice Department. In fact, the first claim of Executive Privilege by the Bush Administration against Congress came in response to a subpoena I issued to DOJ for documents relating to wrongdoing by the Justice Department and the FBI.

President-Elect Obama also has expressed his concerns about maintaining integrity at the Justice Department. While campaigning, Mr. Obama proclaimed that "The President needs to nominate an Attorney General who will be the people's lawyer, not the President's lawyer."

Unfortunately, Mr. Obama has selected as his Attorney General a man who did not rise to this standard during his tenure at DOJ. The investigative record shows that no person – save those who were on Marc Rich's payroll – did more than Eric Holder to promote Marc Rich's cause and help him secure his pardon from President Clinton. More recent allegations about Mr. Holder's actions in support of clemency for members of the violent FALN organization in 1999 only adds to the concerns over this nomination.

The Government Reform Committee conducted a painstaking, year-long investigation into the clemency grants issued by President Clinton at the end of his presidency. The pardon issued to Marc Rich was a central focus of this investigation. Several key facts about the Rich pardon became apparent almost right away: (1) the pardon was completely indefensible on the merits; (2) the critical lobbying role of Denise Rich and Beth Dozoretz, key Clinton Library fundraisers, created a strong appearance of impropriety; and (3) Eric Holder, the Deputy Attorney General, stood virtually alone among the President's advisors as a supporter of the pardon.

When you question Mr. Holder about his involvement in the Marc Rich case, there are several key facts about Marc Rich that are of concern. He was the largest tax cheat in U.S. history. He illegally traded with America's enemies, including the Ayatollah of Iran and Saddam Hussein. The Committee investigated Rich's dealings with America's enemies, and received briefings from the CIA and other intelligence agencies during its investigation. The most that we could say about this in the final report was that if President Clinton had consulted with the CIA, he "would have received information worthy of his consideration in making his decision on the pardon. This information cannot be declassified." And, most important, rather than face criminal charges, Marc Rich fled the country to live in exile in Zug, Switzerland. When Rich fled the country, his own lawyer, Edward Bennett Williams told him: "You spit on the American flag. You spit on the jury system. What you get, you deserve." Rich then renounced his American citizenship to avoid extradition.

A question of central importance for the Senate Judiciary Committee is why America's next chief law enforcement officer would support the pardon of such a person. Eric Holder has never offered a convincing justification for his actions, leading the Committee to the conclusion that he likely supported the pardon in order to curry favor with Rich's chief lobbyist, Jack Quinn. Quinn was a confidant of then-Vice President Gore, and would have been an influential ally in having Mr. Holder nominated as Attorney General in a potential Gore administration.

I hope that you have the opportunity to review the Committee's report about the Clinton pardons (Justice Undone: Clemency Decisions in the Clinton White House, House Report 107-454 (2002)) and question Mr. Holder about the Committee's findings:

- Eric Holder recommended that the Marc Rich team hire Jack Quinn. When one of Rich's allies met Mr. Holder at a dinner party, he asked Holder what advice he would offer to someone who had been indicted by an "overzealous prosecutor." Mr. Holder told him that such a person should "hire a lawyer who knows the process, he comes to me, and we work it out," offering Jack Quinn as an example of the type of fixer he had in mind. Of course, this is exactly what Jack Quinn did over the next 15 months.

- After Marc Rich hired Mr. Quinn, Quinn began an effort to convince the prosecutors in the Southern District of New York to sit down with him to settle the charges against Rich. The Southern District refused to meet with Rich's lawyers, as they had a policy of not negotiating with fugitives. Mr. Quinn then went to Eric Holder, and asked for Holder's help in forcing the Southern District to meet. Instead of supporting the Justice Department prosecutors, Mr. Holder told Mr. Quinn that the Southern District's refusal to meet was "ridiculous," that the "equities are on your side," and that "we're all sympathetic."

- Through his own inaction after receiving advance notice of Jack Quinn's plans, Mr. Holder made sure that the Justice Department's career prosecutors did not have a chance to weigh in on the Rich pardon. A full two months before President Clinton granted the Rich pardon, Jack Quinn told Eric Holder that he would be filing a pardon petition with the White House. Holder did not ask for a copy of the pardon petition. Nor did Holder alert anyone at the Justice Department that the largest tax cheat in history and one of the FBI's most wanted white-collar fugitives was applying for a pardon. In fact, the evidence suggests that Mr. Holder told Mr. Quinn to "go straight to the White House," and that the "timing is good."

- Most important, Mr. Holder told the White House that he was "neutral, leaning towards favorable" on the Rich pardon at a decisive moment. As the Committee found, "Holder's support had the illusory effect of giving the Justice Department's blessing to the Rich pardon, when in reality, not a single individual at the Justice Department other than Eric Holder knew that the Rich pardon was even being

considered." Indeed, it was largely because of Mr. Holder's efforts that no one at the Justice Department was aware of the consideration of the Rich pardon.

- Mr. Holder was the only person in President Clinton's inner circle to support the Rich pardon. Bruce Lindsey, Beth Nolan, and even Cheryl Mills were skeptical of Rich's arguments. Yet, Mr. Holder supported the pardon. When informed of Holder's support for the pardon, one shocked Clinton White House lawyer asked, "Why the [expletive deleted] would he say that?"

- In case there was any doubt about where Mr. Holder stood on the Rich pardon, recall that Holder spoke with Jack Quinn the day after the pardon and offered Quinn his congratulations and advice for how to deal with media inquiries about the pardon. Mr. Holder also found time to ask Mr. Quinn to hire two of his deputies, who were looking for jobs at the end of the Clinton Administration.

Just as troubling as Mr. Holder's involvement in the Rich pardon are his incomplete and unconvincing explanations of his conduct:

- Mr. Holder has suggested that he had a momentary lapse in judgment. However, the record reflects that Holder was promoting Marc Rich's cause within the Administration over a period of 15 months.

- Mr. Holder has unbelievably claimed that he only supported the Rich pardon because he thought it had no chance of succeeding. In his testimony before the Government Reform Committee, Holder stated that on the evening before the pardon was granted, as he gave his infamous "neutral leaning towards favorable" opinion, he did not think there was a real possibility that the pardon would be granted. However, Jack Quinn testified that he had already told Holder that Rich pardon was receiving serious consideration from the White House. Moreover, did Mr. Holder really think that the White House counsel was calling him on the last evening of the Clinton Presidency to discuss a pardon that wasn't being seriously considered?

- Even if you accept Mr. Holder's claim, should we be less concerned knowing that he supported the pardon of America's most wanted white-collar fugitive merely because he was throwing a bone to a friendly lobbyist?

Mr. Holder's actions in regard to the FALN commutations were just as troubling, if not more so. According to credible press reports, Mr. Holder ordered the Justice Department pardon attorney to revise a previous Justice Department opinion strongly opposing clemency for the FALN terrorists and replace it with a more neutral "options memo" that would be more useful for a White House seeking to grant clemency. Mr. Holder undertook this action despite reportedly receiving at least two memos from Justice Department attorneys warning of the negative consequences of such commutations, including the fact that they could undermine at least four pending Justice Department investigations. My Committee also investigated the August 1999 commutations given to the sixteen members of the FALN and Macheteros terrorist groups. However, many of the revelations that came to light last week in the press were not available to the Committee at the time because of a White House claim of executive privilege.

The imprisoned members of the FALN who ultimately received commutations from President Clinton after the Justice Department opinion was forwarded to the White House were convicted of bank robbery, possession of explosives, and participating in a seditious conspiracy. Overall, the FALN and Macheteros groups have been linked by the FBI to more than 130 bombings, numerous armed robberies and six slayings. Former DOJ Pardon Attorney Roger Adams was quoted in the Los Angeles Times last week stating, "I remember this well, because it was such a big deal at the time to consider clemency for a group of people convicted of such heinous crimes."

In considering Mr. Holder's nomination to be Attorney General, Members of the Judiciary Committee should carefully weigh his conduct in the Marc Rich and FALN cases. I believe that it is incumbent upon the Committee to question him thoroughly on these issues, and judiciously consider his responses in the context of the entire investigative record. Some would argue that the Marc Rich pardon and FALN commutations are not relevant to Holder's confirmation, since the pardon power is a plenary power of the President. I disagree. The issue before this Committee is whether Eric Holder has the judgment and character to serve as the nation's next Attorney General. As I have described in detail, Holder's role in these matters, and his incomplete and unbelievable explanations of his conduct raise profound questions about his judgment and character. Eric Holder's actions in the Rich and FALN matters do not appear to have been the product of naivete or misjudgment. Rather, they appear to have been the actions of a man who bent to the prevailing political winds, and who put aside good judgment in favor of ambition.

I agree with President-elect Obama that we need an Attorney General who will bring integrity to the Justice Department, and truly be the people's lawyer. One of the most critical parts of that job is standing by dedicated career professional law enforcement officers, unless there is a clear reason to do otherwise. In the Marc Rich and FALN matters, Eric Holder failed to stand up for the Justice Department, and let down the American people. While your decisions will ultimately be guided by your own review of the matter, in my view, Eric Holder is the wrong choice for Attorney General.

Sincerely,

Dan Burton
Member of Congress

INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO

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Legislative Affairs

TIMOTHY A. SCOTT
International Secretary-Treasurer

December 18, 2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senators Leahy and Specter:

As the President of the International Union of Police Associations, AFL-CIO, I am proud to endorse the appointment of Eric H. Holder to the position of the United States Attorney General. As you know, the I.U.P.A. is the only union specifically chartered to represent active duty, rank and file law enforcement professionals across the nation as well as in Puerto Rico and the Virgin Islands.

Mr. Holder's experiences as a Superior Court Judge, U.S. Attorney, Deputy Attorney General and as the Acting Attorney General have given him the background and allowed him to demonstrate the sound judgment and personal integrity that is necessary to be successful in this role. It has also given us the opportunity to view his decision-making ability and the honor that guides him when making some of the hard choices this office mandates. During his tenure as the Deputy Attorney General and while the Acting Attorney General, Mr. Holder continued to maintain a line of communication with all representatives of the nation's law enforcement community. This served both the Department of Justice and America's public safety officers in their roles of keeping the nation safer for those privileged to live here.

While the I.U.P.A. has not always agreed with some of Mr. Holder's positions, we have always recognized that principals rather than political expediency or party dogma guided him. His breadth of experience and his continued willingness to do the right thing in the face of criticism has marked him as an independent advocate and guardian of American justice. He will, I am certain, lead the members of the Department of Justice in upholding our Nation's security, our Constitution and the American values embodied by that sacred document.

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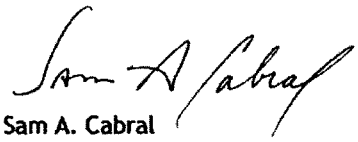
I respectfully ask you and the other honorable members of the Senate Committee on the Judiciary to confirm Mr. Holder to be the Attorney General of the United States.

Very Respectfully,



Sam A. Cabral
International President

Woman shoots home invader through abdomen
S. Brady Calhoun
Northwest Florida Daily News
December 5, 2008

LYNN HAVEN - Lynn Haven police were looking Friday for two suspects in a home invasion and attempted robbery.

Melissa Galarza, of 817 Bradford Circle, answered a knock on her door Thursday evening, and two white males charged into the home and demanded "the money," a Lynn Haven officer wrote in an incident report.

One of the men punched Galarza in the face twice and knocked her to the floor. The men covered her mouth to keep her from screaming and kept demanding the money, reports said.

While on the floor, Galarza remembered she had a gun within reach on the bottom shelf of her coffee table. She drew the weapon, and the two men backed off before charging at her again. Galarza said she fired in self-defense, and the men fled her home together, report said.

Galarza suffered minor injuries in the incident, officials said.

Galarza's bullet went through the abdomen of one of the suspects, 26-year-old Matthew Andrews, officials said.

Andrews went to a local hospital, where he was treated for his injuries. While at the hospital, Andrews was met by the Panama City Police Department and an investigator questioned him about the wound, said Capt. Mark Aviles.

Andrews told the investigator he was the victim of a robbery on 15th Street but that he did not want to file a police report and did not want to speak with officers further, Aviles said.

The investigator interviewed Andrews and his girlfriend, who was not named, for about an hour, then took his photograph and gathered his contact information, Aviles said.

The investigator left the hospital but later was informed that Lynn Haven police believed the man was a suspect in a home invasion and officials there would be taking over the case.

Andrews checked himself out of the hospital before Lynn Haven officers arrived, said Chief David Messer.

"He just checked out before we got there," Messer said. "They can't hold him."

Lynn Haven officials issued a warrant for Andrews' arrest and still were trying Friday to identify the second suspect in the home invasion.

Messer said Garlarza identified Andrews as one of the men who invaded her home.

Lynn Haven officials said the two men targeted her home specifically and described the attempted robbery as an isolated incident.

After the incident, Galarza and her boyfriend drove around town looking for the suspects and talked with some of their neighbors, Messer said. They did not call the police, he added.

"Finally, a neighbor called us," Messer said.

That delay in contacting police contributed to the delay in Lynn Haven officials arriving at the hospital, Messer said.

Messer said he is confident Andrews will be caught.

"He's not somebody that can go far, I don't think," he said.

Anyone with information about this crime is asked to call Investigator Robin Kathren at 265-4111 or CrimeStoppers at 785-TIPS (785-8477).

BUSINESS INTELLIGENCE

Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

RE: Eric Holder Nomination

Dear Senator Patrick Leahy

I have had the honor and privilege of working within the Defense, Intelligence, and Law Enforcement communities on some of our nation's most sophisticated technology programs as either a Military Officer (Navy Pilot) or Government Contractor for over 30 years. I come to you and your colleagues to enthusiastically support the confirmation of Mr. Eric Holder for Attorney General of the United States of America. My role as a former Senior Subject Matter Expert for Knowledge Discovery and Predictive Analytics for the Defense Intelligence Agency has placed me and many of us into positions which have caused us to question and make judgment calls on many of the intelligence issues of the day. Though I do not know Mr. Holder personally I am familiar with his work in previous Administrations and did listen to his questioning by your Committee very closely. I found his response to issues of torture, privacy, and the rule of law to be a welcomed one to our community. Additionally, I can assure you that there a great many others within Intel which would agree with me wholeheartedly.

Over the past few years, many in our community have been mis-represented as it relates to our position on these subjects. Most of us have at one time in our professional lifecycle, taken oaths to support and defend our great Constitution and we take those commitments seriously. As some of us were forced to make hard choices and did leave the community, most of us welcome the changes that Mr. Holder represents. Many of us actually think that he can help us to regain our image and standing within the international community and this is absolutely tantamount to our overall success as we prosecute the war on terror.

Our community is one that is shy about direct contact to the Congress and one that prides itself on its independence. You should not likely to expect to hear from many within the Intelligence community; however we are here and we are interested. I would implore you to act on this nomination for the good of our nation and the good of our community.

I thank you for your dedication and public service and that of your Committee members. Please feel free to route this letter to the members of your committee.

Respectfully submitted,

Stanley V. Campbell Jr.
CEO, Business Intel Solutions

1300 Pennsylvania Ave. NW, Washington, DC 20001
Phone 202-204-3071

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

TESTIMONY

of

Chuck Canterbury

National President,

Grand Lodge, Fraternal Order of Police

on

the Nomination of Eric H. Holder, Jr. to be the 82nd Attorney General of the United States

before the

Senate Committee on the Judiciary

15 January 2009

—BUILDING ON A PROUD TRADITION—

Good morning, Mr. Chairman, Ranking Member Specter, and distinguished Members of the Committee on the Judiciary. My name is Chuck Canterbury, National President of the Fraternal Order of Police. I am the elected spokesperson of more than 327,000 rank-and-file police officers—the largest law enforcement labor organization in the United States.

I am very pleased to have this opportunity to testify in strong support of the nomination of Eric H. Holder, Jr. to be the next Attorney General of the United States.

Following the news that President-elect Obama intended to tap Mr. Holder for this critical Cabinet post, the FOP undertook an exhaustive examination of Mr. Holder's record of public service, from his first twelve years in the U.S. Department of Justice in the Public Integrity Section to his role as Deputy Attorney General and Acting Attorney General of the United States. This was a very thorough review on a scale that the FOP had not done in my memory. His positions, policy work, and official acts were consistent with the goals and objectives of the Fraternal Order of Police, and we have every reason to believe that he will be an exemplary U.S. Attorney General with whom we would have a productive partnership.

I believe that the FOP brings a unique perspective to this nomination hearing, not just because we are the only law enforcement organization that has been asked to appear, but also because of our familiarity with Mr. Holder's record in the courtroom, as a judge and as U.S. Attorney.

As part of our review process, we consulted with the leadership of the District of Columbia FOP Lodge about his tenure on the Superior Court and as U.S. Attorney. Our members reported that they found Judge Holder fair and tough, and spoke favorably of U.S. Attorney Holder, describing him as an able and aggressive prosecutor. From the perspective of line officers who worked with him on real cases, and from that of the leadership of the D.C. State Lodge and Labor Committees, the FOP has a better sense–a more complete picture–of Eric Holder in a law enforcement role than others who may only be familiar with his policy work as a Justice Department executive or as Deputy Attorney General.

I would add here that we consider the career employees of the Department of Justice to be the best of the best–and note that many of them are FOP members. They are very anxious to have this fine nominee–whom they consider as one of their own–to take his place at the helm of the Department.

The FOP was also privileged to have the opportunity to discuss personally with Mr. Holder a number of different issues, including his vision for the Department of Justice in the new Administration. Mr. Holder stated that the FOP will remain engaged and involved in the full spectrum of public safety issues and will be consulted during the formulation of our nation's crime-fighting strategies and policies.

I believe that the President-elect has made a great choice in Eric H. Holder, Jr. to be the next Attorney General of the United States. I also want to emphasize that, in addition to the FOP, all major, mainstream law enforcement organizations have announced their support for Mr. Holder's nomination. I urge the Committee to complete their own review of this nominee in an expeditious fashion and to favorably report it to the Senate floor. I think if politics are put aside when examining Mr. Holder's record, you will find him not only well-qualified, but also possessed of the requisite character, knowledge, and experience to be an effective leader of the Department and our nation's top law enforcement officer.

Thank you again, Mr. Chairman, for the invitation to appear today, and to all the Members of the Committee for their kind attention. I would be pleased to answer any questions you may have.

STATEMENT OF SENATOR BENJAMIN L. CARDIN (D-MD)
EXECUTIVE NOMINATION OF ERIC H. HOLDER, JR.
UNITED STATES SENATE OF THE JUDICIARY
JANUARY 15, 2009

I am looking forward today to the start of the confirmation hearing for Eric Holder to be the 82nd Attorney General of the United States. I am especially anxious to hear his detailed plan for restoring trust and confidence in a Department of Justice (DOJ) that recently has strayed far from its role as a non-partisan protector of the rule of law and the civil rights of all Americans.

Today we reach the final steps in what has been a two-month-long process for me and other members of the Judiciary Committee. During this time, we all have reviewed a tremendous amount of material on Mr. Holder's professional record, work experience, and even previous testimony before Congress and this committee. After meeting one-on-one with Mr. Holder recently, I believe that he is an experienced and dedicated public servant, Without question, he is the very best candidate to serve the president and lead the DOJ at this critical time. Eric Holder has an impressive, lifelong record of public service spanning more than a quarter of a century, and broad experience within the Department of Justice and the Judiciary. He has established a long record of independence and sound judgment. Throughout the public and private sector, he is known for being fair and tough and for combating public corruption by both parties.

One of the issues Mr. Holder and I discussed in our private meeting, which bears repeating, is his unequivocal commitment that as Attorney General he will serve the American people and not just the White House. This is extremely important considering our nation has recently witnessed an Attorney General who lacked independent judgment in criminal investigations, personnel decisions, and the protection of constitutional liberties. The political firings of U.S. attorneys severely damaged the credibility of the Department of Justice. Mr. Holder assured me that such partisan entanglements would not be tolerated by him or President Obama. I hope and expect he will reiterate that position during our hearing today.

I am confident that Eric Holder, based on his experience and the firm support he has from President-elect Obama, will be able to restore confidence in the Department of Justice. He has a record of using independent judgment throughout his tenure. His first assignment at the Department of Justice was a politically unpopular position: he went to the newly-created public integrity section, created after the abuses of the Nixon Administration in Watergate. That section is responsible for prosecution corrupt by elected and appointed government officials at all levels of local, state, and federal government.

As the U.S. Attorney in Washington, DC, Mr. Holder held his ground and did his job independent of political implications or potential impact on the most senior of political individuals. His office indicted former Ways and Means Chairman Congressman Dan Rostenkowski at the same time the Clinton Administration was working with the Committee to enact important legislation; as Deputy Attorney General, he advised Attorney General

Janet Reno to expand the scope of Kenneth Starr's investigation, ultimately leading to President Clinton's impeachment; He also recommended a special counsel be appointed to investigate Interior Secretary Bruce Babbitt.

In each and every position held by Mr. Holder, he has excelled. He has treated parties fairly and impartially. He has managed 300 lawyers on a broad range of civil and criminal issues at the Department of Justice. He has served as Deputy Attorney General where he had tremendous authority and oversight power and completed his tasks exceptionally well. He has also served as Acting Attorney General after President Clinton left office, until President Bush's nominee, John Ashcroft, was confirmed. It should be noted that during the last three positions held, Mr. Holder was confirmed unanimously by the Senate.

It is precisely because of Mr. Holder's strong experience and independent judgment that law enforcement organizations, civil rights organizations and past U.S. attorneys support his nomination. The Fraternal Order of Police reported that "our members reported that they found Judge Holder and U.S. Attorney Holder and able and aggressive prosecutor." Additionally, in a January 7, 2009 letter from several former high-level Department of Justice officials in Republican Administrations, including William Barr, Joseph diGenova, Stuart Gerson, Victoria Toensing, and George Terwilliger, they wrote that they were "pleased to be able to write in support of Eric Holder, a man who stands with the most qualified who have been privileged to be nominated to be Attorney General of the United States. President-Elect Obama's nomination of Eric as the historic appointment of our first African-American Attorney General should be hailed as a milestone. He is an extraordinary lawyer and an even better person."

The Leadership Conference on Civil Rights reported that "Mr. Holder's various experiences as a trial attorney, judge, prosecutor, and lawyer in private practice make him uniquely qualified to run the Department of Justice. It would be difficult to find a candidate more experience in the Department, or better suited to lead it. His background will render him ready to lead the Department from day one. His even-mindedness and sound judgment will ensure that justice is dispensed fairly and equitably. His professional accomplishments and ability to put partisan politics aside make him above reproach. His commitment to the rule of law makes him the ideal candidate for the nation's top prosecutor."

During our conversations, Mr. Holder and I have discussed the disturbing developments in the Civil Rights Division, which has been abysmal in its performance during the current administration. I look forward to his comments on this topic during today's hearing. I will continue to urge the future Attorney General to vigorously enforce our civil rights laws to protect all Americans from unlawful discrimination. Ensuring strong enforcement of civil rights laws and restoring funding to the Civil Rights Division will be among my top priorities in the new Congress and I expect it to be one of his top priorities too. Mr. Holder and I also discussed the urgent need to close the justice gap and provide civil legal assistance to Americans who cannot afford to hire an attorney.

One other issue that must be discussed at today's hearing is torture. I have the privilege of

serving as the incoming Chairman of the U.S. Helsinki Commission and as a U.S. delegate to the Organization for Security and Cooperation in Europe (OSCE). Unfortunately, in this position I have found myself trying to defend the United States against international criticism, instead of working with nations on how to effectively handle terrorism. Over the last eight years, the leadership of the United States on human rights issues has been severely compromised. This has hampered our ability to positively affect human rights progress around the world. During the testimony of Attorney General Mukasey, I was disturbed that he could not bring himself to say that waterboarding is torture. Torture is illegal under the laws of the United States and the treaties it has ratified. I would expect Mr. Holder to have no such problems.

The Attorney General, as the nation's chief law enforcement office, must be able to effectively and independently enforce the laws of the United States, which includes giving candid advice to the President on what torture is and what techniques are forbidden by law. The Attorney General must prosecute those who violate our laws against torture. I want the Attorney General and the President to tell the world that the United States will not permit the use of torture. I am hopeful that Mr. Holder will draw a bright line in opposition to the use of torture by the United States.

During the past eight years, the American people have seen a Department of Justice led by an Attorney General who lacked independent judgment in criminal investigations, personnel decisions and the protection of constitutional liberties. These actions along with the politicization of U.S. attorneys and the blatant disregard of federal wiretapping laws severely damaged the credibility of the Department of Justice. Eric Holder is the change we need. He will bring independent judgment, integrity and restore the rule of law at the Department of Justice. For these reason and the many listed above, I support the nomination of Eric Holder to be our next Attorney General of the United States.

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JOHN W. BOUR
(1956-1993)
JOSEPH E. GALLAGHER
(1956-1991)

January 12, 2009

Senator Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

Via Federal Express

RE: Eric Holder

Dear Senator Leahy:

Alarmed by the January 11, 2009 article in the New York Times, which questioned the integrity and honesty of Eric Holder, nominee of the President-elect for the position for Attorney General of the United States, I write to offer enthusiastic and unquestionable support for Mr. Holder's nomination.

I have known Eric Holder since his starting days with the Department of Justice in the mid-70s. As a former First Assistant United States Attorney for the Middle District of Pennsylvania, I had the privilege of working with Mr. Holder in those early years. The Middle District of Pennsylvania, upon the replacement of the United States Attorney, assigned the most sensitive and critical political corruption cases in the Middle District of Pennsylvania to Mr. Holder. Mr. Holder's character and ability left a trail of accomplishment and respect.

Since that time, I have watched Eric's career and on occasion worked with him in his role as United States Attorney for the District of Columbia, Deputy Attorney General and in private practice. I represented the sponsors of the *McDade-Murtha Bill*, which sought in part a reform of the criminal justice system. In negotiating the language of the Bill with the Department of Justice, Eric Holder represented the Department of Justice and his balanced approach satisfied both the proponents and opponents of said legislation. I have also worked as local counsel with Eric Holder's firm in representing major corporate clients in the Middle District of Pennsylvania. My perspective is gleaned from over thirty years of observation.

As the first lawyer non-judge elected President Judge of the Court of Judicial Discipline for the State of Pennsylvania and as a present member of the Supreme Court Disciplinary Board, I am most familiar with the ethical requirements of the legal profession. Eric Holder is an outstanding gifted individual of the highest quality. His professionalism, integrity and honesty are all beyond question.

The citizens of the United States of America will be well-served by Eric Holder's appointment as Attorney General.

Very truly yours,

SAL COGNETTI, JR.

SCJR/dlk

cc: Senator Robert P. Casey
Senator Arlen Specter

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OUR FILE NUMBER

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[redacted]

WRITER'S E-MAIL ADDRESS
[redacted]

23 January, 2009

VIA FACSIMILE 202-224-3479

The Honorable Patrick J. Leahy, Chairman
Committee on Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

As you know, I am one of the persons advising Eric Holder in re his nomination and hearings to be Attorney General of the United States. I think your Committee, under your leadership, has handled the situation quite well. I hope, however, before this week is out or at least early next week your Committee would vote upon the nomination and hopefully send it to the floor of the Senate for final action.

Eric Holder is an outstanding lawyer, a very decent man, and I think he would head up the Justice Department with the integrity, skill, style and knowledge that we expect of a lawyer who has such a position.

You have been very helpful as Chairman and I wish you would let me know if there is anything I could do to make sure there is a vote on the nomination before this week's end or early next week. President Barack Obama has a lot of tough issues before him and I really think that it is in the public's interest that the person he suggested as Attorney General, Eric Holder, should be in office so as to give President Barack Obama the correct advice, including on some of the tough legal issues. If I can be of any further help, please give me a call.

"Take care...."

Sincerely,

Bill

William T. Coleman, Jr.
Senior Partner and The Senior Counselor
of O'MELVENY & MYERS LLP

McLean, Virginia

December 19, 2008

Patrick J. Leahy, Chairman
Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

I write in support of the nomination of Eric Holder to be Attorney General. From my professional and personal association with Mr. Holder, I believe him to be a man of strong character and first-class ability. I think he has the institutional knowledge, humility, and integrity to be a fine Attorney General. I also know from press reports that a major issue in his confirmation is likely to be his role in the 2001 pardons of Marc Rich and Pincus Green. Although I don't know all the facts surrounding that matter, I may be able to offer a unique perspective on Mr. Holder's fitness in light of that controversy.

You see, I was the prosecutor in charge of the Marc Rich case from 1987-93 and supported the United States Marshals Service and the FBI in their worldwide effort to capture him and Green. Along with my boss, then-U.S. Attorney Otto Obermaier, I rejected efforts to have us reconsider the charges while Rich and Green were fugitives. I was stunned when President Clinton pardoned them and, when I became U. S. Attorney in Manhattan in 2002, I supervised a criminal investigation of those pardons. In 2003, I became Deputy Attorney General, the job Mr. Holder had at the time of the pardons.

From that experience, I have come to believe that Mr. Holder's role in the Rich and Green pardons was a huge misjudgment, one for which he has, appropriately, paid dearly in reputation. Yet I hope very much he is confirmed. I know a lot of good people who have made significant mistakes. I think Mr. Holder's may actually make him a better steward of the Department of Justice because he has learned a hard lesson about protecting the integrity of that great institution from political fixers. I'm not suggesting errors of judgment are qualification for high office, but in this case, where the nominee is a smart, decent, humble man, who knows and loves the Department and has demonstrated his commitment to the rule of law across an entire career, the error should not disqualify him. Eric Holder should be confirmed as Attorney General.

Sincerely yours,

James B. Comey

Congressional Black Caucus

OF THE 111TH UNITED STATES CONGRESS

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Change Course, Confront Crises, Continue the Legacy

January 15, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

We, the membership of the Congressional Black Caucus, are highly honored to offer our strong support of the nomination of Eric Holder for the position of United States Attorney General. Mr. Holder is tough, strong, smart, and we are extremely proud of him.

For more than 25 years, Eric Holder has committed his life to public service. He has served as a line prosecutor in the United States Department of Justice ("USDOJ"), Superior Court Judge in the District of Columbia, United States Attorney for the District of Columbia, and Deputy Attorney General for the United States Department of Justice. He may well be the most qualified candidate for the office of Attorney General that we have seen in generations.

In each of the positions Mr. Holder has held, he has demonstrated the highest levels of leadership, political independence, and integrity. He has been a leader in the effort to eradicate corruption in public life – even when it meant bucking his own party. As a prosecutor in the USDOJ's Public Integrity Unit, Mr. Holder worked for twelve years prosecuting corrupt officials without regard to party. As United States Attorney, Mr. Holder prosecuted former House Ways and Means Committee Chairman Dan Rostenkowski who - at the time - was helping to lead President Clinton's top legislative priority in Congress. Mr. Holder ignored partisan politics to prevent greater injustice and successfully prosecuted Congressman Rostenkowski. Mr. Holder carried that independent spirit with him as the Deputy Attorney General, where he advised Attorney General Janet Reno to expand the scope of Kenneth Starr's investigation, despite significant criticism by members of his own party, including some of us on this letter. There is no doubt that Eric Holder has demonstrated great autonomy and independence; we have seen it up close.

CBC

Sen. Patrick Leahy, Chairman
Sen. Arlen Specter, Ranking Member

Mr. Holder is keenly knowledgeable of this nation's struggle for civil rights; he has spent his career fighting to expand those protections to all Americans, from fighting racial profiling to expanding hate crimes protection. Mr. Holder took the lead in bringing law enforcement to the communities in which he serves, forging strong ties between the prosecutor's office and the people who rely on that function for crime reduction and fairness. He was a tough, honest, and fair judge. He has a tremendous record of service to the community in the form of pro bono work, board service, and community leadership.

Mr. Holder exemplifies the very best our nation can hope for in an Attorney General. As we confront the challenges of restoring integrity to the United States Department of Justice, rebuilding our national security infrastructure, ensuring that our laws are properly enforced, and reestablishing our credibility in the world, he indeed is the person for the job.

As the Senate begins the confirmation process for the first African-American Attorney General, we expect that Mr. Holder will be treated fairly and with the respect to which he is entitled. Mr. Holder has had an impressive career, possesses the necessary credentials to bring about significant change in the United States Department of Justice, and enjoys a position of trust and integrity in the communities we serve. We could not be more proud to offer our full support, and we look forward to working with you to ensure an expeditious confirmation.

We are troubled by statements recently made by members of the Senate Judiciary Committee focused on undermining Mr. Holder's unimpeachable record of public service. These unnecessary assertions give us pause. We are aware that the Committee must work its will and perform appropriate oversight. We trust that oversight does not bleed into character attacks on a trusted leader. We strongly urge you to fairly and accurately review Mr. Holder's record and swiftly act to confirm his nomination.

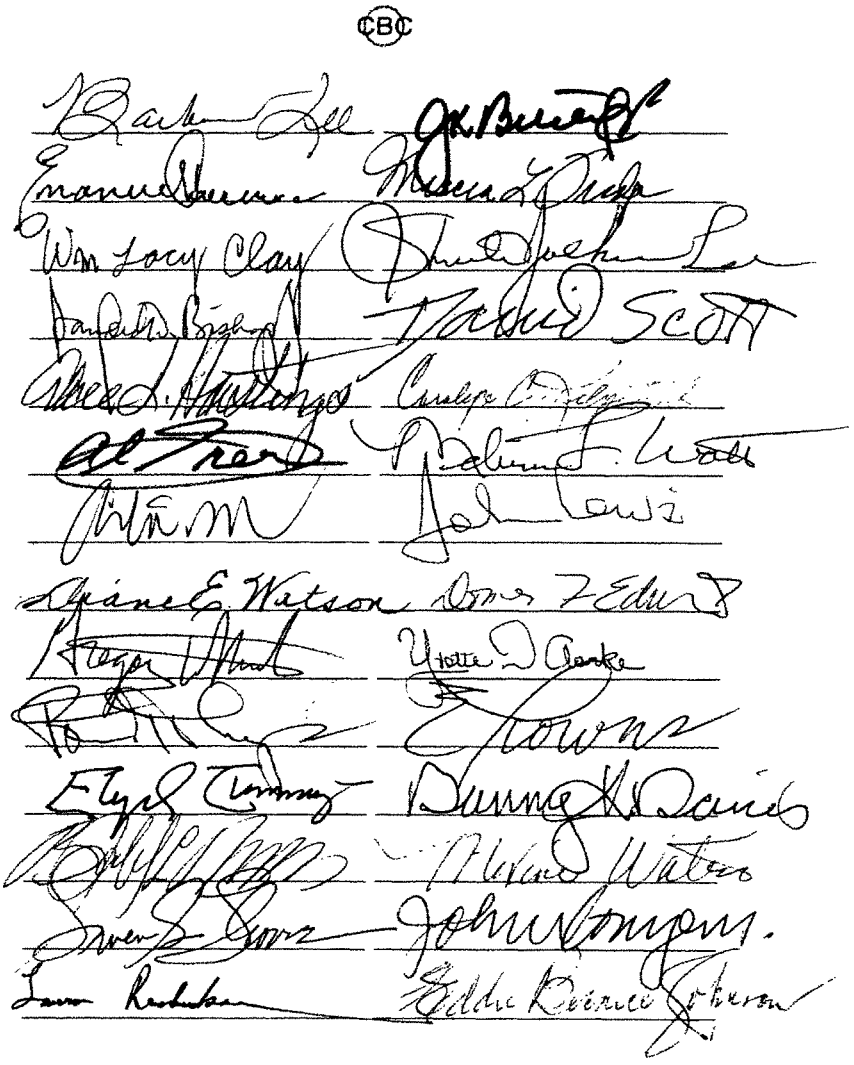
Now more than ever, we need an Attorney General with a commitment to restoring integrity to the USDOJ, the impartiality necessary to do the job effectively, and a track record of upholding the United States Constitution and the rule of law.

Should you have questions, please do not hesitate to contact me at (202) 225-2661.

Respectfully,

Barbara Lee

Barbara Lee
Chairwoman



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HEARING STATEMENT OF JOSEPH F. CONNOR

THE UNITED STATES SENATE JUDICIARY COMMITTEE
ERIC HOLDER, ATTORNEY GENERAL NOMINEE CONFIRMATION HEARINGS

JANUARY 16, 2009

Thank you members of the committee.

My name is Joseph Connor and, unfortunately, I appear before the Judiciary Committee for a second time, once again addressing the unimaginable, immoral and dangerous 1999 clemency offer to 16 Puerto Rican terrorists of Los Macheteros and the Armed Forces for National Liberation, more commonly known as the FALN. These terrorists proudly claimed responsibility for over 130 bombings in the US including the murder of my 33 year old father Frank Connor during the infamous lunchtime bombing of historic Fraunces Tavern on January 24, 1975.

Despite warning and recommendations to the contrary by the FBI, Bureau of Prisons and the Attorney General herself, then Deputy Attorney General and current AG nominee Eric Holder played a large part in the release of those terrorists.

The years since those hearings in September 1999 have brought our country great change and traumatic events. From the horrors of 9/11 and two wars, to the election of two presidents to the current economic crisis, much has changed in our world; some change forced upon us, other change initiated by us.

In my life and I think in the lives of most Americans we make changes based on our experience intended to build on our successes and avoid repeating the mistakes of our past. The nomination of Eric Holder makes me wonder what his supporters have learned from the past or if they have already forgotten the lessons of recent history.

Putting aside his well documented involvement in the outrageous pardon of Marc Rich, his involvement with Chiquita Brands and Elian Gonzalez, the Attorney General nominee's reported egregious support for unleashing unrepentant terrorists on the American people against the advice of the FBI, Bureau of Prisons, prosecutors and even Janet Reno herself, should disqualify him on its own.

Incredibly, we revisit today the same recriminations of the September 1999 hearings; who had a hand in the clemency grants and why? How sad that we have to go through this again. We knew the clemencies were wrong then. The Senate, in 1999, condemned the offers by a 95-2 vote. Yet here we are contemplating the confirmation of the architect of terrorists' release as the top law enforcement officer in the land! In a post 9/11 world, how can this be?

If anything, given the devastating terror attacks of 9/11, we as Americans should only be more resolute in our opposition to anyone who would be soft on or support terrorist organizations.

If anyone needs to be reminded about terrorism perhaps I can provide some insight.

Murder at Fraunces Tavern

It was a beautiful winter's day, Friday, January 24, 1975, when my family was shattered by the bombing of Fraunces Tavern in New York City. My father, Frank Connor, was brutally murdered in the attack; an attack for which the FALN proudly claimed responsibility. Our mother, Mary, had spent much of the day preparing a special meal, which we planned to have that night to celebrate my brother's and my recent 11th and 9th birthdays, respectively. That special meal became the food mourners ate after my dad's funeral. Shortly after coming home from school that day, we learned that our father had been with clients at Fraunces for lunch. After an agonizing vigil, his colleagues at J.P. Morgan Bank delivered the final, devastating news to my mother, brother, grandmother and me. Our dad was dead and our childhoods' shattered.

Who was Frank Connor?

Frank Connor was our father. Only 33 years old when he was murdered, he was the only child of immigrants Thomas Connor and the former Margaret Maloney. Tom worked days as an elevator operator

and a Margaret nights as cleaning lady at J.P. Morgan where she would eventually find young Frank a job out of high school. The Connor family lived in Washington Heights, NYC, a working-class section of Manhattan. Frank attended City College, and years later graduated from Farleigh Dickinson University night school. He was a classic American success story, the son of immigrants working his way up from his clerical job as a high school graduate to a successful career as officer at the prestigious J.P. Morgan.

Frank married Irish born Mary Anne Lynch in 1962 and had three sons, Tom (1964), Joe (1966) and Martin (1967). Frank and Mary were devastated when Frank's father Tom died in November 1967 and baby Martin tragically died shortly after his birth just before Christmas of the same year. Through the pain, Frank remained a devoted husband to Mary, son to Margaret and proud and loving father to Tom and Joe.

His mother, my grandmother, Margaret Connor lived until October 2001 at the age of 97. She never recovered from the death of her only child. Although my mother has remarried to a fine man, and my brother Tom and I have families of our own, not a day passes without feeling the void left in our lives. My father's death has become a part of me; an indescribable, intangible wound that was opened and aggravated by this preposterous and disrespectful clemency grant and now re-aggravated by this nomination.

These terrorists took away my father's life; never allowing him to see his sons play sports in high school, never allowing him the pride in seeing his boys graduate high school and college, or meet his daughters in law. They took from him the joy of being father and a grandfather. They took from my mother the promise of growing old with her first love.
>
His grandchildren will never know their grandfather. They look at pictures and listen to stories. But, when they ask why he was killed and why those claiming responsibility were released, what answer can we give? Truth is his life has been valued lower than the political agendas of a political appointee like Holder, the former first lady Hillary Clinton and the former president Bill Clinton who used Holder's push for clemency to further the political career of his wife. Frank Connor was a good man. He loved his family and his country and deserves better than having his life and tragic death used for politics.

Should Holder, a person who panders to terrorists be our top law enforcement officer? Certainly this great country can produce better candidates.

Who was the FALN?

Contrary to the disingenuous claims of those who sought the terrorists' release, there is nothing non-violent about these FALN members and there has been no remorse. They proudly claimed responsibility for over 130 bombings in the US mainland and Puerto Rico killing six and wounding scores (see communiqué). Four of them were videotaped building bombs just prior to their arrests. They refused to acknowledge the United States' jurisdiction to prosecute them and at sentencing threatened the life of Judge McMillan. They were convicted for crimes such as seditious conspiracy, weapons possession, and armed robbery. Judge McMillan said he would have imposed the death penalty if he could.

The FALN killed and maimed real people and devastated the lives of many others. Our family has had to live with the aftermath of their "non-violence" for almost 34 years.

The day after their release, one of the terrorists explained to Tim Russert on Meet the Press that there was no need for him to feel guilt for the Fraunces bombing. Incredibly and shamelessly, he argued that the establishment where people were killed did not take proper precautions to guard against such an attack. My father was killed while eating lunch in a New York City restaurant in the middle of the day! The bombings only stopped when these terrorists were put in jail!

These are the people Holder pushed out of prison and on to the American people.

Terror hits our family again: The World Trade Center attacks of 9/11

As we did every day, my brother and I commuted through the World Trade Center the morning of 9/11/01. I witnessed the towers explode in a massive fireball from my nearby office; hundreds of our fellow citizens jumping or falling from the mighty towers like specs of rain in a storm. Personal items and papers, all too similar to those on my desk, floated toward Earth exposing to the world all that was, up until only seconds before, precious to those people but now utterly meaningless to those dead or dying on the upper floors.

Our father's godson and our closest cousin, Steve Schlag was killed in the North Tower that horrible

morning only blocks from both where I stood and from Fraunces Tavern where his godfather was killed by terrorists a generation before. Like our father, Steve left a loving wife and young children. He left an adoring mother, two sisters and a father still devastated from the loss of his "brother" Frank Connor.

Clemency legal convention and process

Not only was this grant of clemency immoral, but it violated several legal conventions. Under the Victim's Rights and Restitution Act of 1990, a "responsible official" was to provide victims with the earliest possible notice of the release from custody of the offender. The law reads at 42 U.S.C. Section 10607(c)(5): "After trial a responsible official shall provide a victim the earliest possible notice of. . .release from custody of the offender." My family read about the grant in the newspaper!

We were never contacted by Eric Holder, Janet Reno or anyone at the Justice Department or the White House regarding our views on the clemency. Had the terrorists renounced violence and accepted clemency right away, they would have been out of jail before we ever learned of the offer.

The process through which this clemency was offered was improper. Typically, those incarcerated express remorse and request clemency from the President through a standard process. The President then reviews the claims. In 3,039 out of 3,042 prior cases, clemency was denied by the Clinton Administration.

In this case the standard process was not followed.

The terrorists:

- did not actually request clemency,
- did not express remorse,
- were not required to provide information on unsolved cases,
- were allowed 30 days to decide to accept the conditions,
- were allowed unprecedented conference calls among them between prisons to decide collectively whether or not to accept the offer. This is even more outrageous when you consider that clemency is an individual, not group grant.

Eric Holder reportedly coached the terrorists to express remorse in writing and renounce violence to get around having not done so in an application. According to Neil Lewis's October 21, 1999 article in The New York Times, "In the end, the prisoners provided a long ambiguous statement with no explicit statement of regret. While some people had been hurt, the statement said, "innocent victims were on all sides."

To reiterate the points above, astonishingly the arrogant terrorists never requested clemency and were allowed 30 days and unprecedented conference calls between prisons before they would agree to these minimal conditions!

Yet the record shows they were pushed to release by Eric Holder.

Had we been properly notified, we would have requested the delivery of our opinion on the issue through a personal meeting with Holder or Reno, as the pro clemency supporters were granted. But no, we were not given the same courtesies as the pro terrorist faction.

Astonishingly these arrogant FALN terrorists were allowed unprecedented conference calls between prisons to discuss the minimal conditions. With freedom offered, these terrorists still took 30 days to decide whether or not to agree to the clemency guidelines! And to show you what type of individuals were offered this accommodation, two FALN members ultimately rejected the grant and chose to state imprisoned.

According to a recent article by in the Los Angles Times

The January 9, 2009 article in the Los Angeles Times documents very clearly, Holder's despicable activities relating to the clemency process. Internal Department of Justice memos released with the article incredibly show Holder's office was more concerned about the public relations fallout of released terrorists committing more crimes than they were concerned about the potential victims of those crimes.

"A significant ***public relations problem*** could arise if one or more of the prisoners granted clemency is charged with an additional crime…"

LA Times Article of January 9, 2009 should be entered into the record as well as released internal DOJ memos.

We cannot afford to place our lives in the hands of anyone who would be soft on terror. According to reports in the LA Times, Hartford Courant, NY Daily News and released papers and transcripts, Mr. Holder was ***the*** driving force behind the clemency for the proud, unrepentant, terrorists of the FALN; even going so far as to ***recommend*** clemency.

Holder lacks the judgment, character, honesty and belief system necessary for such a vital position in today's world.

I respectfully request Mr. Holder respond to the following questions and protocols allowing the members of the United States Senate, who have accepted the trust and interest s of our citizenry, to make an informed and thoughtful decision on his qualifications to hold the highest law enforcement position in the land. I implore that the members of the Senate require that Mr. Holder provide direct, truthful and unambiguous answers to the follow questions:

- *Why* he ignored the recommendations of the FBI, the Bureau of Prisons, the former Pardon Attorney, prosecutors and even his own Justice Department and championed the release of self proclaimed terrorists?
- Why Mr. Holder continues to hide behind executive privilege when posed direct questions on the issue when he will be a part of the "most transparent administration in American History?"
- How did his conscience feel when he released dangerous terrorists on the American public?
- Why Holder failed to contact victims or their families while meeting with supporters of the terrorists?
- Why Holder provided advise to the terrorists by coming up with the idea that they renounce violence?
- Why Holder allowed the terrorists unprecedented conference calls between prisons?
- Why Holder did not require their provision of information to resolve unsolved crimes?
- Why was a new report done in 1999, superseding former Pardon Attorney Margaret Love's report (that recommended against clemency)?
- If not the FALN terrorists, as Mr. Holder specifically pointed out, which terrorist group was Janet Reno referring to in her Sept 1999 report condemning the impending release of terrorists?
- What reason President Clinton gave for the terrorist clemencies?

  Holder claimed in his very evasive testimony before the Judiciary Committee that it could not be the FALN terrorists because (in his absurd logic twisting manner) they had renounced violence and therefore could not have been regarded as terrorists. However he never said, who if not the FALN, it could have been.

In February 2000, Deenie Berger (wife of Alejandro Berger who was killed at Fraunces Tavern) and I introduced the Pardon Attorney Reform and Integrity Act with Senator Hatch and Representative Fossella.

While never enacted into law, this Act required the Attorney General to submit specific information to the president (including written statements of victims and of various law enforcement representatives) during the clemency process. While the President would retain his constitutional right of complete discretion over granting clemency the Bill was intended as a guarantee to the American people that the President is making an informed decision fully disclosed to the people.

This Bill would have made for a very transparent process and remove all doubt as to the roles of those involved such as Mr. Holder. The light of full disclosure may well have been bright enough to eliminate any thought of allowing terrorists to walk free.

I ended my introduction that day in 2000 with the following wish and warning, "We hope and pray that there will be no "future victims" and when made law, this will never need enforcement. We live in a world, however, that is that much less safe given the release of these terrorists and the encouragement would be terrorists much have received by the clemency grant.

I would not want to think that my father lived, died and was forgotten; the memory of his life pushed aside by some political agenda of the President. Beside the beautiful memories carried by his family and friends and passed down to the newest generation, perhaps the Bill introduced today by Senator Hatch and Representative Fossella will mean that some good has come out of this horrific experience and he has not died in vain."

It's very simple. Please thoroughly review Mr. Holder's record, put aside partisan politics but put yourselves in the shoes of the ordinary Americans who have given you their trust and vote and decide if this man who favored endangering their lives by releasing unrepentant terrorists should be charged with protecting your follow citizens.

I think ordinary Americans would agree. The answer is very clear.

Respectfully submitted,

Joseph F. Connor
January 16, 2009

Institute for Law and Justice
1018 Duke Street
Alexandria, Virginia 22314
Phone: 703-684-5300
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January 15, 2009

U. S. Senate Committee on the Judiciary
224 Kirksen Senate Office Building
Washington, DC 20510

RE: Eric Holder Confirmation Hearings and
Need for New Law Enforcement Priorities

Dear Chairman Leahy and Members of the Judiciary Committee,

Please consider the attached remarks as you conduct the Attorney General confirmation process, and as you continue your work on the Judiciary Committee.

The Institute for Law and Justice (ILJ), a nonprofit organization, was founded in 1979. ILJ's mission is to improve law enforcement throughout the nation. The organization has worked with over 1,000 police agencies in all 50 states. I am an attorney and began my work in law enforcement with the United States Marshals Service before founding ILJ more than 30 years ago.

Thank you very much for your consideration.

Sincerely,

Edward Connors
President
Institute for Law and Justice
1018 Duke St.
Alexandria, VA 22314
703-684-5300, Ex 115
econnors@ilj.org

01/15/2009 12:44PM

America's Chief Law Enforcement Officer

The United States Attorney General is the nation's chief law enforcement officer. Although the Attorney General does not oversee state and local police the way he does federal agents in the U. S. Department of Justice, his policies and leadership can and do influence their direction and priorities.

Law enforcement in America is due for someone we can look up to, respect, and follow—someone who knows that, besides the economy, the main issue on the public's mind is safety for their families. In fact, citizens in every community know that when the economy finally turns around, you can't enjoy your earnings if you can't feel safe shopping. Over 1.3 million violent crimes are reported annually in the nation, including over 16,000 murders. While the media report that crime has dipped a bit, no one asks about the level of *fear* of crime.

We need an Attorney General who understands that to keep America safe, we need federal law enforcement working together with state and local law enforcement and private security. Together, this gives us over 3 million public safety professionals who can be mobilized to prevent crime and terrorism. We need an Attorney General who understands that the community also has a major role to play in keeping America safe.

We got sidetracked and lost our focus over the past eight years. Too much time and too many resources were spent on immigration and drug issues. We need an Attorney General who will refocus law enforcement on what people care most about—safety. And we need someone who won't confuse scare tactics with policy.

We need someone who will reorient the criminal justice system—police, prosecution, courts, and prisons—to *violent* crime. We spend hundreds of billions of dollars keeping non-violent criminals in prisons and jails in this country. We have, by far, the highest incarceration rate of any industrialized nation in the world. We can't afford to continue to wasting hard-earned taxpayers' money on failed criminal justice policies.

It is a charade to try and convince Americans that fighting the terrorists in Iraq and Afghanistan will effectively keep them from ever coming to our shores. Their sympathizers and proxies are here already. It won't be the military—God bless their heroic efforts overseas—who root them out and prevent terrorist acts in the U.S. It will be our federal agents, police, private security, and community members.

We need an Attorney General who understands this. Someone who has led law enforcement and prosecutors. Someone who has mobilized communities to play their part as the eyes and ears of law enforcement.

Edward Connors, President, Institute for Law and Justice - 1

01/15/2009 12:44PM

While the Senate considers Eric Holder as President-elect Obama's selection for Attorney General, we hope they consider that we need a person like this to be our chief law enforcement officer in America. We need someone who can get us back on track.

Edward Connors
President
Institute for Law and Justice
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January 9, 2009

Hon. Patrick Leahy
Chairman
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510-4502

Hon. Arlen Specter
Ranking Member
Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of Constitutional Accountability Center (CAC) to urge the Senate's prompt confirmation of Eric Holder as Attorney General of the United States. CAC is a think tank, law firm and action center dedicated to fulfilling the progressive promise of the Constitution's text and history. Mr. Holder is exceptionally well-qualified to serve this country as the next Attorney General, and we believe that it is critical to the constitutional rights and interests of all Americans that leadership of the Department of Justice be in place as soon as possible.

There can be no legitimate question about the sufficiency of Mr. Holder's qualifications. His record and credentials are extensive and exemplary. In various and distinguished positions, Mr. Holder has spent more than two decades in public service to this country -- as Deputy Attorney General, United States Attorney for the District of Columbia, Associate Judge of the Superior Court of the District of Columbia, and trial attorney in the Public Integrity Section of the Department of Justice.

The Department of Justice is one of our country's most important executive branch agencies. Among its many critical responsibilities, the Department is responsible for ensuring the enforcement of laws that help implement constitutional guarantees, including laws protecting the right to vote free of racial discrimination and laws prohibiting various other forms of invidious discrimination.

In addition, the Department is responsible for representing the United States in our nation's courts. In just the next few months alone, the United States will be called on to take

positions in Supreme Court and lower court cases involving significant constitutional and other legal issues. These cases include several "war on terror" matters. For example, just one month after the inauguration of President Obama, the United States must file a brief in *Al-Marri v. Pucciarelli*, a critically important Supreme Court case testing whether the president may order the military to seize legal residents of the United States and hold them indefinitely without charging them with a crime. The United States is also scheduled to file a brief in the U.S. Court of Appeals for the D.C. Circuit in *Rasul v. Myers*, which the Supreme Court remanded several weeks ago for a fresh look at whether the Bill of Rights applies to detainees held in Guantanamo.

And if the Supreme Court determines to grant plenary review in *NAMUDNO v. Mukasey*, in which a municipal utility district in Texas has challenged the constitutionality of a significant provision of the Voting Rights Act of 1965, the United States will be required to file briefs in a critical test of the power of the federal government under the Civil War Amendments.

Whatever positions are ultimately taken by the United States in these or any other matters, decisions must be made and it is important that this country have a confirmed Attorney General at the Department's helm as soon as possible. We urge the Senate to promptly confirm Eric Holder as Attorney General.

Thank you for your consideration of our views.

Sincerely,

Doug Kendall

Doug Kendall
President

Southern Poverty Law Center
400 Washington Avenue
Post Office Box 2087
Montgomery, AL 36102-2087
tel 334/956-8200
fax 334/956-8481
www.splcenter.org

December 19, 2008

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I write in support of the nomination of Eric Holder to the position of Attorney General of the United States.

I had extensive dealings with Mr. Holder when my colleagues and I represented the Macedonia Baptist Church in a civil suit against the Christian Knights of the Ku Klux Klan in the 1990s in South Carolina state court. Three Klan foot soldiers had been arrested and sentenced to federal prison for their part in the arson of Macedonia and another church. But the Klan and its South Carolina leader had not been brought to justice. Through our civil case, we hoped to seize the group's headquarters, put it out of business, and send a message to others who might burn places of worship.

To prevail against the Klan leader and his group, we needed to prove that he lent substantial aid and assistance to the three imprisoned men who burned Macedonia. To accomplish this objective, it was essential that the three Klan members be brought from federal prisons scattered across the nation to provide live testimony. There is no standard procedure to obtain live testimony from federal inmates in state civil trials. Usually, the only option is to depose inmates and present their deposition testimony. But a pretrial deposition rarely has as much impact on a jury as does live testimony. Also, a pretrial deposition does not allow for effective cross-examination based on unanticipated evidence from trial witnesses.

I contacted then-Deputy Attorney General Eric Holder for assistance in getting the three federal inmates to the courtroom. He promptly got the Federal Bureau of Prisons and the U.S. Marshals Service to transport them to Clarendon County, South Carolina, for our civil trial. In doing so, he demonstrated an extraordinary concern for the victims of hate crimes.

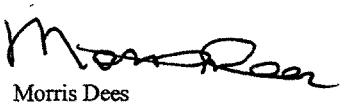
Based in large part on the testimony of the three Klansmen, the jury returned a $37.5 million verdict, later reduced to $21.5 million, against the Klan and its South

Carolina leader. As a result of the verdict, we seized the group's headquarters, and the Christian Knights dissolved. Without Mr. Holder's assistance, neither the verdict nor the message it sent—a message about the sanctity of places of worship in our country—would have been possible.

I urge you to move promptly to confirm Mr. Holder.

Please call if you have questions.

Sincerely,



Morris Dees
Founder and Chief Trial Counsel

cc: Eric Holder

Dothan pizza delivery man fends off robber with gunfire

By MATT ELOFSON
Published: October 6, 2008

Victor Greenwood said he plans to take a week off work after a man attacked him with a brick as he tried to deliver a pizza.
Greenwood, 32, said although the incident left him traumatized, he managed to escape with only minor injuries. He said he suffered a cut on the shoulder and was left a little sore. Moments after the assault dropped the pizza and hot wings, and opened fire with his pistol.

"As soon as I got back down the stairs, one of them hit me in the head with a brick," Greenwood said. "A few seconds later, he was charging me. I dropped the food and grabbed my pistol."

Dothan police Capt. Larry Draughon said Khiry Terrel Beachum, 18, of East Lafayette Street, suffered a gunshot wound to the leg during the robbery, and was caught shortly afterward by police. Police are still looking for Michael Pope, who they say ran after gunfire erupted. Police said the robbery happened about 10 p.m. Sunday in the 400 block of East Crawford Street. Police said Beachum was treated and released from Southeast Alabama Medical Center for an injury to lower right leg.

Both men were charged with first-degree armed robbery.

Greenwood said he's worked for Hungry Howie's Pizza for five years and had never been robbed until Sunday night. But he said the two men didn't get a chance to steal anything.

"It was either me or him," Greenwood said. "If they'd got me on the ground, it would've been over."

Greenwood said he saw the two men sitting on the steps of what he believed to be a bogus address. After he found no answer at the door, he walked toward his car when he was attacked with the brick.

"I just felt like my life was in danger because I knew there was two of them and they had bricks," Greenwood said. "I just feel sorry for the kid, but they're going to have to learn not endanger somebody's life."

Alan Hodges, general manager of Hungry Howie's Pizza, said he had another delivery person robbed earlier this year on Cougar Drive. Hogdes added Crawford Street to a list of streets across the city that the business will not deliver food after 5 p.m. for what Hodges called safety concerns. "I'm glad he's all right," Hodges said, who was a delivery man before he became manager. "He's a hero to a lot of delivery people. They risk their lives to deliver their food."

Sharon J. English
Homicide Victim Survivor
Crime Victim Services Advocate
[redacted]

November 25, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

I am very pleased to support your nominee for the Attorney General of the United States, Eric H. Holder, Jr. As a long-time victim advocate, resident of far away California, and most importantly a survivor of a homicide victim, I have heard about Mr. Holder for about 20 years, and have followed his career with admiration and gratitude.

Though many support letters list his accomplishments specific to crime victims, you already know those. What I want to say is, we need someone at the Department of Justice who believes in balance, believes in justice, not just CRIMINAL justice or JUVENILE justice, but justice for all. We need someone who realizes that crime victims are equal clients of the system. Both the adult and the juvenile justice systems need a victim-centered perspective.

Fortunately, Mr. Holder knows crime victim issues and will not over look what needs to be done. His reputation for fairness and thoughtful deliberation will serve us well. He is familiar with the DOJ Office for Victims of Crime and with that knowledge I think he will move quickly and with "vision" to re-establish that Office's leadership for the nation.

Eric Holder is truly a gift to those of us who dedicate our lives to serving victims and survivors of crime. He understands the importance of our issues and concerns, and will require *no* on-the-job training regarding crime victims' needs, rights and services.

I join countless colleagues in my field in strongly supporting Eric H. Holder, Jr. to serve as the Attorney General of the United States, and thank you for your wisdom in nominating him.

If I can provide you with additional information or answer any questions, please contact me at [redacted]. Thank you very much.

Sincerely,

Sharon J. English

Memorandum

To : MR. ESPOSITO Date 12/9/96

From : DIRECTOR, FBI

Subject DEMOCRATIC NATIONAL CAMPAIGN MATTER

As I related to you this morning, I met with the Attorney General on Friday, 12/6/96, to discuss the above-captioned matter.

I stated that DOJ had not yet referred the matter to the FBI to conduct a full, criminal investigation. It was my recommendation that this referral take place as soon as possible.

I also told the Attorney General that since she had declined to refer the matter to an Independent Counsel it was my recommendation that she select a first rate DOJ legal team from outside Main Justice to conduct the inquiry In fact, I said that these prosecutors should be "junk-yard dogs" and that in my view, FIS was not capable of conducting the thorough, aggressive kind of investigation which was required.

I also advised the Attorney General of Lee Radek's comment to you that there was a lot of "pressure" on him and FIS regarding this case because the "Attorney General's job might hang in the balance" (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely.

I also stated that it didn't make sense for FIS to call the FBI the "lead agency" in this matter while operating a "task force" with DOC IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI.

I strongly recommended that the FBI and hand-picked DOJ attorneys from outside Main Justice run this case as we would any matter of such importance and complexity.

We left the conversation on Friday with arrangements to discuss the matter again on Monday. The Attorney General and I spoke today and she asked for a meeting to discuss the "investigative team" and hear our recommendations. The meeting is now scheduled for Wednesday, 12/11/96, which you and Bob Litt will also attend.

LJF:wss (2)

CONTINUED--OVER

Memorandum to Mr. Esposito from Director, FBI
RE: DEMOCRATIC NATIONAL CAMPAIGN MATTER

I intend to repeat my recommendations from Friday's meeting. We should present all of our recommendations for setting up the investigation--both AUSAs and other resources. You and I should also discuss and consider whether on the basis of all the facts and circumstances -- including Huang's recently released letters to the President as well as Radek's comments--whether I should recommend that the Attorney General reconsider referral to an Independent Counsel.

It was unfortunate that DOJ declined to allow the FBI to play any role in the Independent Counsel referral deliberations. I agree with you that based on the DOJ's experience with the Cisneros matter--which was only referred to an Independent Counsel because the FBI and I intervened directly with the Attorney General--it was decided to exclude us from this decision-making process.

Nevertheless, based on information recently reviewed from PIS/DOC, we should determine whether or not an Independent Counsel referral should be made at this time. If so, I will make the recommendation to the Attorney General.

National
Law Enforcement Officers
MEMORIAL FUND, Inc.

January 14, 2009

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

The Honorable Arlen Specter
Ranking Minority Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Minority Member Specter:

I wanted to comment very favorably on the nomination of Eric H. Holder, Jr., to be the next Attorney General of the United States.

I have had the pleasure of knowing and working with Mr. Holder over the last couple of decades. He is an extremely impressive individual, both in terms of his intellect and integrity, but also as a caring individual with a real passion for public service.

Of particular interest to me and the organization I represent is his strong support and deep respect for the law enforcement profession. As a prosecutor, he worked closely with law enforcement professionals and developed a deep respect for the vital role they play in our society. As U.S. Attorney for the District of Columbia, and Deputy Attorney General of the United States, he was a regular attendee at Memorial Fund events honoring the law enforcement officers of our nation. As a deeply devoted husband and father, he also has a special compassion and concern for the surviving family members of officers who make the ultimate sacrifice.

More recently, he joined as a member of our National Honorary Campaign Committee to help build the first-ever National Law Enforcement Museum, which will help to increase public understanding and support for our law enforcement professionals. He also served as Co-chair of the Washington, DC Police Foundation, which provides important and necessary resources for the Metropolitan Police Department.

It would be an honor and a pleasure to continue our close working relationship with the U.S. Department of Justice under the leadership of Eric H. Holder, Jr. I would encourage you and the Committee to report his nomination favorably to the full Senate.

Sincerely,

CRAIG W. FLOYD
Chairman and Chief Executive Officer

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COMMONWEALTH OF PUERTO RICO

LUIS G. FORTUÑO
GOVERNOR

January 27, 2009

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
433 Russell Senate Office Bldg.
Washington, DC 20510

Dear Mr. Chairman:

As the newly elected Governor of Puerto Rico and Republican National Committeeman, I am writing in support of the President's nomination of Eric H. Holder, Jr. for Attorney General. I am aware of the questions some have raised about the advice that he gave as Deputy Attorney General to President Clinton regarding a longstanding pardon petition for a number of residents of the States of Puerto Rican heritage who committed crimes in a misguided effort to bring independence to Puerto Rico. President Clinton subsequently did not pardon the individuals but commuted the sentences of most on the condition that they renounce the use of violence.

I, like almost all Puerto Ricans, strongly condemn the criminal acts that these individuals committed but I, also like most Puerto Ricans, regard Mr. Holder's response to an inquiry from President Clinton's Counsel as wise and courageous. The individuals whose sentences were reduced had not committed crimes that caused bodily harm to others. Those who were in prison were given extremely long sentences for the crimes they committed, and they had already been incarcerated for an unusually long period of time for those crimes. The length of their sentences was tied to their involvement in a fringe Puerto Rican independence organization which harbored persons that committed crimes that ended up harming others. The length of their sentences was also due to their refusal to defend themselves at trial because they wrongly believed that it was illegitimate for the Government of the United States to prosecute them since Puerto Rico is a possession of the United States by virtue of the United States having acquired Puerto Rico through war. The clemency that was granted also took note of their records during the decades that they were in prison.

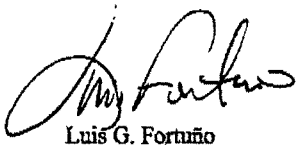
LA FORTALEZA, SAN JUAN, P.R. 00901 * P.O. BOX 9020082, SAN JUAN, P.R. 00902-0082
TELEPHONE: (787) 721-7000

For these reasons, clemency was supported by most leaders in Puerto Rico, including the late longtime Chairman of the Republican Party of Puerto Rico and former Governor, Luis A. Ferre, and by most of my other predecessors as governor, as well as by most territorial legislators and others from all fields and factions. Clemency was also sought by a host of distinguished and respected leaders and peace-makers within the United States and internationally, including President Carter, who had commuted the sentences of Puerto Rican nationalists that had committed violence against others; Archbishop Desmond Tutu, other Nobel Peace Prize laureates; John Cardinal O'Connor of New York, national religious organizations, and Members of the U.S. House of Representatives.

In addition, those granted clemency have represented no threat to society since then, and there has been nothing to suggest that the clemency has encouraged any illegal acts on their part. This substantiates the judgment of Mr. Holder as well as that of President Clinton in commuting the sentences, on the advice of his Counsel.

As you know, the Senate has consented to the nomination of Mr. Holder three times, for service as a judge and as a U.S. attorney before he became Deputy Attorney General. He has performed with extraordinary distinction in each of these positions and he has also exhibited leadership and great perspicacity, integrity, and fairness in other capacities. I respectfully urge the Committee to favorably recommend his nomination.

Sincerely,



Luis G. Fortuño

cc: The President of the United States
Hon. Arlen Specter
Hon. Eric H. Holder, Jr.

TESTIMONY OF LOUIS J. FREEH BEFORE THE SENATE COMMITTEE ON THE JUDICIARY REGARDING THE NOMINATION OF ERIC HOLDER TO BE ATTORNEY GENERAL OF THE UNITED STATES.

I am very pleased to appear before the Senate Committee on the Judiciary in support of the nomination of Eric Holder for Attorney General of the United States.

I am very proud to have served in the United States Department of Justice for over 25 years (1975-2001). I became an FBI Special Agent in 1975, retired in June, 2001 and I am honored to be classified by OPM as a retired FBI Agent. I have served under every President since Jimmy Carter, being appointed as a Federal judge (Southern District of New York) by President George H.W. Bush and FBI Director by President Bill Clinton. Since retiring from the Department of Justice in 2001, I have supported and campaigned on behalf of both Democrats and Republicans for local, state and federal offices. My sole criteria for such support has been both men and women of high competence, integrity, good character and commitment to honest service and political independence in matters of important public interest.

Eric Holder meets and surpasses all of these criteria and has my unconditional support for the important position of Attorney General. His legal competence and skills are excellent. I know him to be a fine leader and a dedicated public servant. Most importantly, I know Eric to be a person of the highest integrity, good character and commitment to political independence in all the important matters which will come before him for decision as Attorney General.

I have personally known Eric for over sixteen years and have worked closely with him both in the Department of Justice, where I served for twenty-five years, as well as in the private sector, engaging him when General Counsel for MBNA America Bank as my lawyer for complex civil litigation. Based on this long personal and professional relationship, I am certain that Eric has the highest legal competence, total integrity, leadership, and most importantly, the political independence to discharge faithfully the immense trust this Nation reposes in its Attorney General. I also firmly believe that Eric will continue to have the complete confidence and trust of the thousands of dedicated men and women who serve us in the Department of Justice.

Eric is a career Justice Department lawyer who has rendered over two decades of dedicated and excellent service as a line prosecutor, Federal judge, United States Attorney, and Deputy Attorney General. Both in prosecuting and adjudicating important criminal and civil matters of critical importance to the Justice Department and to the United States, Eric consistently displayed superb legal ability, fairness, selfless dedication and courage. My FBI colleagues and I always ranked Eric as one of the Department's very best anti-corruption prosecutors and advocates for honest public service. He always acted in the highest traditions of the Department's professionalism, fairness and political independence. I was personally delighted when Eric was appointed United States Attorney for the District of Columbia because the incumbent in this critical law enforcement position must be fearless in the pursuit of justice and be able to withstand the inevitable pressures brought to bear on the most politically sensitive matters. Eric met all of these challenges and proved himself to be an outstanding prosecutor who carried out his duties without political favor or fear.

As the Senate Committee on the Judiciary well remembers, my tenure as FBI Director required that the Bureau and I initiate a series of the most sensitive criminal investigations where the President of the United States, who appointed me, and the other senior members of the Administration were the subjects of grand jury inquiry. During this highly-charged time, Eric served as United States Attorney for Washington, D.C., and later as Deputy Attorney General. In my then position of FBI Director, I worked closely and directly with Eric and had the unique opportunity to observe and evaluate all of his actions in connection with the execution of these criminal investigations. In all of Eric's interactions with me as FBI Director, as well as his close coordination with my Deputy and other Assistant Directors, who also had extensive and sometimes daily contact with him, Eric always displayed total integrity, courageous leadership, complete fairness and, once again and most importantly, political independence. These are exactly the character and professional qualities which Eric, in my judgment, will embody as Attorney General of the United States.

After retiring from the Department of Justice in June, 2001 after twenty-five years of government service, I went to work as General Counsel for MBNA America Bank in Wilmington, Delaware, then the largest independent issuer of credit cards in the world. When I needed to retain outside legal counsel in one of the most complex litigations involving the bank, I engaged Eric, then in private practice, to serve as my trial counsel. In addition to winning the trial, Eric succeeded in persuading the trial judge to impose costs on plaintiffs' attorney, a rare result in federal, civil litigation. As General Counsel, I could have engaged any lawyer in America to represent our bank. I chose Eric for all the same reasons I described above: his excellent legal skills, complete integrity, sense of fairness, courage and, most importantly, my confidence that he would provide me with his independent judgment without fear or favor.

I respectfully recommend that the Committee and its leadership support this fine nomination and confirm Eric as our next Attorney General. I am completely confident that he will be an excellent and apolitical leader of this great Department who will provide its terrific employees and the Nation with competent, dedicated service. For the record, I have never had any social relationship with Eric and nobody asked me to submit this letter. I am honored to give him my very highest personal and professional recommendation.

Judge Louis J. Freeh, Former Director
Federal Bureau of Investigation

January 7, 2009

The Honorable Patrick J. Leahy
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Re: Nomination of Eric Holder For Attorney General

Dear Senators Leahy and Specter

This letter is respectfully submitted to the Senate Committee on the Judiciary in support of the nomination of Eric Holder for Attorney General of the United States. I have personally known Eric for over sixteen years and have worked closely with him both in the Department of Justice, where I served for twenty-five years, as well as in the private sector, engaging him when General Counsel for MBNA America Bank as my lawyer for complex civil litigation. Based on this long personal and professional relationship, I am certain that Eric has the highest legal competence, total integrity, leadership, and, most importantly, the political independence to discharge faithfully the immense trust this Nation reposes in its Attorney General. I also firmly believe that Eric will continue to have the complete confidence and trust of the thousands of dedicated men and women who serve us in the Department of Justice.

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United States, who appointed me, and other senior members of the Administration were the subjects of grand jury inquiry. During this highly-charged time, Eric served as United States Attorney for Washington, D.C., and later as Deputy Attorney General. In my then position of FBI Director, I worked closely and directly with Eric and had the unique opportunity to observe and evaluate all of his actions in connection with the execution of these criminal investigations. In all of Eric's interactions with me as FBI Director, as well as his close coordination with my Deputy and other Assistant Directors, who also had extensive and sometimes daily contact with him, Eric always displayed total integrity, courageous leadership, complete fairness and, once again and most importantly, political independence. These are exactly the character and professional qualities which Eric, in my judgment, will embody as Attorney General of the United States.

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I respectfully recommend that the Committee and its leadership support this fine nomination and confirm Eric as our next Attorney General. I am completely confident that he will be an excellent and apolitical leader of this great Department who will provide its terrific employees and the Nation with competent, dedicated service. For the record, I have never had any social relationship with Eric and nobody asked me to submit this letter. I am honored to give him my very highest personal and professional recommendation.

I am also pleased to testify before the Committee on this matter.

Respectfully submitted

Louie Freeh

December 8, 2008

Honorable President-elect Barack Obama
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

RE: Hon. Eric H. Holder's U.S. Attorney General Nomination

Dear Mr. Ogden:

I am writing in my personal capacity to strongly support the nomination of the Honorable Eric H. Holder, Jr., for U.S. Attorney General. As a child advocate and an advocate for the rights of all crime victims and survivors for 30 years, I believe that Mr. Holder would be an excellent Attorney General particularly from the standpoint of these very deserving yet under-served individuals.

In every major government position that he has held, from judge to federal prosecutor to Deputy Attorney General, Mr. Holder has been a leader and innovator in developing services for victims of crime. As U.S Attorney for the District of Columbia he established special forensic interviewing courtroom support for child abuse victims. He focused similar attention on the plight of domestic violence victims, sexual assault victims and homicide survivors. He also expanded other victim-witness services that assisted those harmed by many forms of criminal victimization. As Deputy Attorney General he continued his strong support of victims of crime and was especially supportive of initiatives for children exposed to violence and also supported important pre-9/11 anti-terrorism victim assistance efforts, most notably the Pan Am 103 crash.

In closing, please accept my letter of strong endorsement for the Hon. Eric Holder.

Sincerely,

Mario Thomas Gaboury, J.D., Ph.D.
Professor and Chair of Criminal Justice

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January 23, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

I have been asked by representatives of the presidential transition office to provide my recollection of the settlement in *United States v. Clarendon, Ltd*, 95-700 (D.D.C. April 12, 1995).

I was the Assistant United States Attorney ("AUSA") who negotiated the settlement and signed then-United States Attorney Eric H. Holder's name to the court filings included in the Department of Justice's document production, bates-numbered SJCMHOLDER000000581 – 604. Since I am no longer an AUSA, I do not have the benefit of reviewing the case file; however, I do recall some of circumstances that lead to the settlement of the case.

I was an AUSA in the United States Attorney's Office for the District of Columbia ("USAO") from 1983 to 1997, serving in the office's criminal and civil divisions. In 1995, I was the Deputy Chief of the Civil Division with supervisory responsibility for the office's Affirmative Civil Enforcement ("ACE") program. Our goal was to work with the Inspectors General ("IG") and their staffs to recoup taxpayer dollars that had been squandered – or stolen - through waste, fraud and abuse.

As I recall, the Clarendon matter was brought to the USAO by the Treasury Inspector General's office. I considered them our client in this matter. I recall briefing the Treasury IG's staff – and I believe the Inspector General – on the case but I do not recall a similar meeting with the U.S Attorney. This was not unusual. While Eric Holder was highly supportive of the ACE program, as long as we followed his general direction to "do the right thing," he, like his predecessors, did not get involved in reviewing civil settlements as long as the client agency was satisfied with the result. It is far more likely that I would have discussed the settlement with the Department of Justice's Civil Fraud Division than the United States Attorney.

As Deputy Chief of the Civil Division, I was authorized to sign the United States Attorney's name to court documents. I have reviewed the materials produced to the Committee by the Department of Justice and I can confirm that I signed his name and memorialized that fact with a notation after his signature, see SJCMHOLDER00000581, 585, 604.

I also recall that it was expected that the AUSA in charge of the case would provide a "draft" release to the Press Officer. The release followed a basic formula, always ending with a statement that the U.S. Attorney praised the agents and AUSAs for their work on the matter. I

believe I drafted the press release produced by the Department of Justice, JCMHOLDER000000579 -80, including the statements attributed to the United States Attorney.

Sincerely

Barbara Van Gelder

GLENN S. GERSTELL
1850 K STREET N.W.
WASHINGTON, D.C. 20006
(202) 835-7500

January 12, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Nomination of Eric H. Holder, Jr. as Attorney General

Dear Chairman Leahy:

I am writing in support of the nomination of Eric H. Holder, Jr. to be Attorney General. Your Committee does not need additional proof of Mr. Holder's impressive credentials, but I thought the Committee might appreciate one small but revealing experience I had with him that demonstrated his independence, fair-mindedness and sagacity.

You may recall the local turmoil here in Washington DC in early 2004 when high levels of lead were discovered in some samples of the District's drinking water system. At the time, I was serving by appointment of the Mayor as the Chairman of the District of Columbia Water and Sewer Authority, which was responsible for the delivery of the water to homes and businesses in the District. The board of directors realized that the credibility of the Authority required that an independent review be undertaken. I turned to Eric Holder, whom I had first met many years ago as a Columbia Law School classmate, and whom I had come to admire through his subsequent distinguished record of public service. Mr. Holder immediately agreed to undertake the review and to commit the resources of his private law firm (at a significant fee discount), but on one understanding – that his review and final report would be unbiased and candid, regardless of where the investigation might lead him. We of course agreed to that understanding, without reservation.

Mr. Holder's multi-volume report, delivered a few months later, was meticulously researched, supported by detailed analysis of the facts, lucid and insightful. But most importantly, he resisted the temptation to sensationalize the problem or to assign blame to individuals or organizations in a way that would easily have attracted favorable attention to him. The report was delivered at a time when the "lead in the water" issue was on the local TV news stations almost nightly and was the subject of several front page stories in the *Washington Post* – which itself had on occasion carried speculation about Mr. Holder

being a potential candidate for Mayor. So some people were surprised when the report failed to pander to popular calls for resignation of the Authority's General Manager or other actions that Mr. Holder felt were unwarranted or imprudent. His report included a number of important and highly useful specific recommendations, all of which were ultimately adopted by the Authority's board of directors.

I appreciate that I am reporting just a small vignette in a long career, but I believe it reveals much about the nominee's wisdom and inherent sense of fairness and justice – qualities that are crucial for our nation's highest law enforcement official.

Thank you very much.

Very truly yours,

Glenn S. Gerstell
Chairman, 2001-2007, District of Columbia
Water and Sewer Authority

My name is Richard Hahn. I am a retired FBI Special Agent. I spent thirteen years of my life, from January 1975 to January 1988 intimately involved in the investigation of the FALN and related terrorist groups. I note that I am but one among scores of investigators who spent countless hours trying to resolve these terrorism cases.

Let me start by saying that the FALN and the Macheteros were no less terrorists than today's al Qaeda or any other terror organization recognized by this Government. In terms of willingness to terrorize, intimidate with threats of violence, violence, and to kill, there is no difference.

Both the FALN and the Macheteros were far-flung conspiracies with ties extending not only to each other, but to other Puerto Rican terror organizations and even to the remnants of the Weather Underground and the Black Liberation Army. The FALN placed and claimed credit for over one hundred explosive and incendiary bombs in American cities over the span of thirteen years. In the process they killed five and maimed scores of others. Their claimed bombings included a booby-trap set for officers of the New York Police Department that maimed one officer, ironically a Puerto Rican himself, and the daytime bombing of Fraunces Tavern in which four were killed and more than sixty injured. They also engaged in armed takeovers of political campaign offices of both Democrat and Republican candidates and sent threat letters to delegates to the national conventions. They shared stolen explosives and money between themselves and other domestic terror groups of their day.

The Macheteros likewise engaged in a protracted campaign of violence and terror. They ambushed the Police of Puerto Rico to steal uniforms and vehicles, attacked a U.S. Navy bus carrying sailors to their everyday jobs in Puerto Rico, fired rockets at the FBI offices and U.S. Courthouse in Puerto Rico, conducted numerous bombings on the island (including the bombing of fighter aircraft of the Puerto Rican National Guard in Puerto Rico, causing tens of millions of dollars in damage,) and engaged in what remains one of the largest single robberies in U.S. history, the theft of more than seven million dollars from a Wells Fargo truck in West Hartford, Connecticut. Through all of this they killed five and injured many others.

These organizations were truly clandestine, with cellular structure, safe houses and other measures taken to prevent members from knowing exactly who was involved in what acts. Consequently, what is known about the activities of specific individuals in each of these organizations is limited. Nonetheless, under the laws of the United States in joining these conspiracies the individuals who were ultimately arrested and charged took responsibility for all acts of the conspiracy. They share the guilt for all of the terror conducted in the organization's name.

Through the nearly decade and a half of investigation of the FALN only one member ever stepped forward to cooperate with the government, a new recruit named Freddie Mendez. With only six months in the "underground" Mendez could offer little insight as to who had done what in the various crimes committed before he became a member. The only other window into the FALN was through penetration of safe houses with court authorized wiretap and microphone coverage by law enforcement. Unfortunately, in these cases the evidence regarding exactly who did what specific acts was clouded by code names, cryptic conversation and the limited locations of the microphone

penetration. Still, despite these barriers to understanding the specifics of the conspiracy, law enforcement was able to discern some things. Here are some of the facts known about the FALN.

Eleven members of the FALN were captured on April 4, 1980 in Evanston, Illinois, as a result of a call of suspicious activity by a resident and, separately, a report of an armed robbery that had occurred that day. Those arrested were armed to the teeth, wore disguises, and were gathered to conduct an armored car robbery, as was later learned from FALN member Freddie Mendez who was among them. One of the arrests that day involved the recovery of a truck stolen just hours before in the armed takeover of a nearby rental agency in which employees and patrons were terrorized at gunpoint and personally robbed. The stolen truck was spotted in a parking lot shortly after the robbery and police established a surveillance. When two suspects were seen moving the vehicle, arrests were made. Both subjects were armed and struggled to get out their weapons when confronted, but were successfully subdued without incident. The stolen truck was found to contain several weapons. Separately, a suspicious van parked in a residential neighborhood was checked by police and found to have nine persons in disguise and carrying a variety of weapons. Among those in the van was FALN leader Carlos Torres who had operated a well equipped FALN bomb factory in Chicago.

These arrests led to the Federal prosecution of Carlos Torres, Elizam Escobar, Ricardo Jimenez, Adolfo Matos, Dylcia Noemi Pagan, Alicia Rodriguez, Ida Luz Rodriguez, Luis Rosa, Carmen Valentin and Alfredo Mendez. FALN leader Oscar Lopez was arrested separately nearly a year later and convicted of charges in the same indictment. Of these individuals, all except Mendez and Carlos Torres were offered clemency.

Repentant FALN member Freddie Mendez became a Government witness. He told investigators that under the tutelage of Oscar Lopez he had participated in training in how to build bombs, had seen bombs being constructed in FALN safe houses, and, with Ricardo Jimenez, carried a bomb to be placed in the Democratic Party Headquarters in Chicago, Illinois in October, 1979. On that occasion Mendez was told the bombings were being coordinated with explosive attacks being conducted by related groups in Puerto Rico, a fact verified not only by the events themselves, but by a communiqué issued immediately thereafter bearing the names and logos of the FALN and Macheteros, jointly claiming of credit for the attacks.

Mendez also told investigators he participated with several of the Evanston arrestees in an armed takeover of a National Guard Armory in Oak Creek, Wisconsin in an attempt to steal weapons and explosives, and the armed takeover of Carter-Mondale campaign headquarters in Chicago for the purpose of intimidating delegates to the national convention. In both cases Mendez and others carried guns, threatening and intimidating their victims. Mr. Mendez identified his co-conspirators that participated with him in these acts. Many are among those who were granted clemency. He also identified FALN Leader Oscar Lopez (also offered clemency) as his mentor in the clandestine organization.

Following his conviction with other members Mendez chose to cooperate with the Government. He told of plans afoot to effect the escape of the jailed FALN members. Mendez said he was told by

outside operatives of the FALN that a number of options were being considered including hijacking an airliner or kidnapping Ronald Reagan Jr., son of then President Ronald Reagan, to compel their release. It should be noted that Mr. Mendez was subjected to repetitive polygraph examinations specifically about these statements and was never found to be deceptive.

While Mr. Mendez' information was limited by his short tenure as a terrorist, the FBI with its partners in law enforcement did subsequently succeed in penetrating FALN safe houses with microphones and video coverage. Through these technical penetrations further evidence of violent plans were discovered and thwarted. In the spring of 1983 FALN members Edwin Cortes, Alejandrina Torres and a third unidentified man from Puerto Rico traveled from Chicago to Kansas with weapons and explosives (which had been neutralized by the FBI) to effect the escape of FALN leader Oscar Lopez. Intercepted conversations made it clear that they were prepared to shoot it out with whoever got in the way of their escape plans. This plot was foiled by FBI intervention. This same cell subsequently planned other prison escapes, an armed robbery, movement of FALN leader William Morales, and ultimately a series of bombings. The bomb plans included yet another conspirator, Alberto Rodriguez. These plans were also intercepted by FBI wiretaps and microphones, and prevented. It is noted that through this investigation it was evident that the conspirators were in contact with and utilized the assistance of co-conspirators in New York and Puerto Rico, some of whom have never been identified.

In yet another FALN investigation terrorist leader Oscar Lopez conspired with others both inside and outside Leavenworth Prison to escape from prison with several fellow inmates. This plot called for procuring weapons, explosives, and hijacking a helicopter to effect the escape. This conspiracy was compromised early on by a prison informant, George Lebosky, who had been recruited into the escape plan. The investigation led to FALN members negotiating for and purchasing what they believed was a large quantity of military explosives from an undercover agent. Pointing up the relations with other groups, the actual sale was not transacted with the Puerto Rican subjects who negotiated the purchase, but rather with non-Hispanics who appeared to make the purchase and thereafter transported the materials cross-country to California on behalf of the FALN.

All of these plots reveal in detail the murky nature of the FALN conspiracy. Violent and reckless, these individuals engaged in acts which only by chance did not result in more injuries and deaths of innocent persons. The intercepted conversations in the FALN investigations reflect a willingness to shoot if necessary and use explosives without consideration of consequences. It should be noted that on some occasions the intent of the organization was clearly to cause injury or death. The FALN claimed daytime bombing of a New York restaurant, packed with patrons is one example. The targeting of New York Police with a booby-trapped bomb in 1974 is another.

Examination of the Machetero investigation yields very much the same results. Little is known which defines exactly who did what within the conspiracy. Intercepted conversations clearly identify Machetreo leader Filiberto Ojeda Rios and others as being involved in the robbery of over seven million dollars from Wells Fargo in 1983. They also reveal that a large portion of the stolen funds were smuggled into Mexico and turned over to representatives of the Cuban Government. But as is the case

in the FALN investigation the intercepted conversations are coded and cryptic, making it difficult if not impossible to discern who and what is being talked about.

Immediately following the 1985 arrest of many of the Macheteros one of the conspirators cooperated to some degree with the Government and verified identities of persons referred to in intercepts by code names. These statements were relied upon in prosecution to identify the subjects in the intercepted conversations. Still, even with this information discerning the specifics of who did what in many of the acts of the conspiracy remain unknown. It should be noted that Filiberto Ojeda Rios, leader of the Macheteros, was a known Cuban trained operative.

The structure and discipline of these groups served them well to cloud the specifics of individual actions within the conspiracies. Nonetheless, the intercepts and few statements of cooperative witnesses showed that these persons collectively were members of the FALN and Macheteros and therefore bear responsibility for all of their claimed actions under U.S. law.

I would like to point out that in both the various FALN prosecutions and the Machetero prosecution these persons were charged in singular Federal Judicial Districts, when in fact, the acts of the conspiracy occurred in multiple jurisdictions. Any of these individuals could have faced multiple prosecutions in the different venues. In addition to Chicago where they were captured, the FALN members could have been prosecuted in New York, where the most heinous of their crimes occurred. The Macheteros could likewise have been prosecuted for bombings and other attacks in Puerto Rico where they conducted several terrorist acts, in addition to the Hartford, Connecticut prosecution for the Wells Fargo robbery. It is only the economy of law enforcement that precluded this from happening. Being convicted and sentenced to lengthy terms in one district served as a disincentive to prosecution in another district for different crimes as there was no expectation of any greater punishment than that already meted out. Hence, the prosecutions in these cases do not fully illustrate the scope of the conspiracies, nor their impact on the public. Consequently, it is fair to say that these individuals were beneficiaries of the legal system by virtue of the fact that they were only prosecuted for some of the crimes committed by the conspiracies.

It has been suggested that the individuals granted this clemency were not "personally involved" in crimes of violence. That statement is a complete misrepresentation of fact. In the cases of the FALN and of the Macheteros the individuals were charged and convicted of being part of the conspiracy that engaged in the acts of violence which they proudly claimed credit for through written communiqués and phone calls to the press. In the case of the FALN most who were charged and convicted were shown to have gathered en-masse with disguises and illegal weapons, to have and engaged in armed takeovers and robberies and to have attempted more than once to engineer armed jailbreaks. In the case of the Macheteros the indictment charges the defendants as members of the "Macheteros," hence directly implicating them in all the acts claimed in the name of that terror organization.

This misrepresentation has been advanced by the Clinton White House through then National Security Advisor Sandy Berger. Speaking on behalf of the Clinton administration Berger stated on national television that the FALN and Macheteros were not "personally involved" in crimes of violence.

This is an intentionally deceptive and specious statement. As noted above, some of those offered clemency were shown to have engaged in crimes of violence. The Government clearly showed, for example, the organization of and participation in violent attacks by Oscar Lopez through the testimony of Freddie Mendez at Lopez trial. Through electronic and physical surveillance Edwin Cortes and Alejandrina Torres were shown to have attempted an armed jailbreak, demonstrating that they were "personally involved" in planned violence which would have been carried out except for law enforcement intervention. Clearly Mr. Berger's statement is more than misleading, it is wrong. Moreover, his statement undermines the objective of conspiracy law. Because conspiracies are secretive in nature, the law casts a wide net over them, making all responsible for the acts committed in furtherance of the conspiriacy. If one were to carry Mr. Berger's premise forward, basing guilt for conspiracies of violence solely on the ability of showing each individual conspirator's specific acts, then current terrorist leaders Osama bin Laden and Khalid Sheik Mohammed would also be exonerated for the events of September 11, 2001, for it is clear they did not fly planes into buildings on that day. Just as bin Laden and other facilitators of the September 11 plot all share responsibility for the horrendous events of that day, in the same way the FALN and Machetero members share in each act committed and claimed by those organizations. The fact that the actions of individuals in a conspiracy are clouded by the clandestine and secretive nature of the conspiracy does not and should not alleviate individual responsibility.

What is most disturbing about these cases is the fact that there are so many unresolved questions. To this day no one knows who was involved in the bombing of Fraunces Tavern where four died and sixty were injured. No one has been called to answer for that attack or the attack on a U.S. Navy bus in December, 1979 in which two were killed and several others wounded. None of those granted clemency were even asked to provide the scantest bit of information regarding their knowledge of the organizations, or who may have committed what acts. The fact is that today there still remain unindicted co-conspirators in these cases who have never been identified. There still remain outstanding fugitives. There still remain unsolved crimes of homicide and attempted homicide in which the clear intent of the organizations was to kill. (I refer specifically to the bomb that injured NYPD officer Angel Poggi, the bombing of Fraunces Tavern and the attack on the Navy bus in Sebana Seca, Puerto Rico.)

Equally disturbing to all of this is the fact that these individuals did not request clemency themselves. The requests were rather carried by ostensibly religious, charitable organizations on their behalf. There is not a shred of evidence to indicate that these proponents of the clemency had any knowledge of either the facts in these cases or any understanding of the law. Yet their voices were heard by the Clinton administration while the voices of the victims and law enforcement were either not consulted or disregarded.

Ironically, the identities of the Government employees who proactively worked to secure the clemencies and what their individual roles were has also been clouded from view by a claim of Executive Privilege. Like the terrorists themselves, it seems that the Government actors and the actions are something which the Clinton White House was not willing to reveal to the American public. It can only be said that the clemencies, with no quid-pro-quo, no requirement of cooperation from the conspirators

to solve outstanding crimes and no requirement of contrition, made a mockery of the American jurisprudence. The granting of clemency in these cases stands out as one of the greatest compromises of the American Justice System in history. It is my view that anyone in this government who proactively worked to bring about the clemencies betrayed their office, the victims and the American people.

TESTIMONY OF STEPHEN P. HALBROOK[1]
ON NOMINATION OF ERIC H. HOLDER, JR., FOR
ATTORNEY GENERAL OF THE UNITED STATES

Serious concerns exist concerning the nomination of Eric Holder for Attorney General regarding rights under the Second Amendment to the United States Constitution. His denial that law-abiding citizens have a right to keep and bear arms for lawful purposes is exemplified by his support for draconian proposals to criminalize, with severe felony penalties, exercise of that constitutional right.

Mr. Holder recently joined in an amici curiae brief in *District of Columbia v. Heller* arguing that the Second Amendment does not guarantee individual rights and supporting the D.C. handgun ban. It states: "Amici disagree with the current position of the United States Department of Justice that the Second Amendment protects an individual right to keep and bear arms for purposes unrelated to a State's operation of a well-regulated militia."[2] The brief relies in part on arguments by an attorney for the Violence Policy Center, a firearm prohibitionist lobby.[3]

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[1]Stephen P. Halbrook is author of the new book *The Founders' Second Amendment*. He filed an amici curiae brief on behalf of 55 Senators, the Senate President, and 250 Representatives in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008). He argued and won three Supreme Court cases on firearm law issues, including *Castillo v. US*, *Printz v. US*, and *US v. T/C Arms*, and is outside counsel for the National Rifle Association. His other books include *Freedmen, the 14th Amendment, & the Right to Bear Arms*; *Firearms Law Deskbook*; *That Every Man be Armed*; and *A Right to Bear Arms*. He received his J.D. from Georgetown University Law Center and Ph.D. from Florida State University, and was an assistant professor of philosophy at George Mason University, Howard University, and the Tuskegee Institute. Contact information: 3925 Chain Bridge Road, Suite 403, Fairfax, Virginia 22030, (703) 352-7276, Shalbrook@stephenhalbrook.com. Website: www.stephenhalbrook.com.

[2]Brief for Former Department of Justice Officials as Amici Curiae Supporting Petitioners, *District of Columbia v. Heller*, 07-290 (Jan. 2008), at 1.

[3]*Id.* at 30-32, citing Mathew S. Nosanchuk, *The Embarrassing Interpretation of the Second Amendment*, 29 N. Ky. L. Rev. 705, 713-36 (2002). Nosanchuk was the Litigation Director and

The brief supports a 1968 Office of Legal Counsel analysis of a bill to "[r]equire the registration of every firearm in the United States" and to "[p]rovide a Federal system for licensing possession of firearms." It opined that the Second Amendment "does not affect regulation of individual possession as proposed in this bill."[4]

President-Elect Obama stated that he agrees with the Supreme Court's decision in *Heller* confirming the Second Amendment guarantee of individual rights and invalidating the D.C. handgun ban. Mr. Holder has a career-long track record opposing those rights.

When Mr. Holder served as Deputy Attorney General (1997-2001) and Acting Attorney General (2001), the Department of Justice implemented policies hostile to Second Amendment rights. In the establishment of the national instant criminal background check system ("NICS") in 1998, the Department claimed the authority to keep records on lawful firearm purchasers for an alleged "audit log" for six months, despite the law's requirement that such records be destroyed and its prohibition on registration of firearm owners.[5] The record retention period for auditing was reduced to a mere 24 hours by regulation in the next Administration, and has since been so restricted by Congress in appropriations riders.

In that same period, the Department circulated draft legislation that would be included in a bill introduced by Congressman John Conyers as H.R. 1768 (106th Cong., 1999). The bill would have: Imposed felony penalties on a person who planned a gun show without registering with and reporting to ATF; made it unlawful for persons under age 21 to possess firearms, even though they

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Legislative Counsel for the Violence Policy Center.

[4]*Id.* at 23-24.

[5]Compare 28 C.F.R. § 25.9(b)(1) (1998) with 18 U.S.C. §§ 922(t)(2), 926(a).

vote, serve on juries, and serve in the military; imposed a 3-day waiting period, and limited handgun purchases to one per month; made it unlawful for a dealer to store firearms "not in conformity with regulations issued by" ATF; and required licensees to provide to ATF "monthly reports of all firearms obtained from non-licensees."

In a 1999 interview with ABC, Mr. Holder was asked whether the Second Amendment recognizes "that citizens have a right to bear arms," including the right to "buy a firearm?" He responded: "No court has ever said that the Second Amendment actually says that. I think, if you look at it, it talks about bearing gun in a well regulated militia. And I don't think anywhere it talks about an individual."[6] To the contrary, as *Heller* notes, State courts and the Supreme Court itself repeatedly stated that the Amendment guarantees the individual right to keep and bear arms throughout the nineteenth and twentieth centuries.[7]

After terrorists struck with box cutters on 9/11, Mr. Holder responded with an op ed arguing for "background checks on all gun sales," which would have extended felony penalties to the otherwise innocent, intrastate conduct of law-abiding private individuals. He added: "Congress should also pass legislation that would give the Bureau of Alcohol, Tobacco and Firearms a record of every firearm sale."[8] Under the guise of combating terrorism, every American firearm owner would thus be registered with the government.

Mr. Holder served as the United States Attorney for the District of Columbia from 1993 to 1997. In that role, he asked the D.C. Council "to strengthen a law making possession of an

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[6]Gun Control Debate, ABC This Week, May 2, 1999.

[7]*District of Columbia v. Heller*, 128 S. Ct. 2783, 2793, 2808-09, 2812-16 (2008).

[8]Holder, "Keeping Guns Away From Terrorists," *Washington Post*, Oct. 25, 2001, A31.

unregistered firearm a felony and increasing the maximum prison term from one to five years."[9] The Council kept the current misdemeanor penalties instead.

A prosecution under Mr. Holder's supervision exhibited similar overkill on a technical firearm offense, diverting resources from violent crime. He was on the appeal briefs in *Bieder v. United States*, which was heard twice by the D.C. Court of Appeals.[10] That case concerned the prosecution of a visitor to the Capitol who had a New York license to carry a handgun and who sought to check it with a security guard at the entrance. He did this because "a handbook issued to him by New York authorities had cautioned against leaving firearms in unattended vehicles." In the first appeal, the conviction was reversed because the trial court had not instructed the jury that the defendant was entitled under the federal Firearms Owners' Protection Act to transport a firearm through different jurisdictions. While the conviction was upheld in the second appeal, the court only imposed a $150 fine for the unregistered firearm.

In sum, Eric Holder has taken a constricted view of Second Amendment rights. Millions of law-abiding Americans exercise the right to keep and bear arms. Mr. Holder's opinion is that the people have no such right unless they are commanded to exercise it in a formal militia, which renders the right meaningless. He has advocated requiring that all firearm owners be registered with the government and that failure to comply be punished as a felony with substantial imprisonment. The restrictions he favors threaten traditional civil liberties.

Many Americans have reason to be uneasy about Mr. Holder's nomination for Attorney

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[9]"Area agencies aim to silence guns in District," *Washington Times*, Mar. 11, 1995.

[10]*Bieder v. United States*, 662 A.2d 185 (D.C. 1995), *later proceeding*, 707 A.2d 781, 782 (D.C. 1998).

General. They deserve to have a person in this role who is committed to upholding all parts of the Constitution, including the Second Amendment. Unfortunately, Mr. Holder has proven himself not to be that person.

HILLS & COMPANY
INTERNATIONAL CONSULTANTS

December 18, 2008

The Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington D.C. 20510

Dear Senator Leahy:

I write to support the nomination of Eric Holder as Attorney General. He is not a personal friend, and I doubt that he would recognize me. I support his appointment because I watched him as he served as the U.S. Attorney for the District of Columbia, and I came to admire the skill and judgment with which he handled that position. I have great respect for the Department of Justice where years ago I served as Assistant Attorney General, Civil Division, and worked closely with the 94 United States Attorneys throughout the country. Since then, the Justice Department has had its share of excellent leaders and a few of lesser quality. My hope is that the Senate will confirm Mr. Holder for I believe he will fall squarely in the former category, and our nation needs to have an outstanding Attorney General.

With great respect,

Sincerely,

Carla A. Hills

1120 TWENTIETH STREET, N W • SECOND FLOOR, NORTH BUILDING • WASHINGTON, D C. 20036 •
PHONE. (202) 822-4700 • FAX: (202) 822-4710

HISPANIC NATIONAL BAR ASSOCIATION
HNBA
The National Voice of the Hispanic Legal Community

January 7, 2009

The Honorable Patrick J. Leahy
Chairman
Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Judiciary Committee
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Re: *Endorsement of Eric Holder for Attorney General of the United States of America*

Dear Senators Specter and Leahy:

On behalf of the Hispanic National Bar Association (HNBA), I write to urge the expeditious confirmation of Eric Holder as the Attorney General of the United States. The HNBA is a non-profit, non-partisan organization that represents the interest of the more than 100,000 Hispanic attorneys, judges, law professors, law students and paralegals in the United States and Puerto Rico. Because its raison d'être is promoting the fair administration of justice for all, the HNBA is particularly interested in ensuring that the next Attorney General possesses the stature, integrity, judgment, experience and commitment to public service required to command the respect and support of both the citizenry and the career staff of the Department of Justice ("DOJ"). Mr. Holder is such a person. He possesses both the broad professional experience and the personal qualities required to lead DOJ in a manner that honors its finest traditions and its mission of "ensur[ing] fair and impartial administration of justice for all Americans."[1]

As required by its *Policies and Procedures Governing Executive Endorsements*, the HNBA has conducted appropriate due diligence in considering Mr. Holder's background and qualifications. Based on our review of Mr. Holder's academic and professional credentials and his record of public service, it is clear that he has both the experience and the temperament required to distinguish himself as the next Attorney General.

[1] Department of Justice Mission Statement.

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
January 7, 2009

Throughout his career, Mr. Holder has gained the respect of his colleagues who describe him as a thoughtful attorney and a gifted leader. In conducting our due diligence, we spoke with individuals who interacted extensively with him during his years as a trial attorney at DOJ, as an Associate Judge of the Superior Court of the District of Columbia, as the U.S. Attorney for the District of Columbia, and as the Deputy Attorney General during the Clinton Administration. Uniformly, those we spoke with recommended Mr. Holder highly and characterized him as fair, committed to the Constitution and the rule of law, unparalleled in his work ethic, and as an active proponent of diversity in the legal profession.

Logic suggests that public trust in the impartiality and integrity of DOJ has been undermined by reports concerning the role political considerations have played in setting prosecutorial and personnel priorities at the Department in recent years. The next Attorney General must persuade the public that enforcement decisions will be driven by the public interest and legal analysis, and that laws will be enforced fairly and with due respect to individual rights. Mr. Holder's long history as a public servant evidences autonomy, integrity, and the ability to remain unaffected by political pressure. Because I was a leader of the Hispanic Bar of the District of Columbia during his tenure as U.S. Attorney there, I can attest from personal experience that Mr. Holder demonstrated an interest in and aptitude for community outreach that will serve him well as Attorney General.

Lastly, Mr. Holder's demonstrated commitment to civil rights is another important reason why he is the right person for the job. The steady increase of hate crimes against Latinos is an area of particular concern for the HNBA and Hispanics generally. Our community will look to the next Attorney General to make enforcement of hate crimes a priority. Given his experience as a prosecutor, we are confident that he will treat all aggressions against the rule of law with the appropriate attention.

We urge the Senate to confirm Mr. Holder's nomination expeditiously to allow him to begin the important work ahead. Thank you for your attention to our recommendation. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact me through our national office at (202) 223-4777 or directly at [redacted].

Sincerely Yours,

Ramona Romero

Ramona E. Romero, Esq.
National President
Hispanic National Bar Association

CC: The Honorable Harry Reid, U.S. Senate Majority Leader

The Honorable Mitch McConnell, U.S. Senate Minority Leader

January 14, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

Dear Senators Leahy and Specter,

We write to you in strong support of the confirmation of Eric Holder as the next Attorney General of the United States.

Along with a number of our colleagues who are also retired admirals and generals, we have been vigorous opponents of recent U.S. policy related to detention and interrogation at Guantanamo Bay and elsewhere. As reported in the Washington Post on January 14, Ms. Susan Crawford's explanation of why she declined to refer charges against one of the "high value" detainees is but the most recent example of the problems U.S. policy has created. [1]

We believe it is vital to our national security, and to the safety of our men and women in uniform, that the United States never sanction the use of interrogation methods that we would find unacceptable if inflicted by an enemy against captured Americans.

In that vein, we met with Mr. Holder in December to discuss our concerns and point of view on these issues. We found him to be engaged, informed, and on the right side of the issues. Often playing the "devil's advocate", he pressed us hard to

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[1] "We tortured Qahtani," Susan J. Crawford, a retired judge who was appointed convening authority of military commissions in February 2007. The torture, which al-Qahtani detailed in a written statement, included being beaten, restrained for long periods in uncomfortable positions, threatened with dogs, exposed to loud music and freezing temperatures and stripped nude in front of female personnel. In the interview published by the Post on Wednesday, Crawford said, "His treatment met the legal definition of torture. And that is why I did not refer the case" for prosecution.

make sure he understood all the nuances. In the give and take of that kind of discussion, it quickly became clear to us that he himself was very well versed and clearly comprehended even the most subtle arguments.

We don't presume to hold ourselves out as experts on a wide range of issues that will face the Attorney General and the Department of Justice, but we are quite expert in this particular area. We firmly believe that Eric Holder will uphold the rule of law and support human rights in a manner which will improve our ability to collect accurate and actionable intelligence, restore our international standing and credibility, and make the United States more secure from those who would do us harm.

We hope the Committee will act swiftly to confirm Mr. Holder as our next Attorney General.

Sincerely,

General Joseph Hoar, USMC (Ret.)
Vice Admiral Lee F. Gunn, USN (Ret.)
Lieutenant General Charles Otstott, USA (Ret.)
Major General Paul D. Eaton, USA (Ret.)
Rear Admiral John D. Hutson, USN (Ret.)
Major General William L. Nash, USA (Ret.)
Brigadier General James P. Cullen, USA (Ret.)
Brigadier General David R. Irvine, USA (Ret.)
Brigadier General Murray G. Sagsveen, USA (Ret.)
Brigadier General Steven N. Xenakis, USA (Ret.)

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December 17, 2008

Senator Arlen Specter
Ranking Member
U. S. Senate Committee on the Judiciary
Washington, DC 20510

Dear Senator Specter:

Thank you for your letter earlier today seeking clarification of my responses to the Judiciary Committee's questionnaire in relation to my nomination as Attorney General.

While I made a good faith effort to fully answer the Committee's questions in my initial submission, it appears that the process I used to search manually and electronically for relevant material from my three decades in public life was deficient. I will shortly transmit to the Committee additional written materials, testimony, and speeches that were inadvertently omitted from my initial response to question 13. I appreciate the Committee's patience.

One of my omissions on question 13d. was information about a press conference I attended with the Governor of Illinois in 2004 regarding my potential engagement to conduct an independent investigation into allegations of the possible influence of organized crime on the awarding of a casino license. That was simply an oversight on my part that I will remedy. However, I believe I was correct in not listing work for the State of Illinois in my answers to question 14.a.iii., which asks for information about "law firms or offices, companies or governmental agencies with which you have been affiliated..." and question 17., which asks for a listing of "any public offices" I have held. Although it was announced by the Governor of Illinois that I had been "hired" to investigate issues related to the Illinois Gaming Board, the engagement never materialized because of disagreements within the Illinois government. I never performed substantive work on the matter, and neither I nor my law firm ever received fees from the State of Illinois.

I understand question 14 to call for information about the entities that have employed me during my legal career, rather than a list of every client that has retained me

as an attorney. With respect to the Illinois matter, I was never employed by the state, and the state never in fact became a client of my firm. I certainly never held "public office" in connection with the matter.

You ask why my answer in question 14.c. ends with a colon. That is a typographical error. The sentence should end with a period.

You further ask why I did not list any cases in response to question 18.e., which calls for "significant opinions" I issued as a D.C. Superior Court judge. While you are correct that I did hear matters involving Fourth, Fifth and Sixth Amendment issues as a judge, I did not write any opinions in those cases which I consider "significant." None of my opinions was published, and the Clerk of the Superior Court has confirmed that it would be unduly burdensome to search the court's off-site archives to examine the hundreds of cases I presided over at trial to see if the files contain any unpublished opinions.

Since submitting the questionnaire on Monday, we were able to identify one case in which there was an unpublished opinion because it is mentioned in the published appeals court decision, Davis v. Davis. That opinion will be included with the other additional materials to be submitted to the Committee. We will continue to work with the Clerk in an effort to identify other such opinions.

Finally, you have asked about my answer to question 25., dealing with potential conflicts of interest. I sought to model my answer to this question on the answer provided by Judge Mukasey when he was nominated to be Attorney General after several years in private practice. Consistent with Judge Mukasey's answer, I have explained that I would work with the Department of Justice Ethics Officer to identify potential conflicts arising out of matters my firm or I had handled, and would take all appropriate action to resolve those conflicts in accordance with Department of Justice guidelines.

I look forward to my hearing before the Committee on January 15.

Sincerely,

Eric H. Holder, Jr. / SMG (per telephone authorization)

Eric H. Holder, Jr.

cc: The Honorable Patrick J. Leahy, Chairman

OPENING STATEMENT OF ERIC H. HOLDER, JR.

United States Senate Committee on the Judiciary

January 15, 2009

Mr. Chairman, Senator Specter, members of the Senate Judiciary Committee:

I am deeply honored to appear before you today. In five days, just a short distance from this historic room, the next president of the United States will take the oath of office. He will swear to preserve, protect and defend the Constitution of the United States. I have been asked by him to serve as Attorney General, the Cabinet officer who is the guardian of that revered document.

I feel the full weight of this responsibility. If confirmed by the Senate, I pledge to you and to my fellow citizens that I will faithfully execute my duties as Attorney General of the United States. I will do so by adhering to the precepts and principles of the Constitution -- and I will do so in a fair, just, and independent manner.

This is the fourth time I have come before the Senate for confirmation to a position in law enforcement. I served almost thirty years as a prosecutor, judge, and senior official within the Department of Justice. President-elect Obama and Vice President-elect Biden asked me to assume this responsibility because they know I will fight terrorism with every available tool and reinvigorate the Department's traditional missions of protecting public safety and safeguarding our precious civil rights.

I accept their trust in me, and with your support I intend to lead an agency that is strong, independent, and worthy of the name: "the Department of *Justice*."

I could not have arrived at this moment without the sacrifice and example of so many others. I begin, of course, by recognizing the support of my family. My wife, Sharon, a respected professional in her own right, has put up with a lot over the years because of my demanding work, and she has done so with the love and grace that characterizes all she does.

My wife is a tremendously talented physician. But the best examples of her skills and qualities as a person are on display not in her doctor's office but in our home in the form of our three children. They make our lives infinitely richer, and I thank them for their love and patience.

It wasn't until I was a parent myself that I truly appreciated all that my parents did for me. My father, only 12 years old when he came to this country from Barbados, worked hard throughout his life to teach my brother and me about the promise of America. He and my mother made sure we never wasted the opportunities presented to

us, especially an education in the excellent New York City public school system. My brother grew up to be a Port Authority police officer and successful businessman, and I grew up to arrive at this humbling moment. I am glad my mother is here to see this day, and I know my father would be proud.

In addition to my family, there are others who have inspired and guided me. Sitting here today, the very day that civil rights leader Martin Luther King, Jr. would have celebrated his 80th birthday, I acknowledge the debt I owe him and the thousands of other Americans, black and white, who fought and died to break the back of segregation. Dr. King devoted himself to breathing life into our Constitution. I feel privileged just to stand in his shadow and hope that as Attorney General I can honor his legacy.

One of those who served on the front lines of the struggle for equality was my late sister-in-law, Vivian Malone Jones, who integrated the University of Alabama in 1963. In an atmosphere of hate almost unimaginable to us today, she and fellow student James Hood faced down Governor George Wallace, and in the presence of then-Deputy Attorney General Nicholas Katzenbach, they enrolled in the University.

The very next day, NAACP leader Medgar Evers was gunned down in his driveway in Mississippi. But Vivian never considered backing down. She went to class despite the ever-present danger, later saying simply that she "decided not to show any fear." She never did, throughout her too-short life. In a career in public service that began in the Civil Rights Division at the Department of Justice, and ended as an advocate for environmental justice, she showed me the meaning of courage and perseverance.

Finally, I want to acknowledge the thousands of career employees at the Department of Justice. They have been my teachers, my colleagues and my friends. When I first joined the Department's Public Integrity Section in 1976, they showed me what it meant to serve the people. When I was the United States Attorney in the District of Columbia, they worked beside me to fight violent crime, drug trafficking and public corruption. And when I was Deputy Attorney General of the United States, they were my troops in the daily battle for justice.

These career professionals are not only the backbone of DOJ, they are its soul. If I am confirmed as Attorney General, I will listen to them, respect them and make them proud of the vital goals we will pursue together.

In fact, if I have the honor of becoming Attorney General, I will pursue a very specific set of goals:

First, I will work to strengthen the activities of the federal government that protect the American people from terrorism. Nothing I will do is more important.

I will use every available tactic to defeat our adversaries, and I will do so within the letter and spirit of the Constitution. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must be a

beacon to the world. We will lead by strength, we will lead by wisdom and we will lead by example.

Second, I will work to restore the credibility of a Department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship, the Department of Justice will serve justice, not the fleeting interests of any political party.

Attorney General Michael Mukasey and Deputy Attorney General Mark Filip have done much to stabilize the Department and restore morale. For that, Judges Mukasey and Filip deserve the gratitude of the American people and they have my personal gratitude. But there is more work to do.

Third, I will reinvigorate the traditional missions of the Justice Department. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace its historic role in fighting crime, protecting civil rights, preserving the environment and ensuring the fairness of the marketplace. To that end:

- DOJ must wage an aggressive effort against financial fraud and market manipulation. As taxpayers are asked to rescue large segments of our economy, they have a right to demand accountability for wrongdoing that only DOJ can provide. At the same time, we must rededicate ourselves to the fight against violent crime which tears at the fabric of our neighborhoods.

- DOJ must defend the civil rights of every American. In the last eight years, vital federal laws designed to protect rights in the workplace, the housing market and the voting booth have languished. Improper political hiring has undermined this important mission. That must change and I intend to make this a priority as Attorney General.

- DOJ must protect American consumers. We need smart antitrust enforcement to prevent and punish unlawful conduct that hurts markets, excludes competition and harms consumer welfare. DOJ should also reinvigorate its efforts to protect the public in areas such as food and drug safety and consumer product safety. And we must work actively with EPA and other agencies to protect the environment.

In all of this, I hope to establish a full partnership with this committee and with Congress as a whole. The checks and balances in our Constitution establish a healthy tension among the three branches as each ensures that the others do not overstep their boundaries. But too often in recent years, that natural tension has expressed itself in unhealthy hostility.

President-elect Obama and I respect Congress. And we respect the federal judiciary. We will carry out our constitutional duties within the framework set forth by the Founders, and with the humility to recognize that congressional oversight and judicial

review are necessary, beneficial attributes of our system of government. In particular, I know how much wisdom resides in this committee from your collective decades of service in government, and I will be sure to draw upon it.

The years I spent in government taught me a lot. As a public corruption prosecutor, I took on powerful interests to ensure that citizens received the honest services of the people who serve them. As a judge, I used the awesome power I had to deprive criminals of their liberty, a power that weighs heavily on anyone who exercises it. And as a high ranking official in the Department of Justice, I faced a series of complex, time-sensitive prosecutorial and administrative decisions every time I stepped inside the building.

My decisions were not always perfect. I made mistakes. I hope that enough of my decisions were correct to justify the gratifying support I have received from colleagues in law enforcement in recent weeks. But with the benefit of hindsight, I can see my errors clearly and I can tell you how I have learned from them.

I can also assure you that I will bring to office the principle that has guided my career – that the Department of Justice first and foremost represents the people of the United States. Not any one president, not any political party, but the people.

I learned that principle in my first days at the Department, when I sent corrupt public officials from both parties to jail. It guided my work as U.S. Attorney for the District of Columbia, when I prosecuted one of the most powerful members of my own party at the very time he held in his hands the top legislative initiative of my own president. And it guided my service as Deputy Attorney General, when I recommended independent counsel investigations not just of members of the Cabinet, but of the very president who appointed me and in whose administration I proudly served.

None of those calls was easy. But I made them because I believed they were the right decisions under the law. If confirmed as Attorney General, I pledge to you that this same principle will guide my service and inform every decision I make.

I have spent most of my career at the Department of Justice and I cherish it as an institution. Its history, its spirit, its people and its sense of integrity are unmatched within the federal government. If I have the honor of serving as Attorney General, I will uphold the trust you have placed in me. I will do so by ensuring that the Department is an instrument of our great Constitution and the servant of the American people.

AH asa hutchinson LAW GROUP PLLC
Little Rock • NW Arkansas • Washington, DC

ASA HUTCHINSON
LICENSED IN ARKANSAS AND DC

December 22, 2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SC-224 Dirksen Senate Office Building
Washington, D. C. 20510-6275

Re: Nomination of Eric Holder as Attorney General

Dear Senators Leahy and Specter:

It has been some time since I last appeared before your Committee, and I am always grateful for the gracious and generous manner in which you received my appearances in a variety of capacities from Administrator of the DEA to Undersecretary for the Department of Homeland Security. The purpose of this letter is somewhat different, but of even greater importance.

I am pleased to express my support for Eric Holder as the next Attorney General of the United States. I know that your committee will thoroughly review this nomination and conduct hearings. I hope my comments will be beneficial to you as you deliberate this appointment, which I believe is the most important position in the administration. Without an Attorney General who is steadfastly loyal to the principles of justice, the government will not have the confidence and trust of the American people. I have known Eric Holder for more than 10 years, and I have observed his conduct as a lawyer and public official. It is my sincere belief that Eric will be the kind of Attorney General who puts the law first and political considerations second. I am confident that he will protect the institutional independence of the Department of Justice and follow the law, no matter where it may lead.

As a former federal prosecutor myself, I followed the work of Eric Holder as U.S. Attorney for the District of Columbia, as he prosecuted Congressman Dan Rostenkowski on corruption charges. The Rostenkowski prosecution was important to help restore the public's confidence in government, which had been rocked with scandal. He helped protect the institution of Congress, of which I was honored to serve as a representative from the State of Arkansas from 1997 to 2001.

You are both very familiar with the Congressional investigations and oversight hearings on various controversies and scandals in the Clinton administration. We all had

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12/22/2008 4:44PM

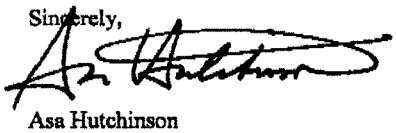
leading roles as the necessary Congressional hearings were conducted. It was during that time that I personally observed the integrity and commitment of Eric Holder to the rule of law. Eric served with distinction and extraordinary commitment as Deputy Attorney General under Attorney General Janet Reno. It was during that time he recommended to Attorney General Reno to expand the scope of the Independent Counsel investigation of then President Clinton. His decision demonstrates that Mr. Holder can make the tough call even when it goes against the administration in which he serves.

I served on the House Judiciary Committee and the House Committee on Government Reform and Oversight. While I served on the committees, Mr. Holder had occasion to testify on more than one occasion, and I always found Mr. Holder responsive to Congress and personally accommodating to the important role Congress plays in our system of checks and balances. While I certainly did not agree with every position Mr. Holder took while he served as Deputy Attorney General, I always found him to be truthful and forthcoming in his dealings with Congress and with me personally.

It is absolutely critical that our nation has an Attorney General who understands the criminal justice system and has personal experience as a front line prosecutor. As United States Attorney, Mr. Holder understands law enforcement, the courts and all the ingredients necessary to give justice the best chance of success in an imperfect society. Because of his experience and demonstrated love for the cause of justice and respect for the independence of the Department of Justice, it is my privilege to express support for Eric Holder, and for his confirmation as Attorney General of the United States.

With highest respect and warm regards,

Sincerely,



Asa Hutchinson

Member of Congress (1997-2001)
Administrator, DEA (2001-2003)
Undersecretary, DHS (2003-2005)

12/22/2008 4:44PM

Illinois Victims

www.IllinoisVictims.org
315 Lockwood Avenue
Northfield, Illinois 60093
847-446-7073

December 2, 2008

To Members of the United States Congress;

This letter is to express our strong support for the nomination of Eric Holder to be Attorney General of the United States. Our organization, IllinoisVictims.org, is the statewide victims' rights and victim advocacy organization in the state of Illinois. We represent the grassroots support of thousands of victims' families across the state in advocacy for their rights in the criminal justice system, and in legislative and public policy matters.

We are all too aware of all the ways that the Criminal Justice system often fails victims of crime. We hear stories everyday about these failures that are heartbreaking. We know that sound leadership at the top of that criminal justice system nationally will be significant in its impact on the many victims of violent crime in the United States, and especially here in Illinois. Such stable and effective leadership will do a great deal to change the entire fabric of life in America.

We were thrilled with the selection of Mr. Holder to be the Attorney General and we know he will be an excellent one. We urge his prompt and unanimous affirmation, and we look forward to working with him and with all of you to advance the much-needed improvements regarding enforceability of the rights of victims of crime across the United States.

Sincerely,

Jennifer Bishop-Jenkins
Founder
IllinoisVictims.Org

International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314-2357
Phone:703-836-6767; 1-800-THE IACP
Fax 703-836-4543
Web: www.theiacp.org

December 19, 2008

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

Dear Chairman Leahy:

On behalf of the more than 22,000 members of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Mr. Eric Holder to be Attorney General of United States. The IACP believes that Mr. Holder's years of service have clearly demonstrated he has the qualifications and experience necessary to be an effective leader of the U.S. Department of Justice.

Mr. Holder's broad base of experience provides him with a unique perspective on criminal justice issues. His service as both Deputy Attorney General and Associate Judge of the Superior Court of the District of Columbia gives him a thorough understanding of the crucial role played by state, local, and tribal law enforcement agencies.

As a result, the IACP believes that, as Attorney General, Mr. Holder's background will allow him to foster and enhance the crucial partnership among federal, state, local, and tribal law enforcement agencies.

The IACP urges you to confirm Mr. Holder's nomination rapidly.

I look forward to your positive response to this request. If you have any questions on this matter, please contact the IACP at 703-647-7211.

Sincerely,

Russell B. Laine

Russell B. Laine
President

Marlene A. Young, PhD, JD
President
32465 NE Old Parrett Mountain Road
Newberg, Oregon, USA
tel: (+1) 503.554.1552
fax: (+1) 503.554.1532
[redacted]rg

November 26, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama,

We join many of our colleagues in the crime victims' movement in enthusiastically commending your nomination of Eric Holder to be the next Attorney General of the United States.

Time and again, as U.S. Attorney for the District of Columbia, Mr. Holder put into practice a victim-centered approach to the administration of justice. Concerning another former prosecutor, Janet Reno, we said proudly at the time of her nomination as Attorney General, paraphrasing Conrad, "she is one of us." A handful of graduates of the U.S. Attorney's office in Washington have earned that place of kinship within our movement, such as Donald Santarelli, Charles Work, and Reggie Walton. Eric Holder is the most recent member of this honor roll.

- Under Mr. Holder's leadership in the U.S. Attorney's office, the victim/witness assistance program was increased from six to twenty-four advocates, and its chief was elevated to the ranks of his senior staff.
- Within that unit, he hired specialists to focus on the special needs of the families of homicide victims, of sexual assault victims, and victims of domestic violence. Regarding domestic violence victims in particular, he set up innovative advocacy services in both the Superior Court and the U.S. District Court.
- His concerns for child victims led to his supporting the creation of a "Kids' Court" and the employment of a forensic child interviewer in the office, but it extended far beyond the special care children need as prosecution witnesses. He was perhaps the most influential supporter behind the founding of the D.C. Child Advocacy Center, and later, as Deputy Attorney General, he was the driving influence behind the Department's "Children Exposed to Violence" initiative.

It is now common, we believe, for those in the justice system to hold a genuine sympathy for the casualties of crime, and we applaud that sense of empathy among our justice officials. But we reserve a special place in our hearts for those who transform goodwill toward victims into concrete measures of reform. Such a figure is Eric Holder.

Sincerely,

Marlene A. Young, Ph.D., J.D.
President

January 13, 2009

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

The Honorable Arlen Specter
Ranking Member
U.S. Senate Committee on the Judiciary
United States Senate
711 Hart Building
Washington, DC 20510

Dear Senators Leahy and Specter:

Judicial Watch, Inc. is a non-profit, non-partisan educational foundation that advocates for the rule of law and against government corruption. We are supported nationwide by hundreds of thousands of Americans and have a fifteen-year record of holding members of both major political parties accountable to the law. Judicial Watch opposes the nomination of Eric Holder for Attorney General for the following reasons:

- Mr. Holder bypassed Justice Department procedures designed to protect the pardon process from corruption and abuse. Judicial Watch was involved in extensive Freedom of Information Act litigation against the Bush Justice Department concerning President Clinton's last-minute pardons. The Bush administration released over 900 blacked-out pages concerning these pardons. How can the committee fully consider Mr. Holder's nomination without full access to these important documents?

- Mr. Holder misled investigators, while under oath, about his involvement in the pardon process for Marc Rich. (Judicial Watch was able to extract the Marc Rich pardon petition from the Bush administration and recently provided it to the Committee.) Frankly, his personal involvement and

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obfuscations in the Rich pardon matter should have been the subject of a serious criminal investigation.

- Mr. Holder's actions resulted in clemency for a number of unrepentant terrorists from the FALN and Weather Underground. (Judicial Watch was able to force the Clinton administration to release through FOIA many documents concerning the FALN pardons. Among other things, they document strong opposition to clemency from the FBI. Again, these FOIA documents have been provided to the Committee.)

- Mr. Holder steadfastly opposed the appointment of an independent counsel to investigate fundraising controversies related President Bill Clinton and Vice President Gore. As a result, apparent violations of law went uninvestigated by authorities. Mr. Holder is also alleged to have threatened a witness in the Clinton fundraising matter, Nolanda Hill, with prosecution if she publicized information she had about Clinton administration misconduct. Judicial Watch obtained sworn testimony concerning Mr. Holder and Ms. Hill in a federal court hearing.

- Mr. Holder undermined the criminal investigation of President Clinton by Kenneth Starr in the midst of the Lewinsky investigation.

- Mr. Holder authorized and orchestrated the legally and morally problematic violent raid on the home of Elian Gonzalez to send the six-year-old boy back to the totalitarian state of communist-controlled Cuba. Judicial Watch represented the victims of this raid.

- As U.S. Attorney for the District of Columbia, Mr. Holder declined to prosecute apparent perjury by a Clinton official, Ira Magaziner, despite a referral by a federal judge. The Clinton Library in Little Rock, Arkansas, continues to withhold documents that the Committee may want to review concerning this controversy.

Mr. Holder's record demonstrates a willingness to bend the law in order to protect his political patrons. On his watch at the Clinton Justice Department, the pardon process was upended and corrupted by a "pay to play" mentality. This undermined, in the least, the appearance of the fair administration of justice by the Justice Department.

Given this record, we do not believe that Mr. Holder has the independence to ethically manage the federal criminal investigations in Illinois that involve President-elect Obama and members of his incoming administration. Nor has

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Mr. Holder demonstrated that he can trustworthily manage various open investigations concerning members of his own party in Congress.

Mr. Holder is the wrong person to head the Department of Justice.

We stand willing to testify to the Committee about these and any other issues that you would like to explore.

Thank you.

Sincerely,

Thomas Fitton
President

By: Facsimile and Mail

Copies to: Committee Members by Facsimile
Sen. Edward M. Kennedy
Sen. Joseph R. Biden, Jr.
Sen. Orrin G. Hatch
Sen. Herbert H. Kohl
Sen. Charles E. Grassley
Sen. Dianne Feinstein
Sen. Jon L. Kyl
Sen. Russ Feingold
Sen. Jeff Sessions
Sen. Charles E. Schumer
Sen. Lindsey Graham
Sen. Richard J. Durbin
Sen. John Cornyn
Sen. Benjamin L. Cardin
Sen. Sam Brownback
Sen. Sheldon Whitehouse
Sen. Tom Coburn

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David Beatty
Executive Director
Diane Alexander
Director
Trudy Gregorie
Director
Aurelia Sands-Belle
Senior Advisor
Anne Seymour
Senior Advisor

December 5, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

It is with great pleasure and with gratitude to you, that the Board and Staff of Justice Solutions, NPO offers its endorsement of and full support for your nominee to the Office of Attorney General of the United States, Eric Holder.

Justice Solutions is a national non-profit organization whose mission is to secure rights, resources and respect for our nation's crime victims. The current senior staff of the organization has more than 100 years of experience working with crime victims, victim service providers, criminal justice and other allied professionals in fulfillment of its mission. The vast majority of our work during the last two decades has involved working closely with the Office for Victims of Crime, within the Department of Justice, to develop educational and training materials and other tools to enhance the ability of victim organizations, criminal justice agencies, and professionals to better serve the needs and interests of crime victims across the nation.

It is clear from our first hand experience working with Eric Holder that he shares our concern for and commitment to assure victims receive the resources they need to help them recover and to secure the justice they deserve. Perhaps the best example of that commitment is his tenure as U.S. Attorney for the District of Columbia. Prior to his arrival, crime victims in the District of Columbia were among the nation's most underserved, and in many cases, unserved crime victims. Immediately upon becoming U.S. Attorney, Mr. Holder began efforts to dramatically expand the offices' victim service capability, quadrupling the size of the victim/witness unit. He also took the initiative to create victim constituent specialists within the unit to better meet the unique needs of sexual assault victims, domestic violence victims and the surviving family members of homicide victims.

His leadership with respect to victim issues continued when he was appointed Deputy Attorney General of the U.S. Department of Justice. Regardless of the issue before the Department, Mr. Holder made sure that victims' interests were considered and their voices heard. We would have been hard pressed to suggest a candidate that has demonstrated more capacity or more compassion with respect to crime victims. Thank you for your insight and vision in offering Eric Holder as the nation's next Attorney General.

Gratefully,

David Beatty
Executive Director

Security On Campus, Inc.
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December 1, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Re.: Nomination Of Eric Holder

Dear President-elect Obama:

As the nation's leading voice for crime victims on college and university campuses, we applaud your nomination of Eric Holder to serve as Attorney General and hope he will be promptly confirmed.

All too often crime victims have been overlooked by the criminal justice system. However, throughout Mr. Holder's career in government service, he has taken important steps to improve responsiveness to victims. Mr. Holder helped to significantly expand the Victim Witness Unit within the Washington, DC U.S. Attorney's office, he was a driving force behind the creation of the *Children Exposed to Violence Initiative* at the U.S. Department of Justice's Office for Victims of Crime, and has been involved in numerous other important efforts.

We look forward to Mr. Holder's continued leadership on behalf of crime victims once he is confirmed as Attorney General and offer any assistance that we can in helping him with this vital work.

Sincerely,

Jonathan M. Kassa

Jonathan Kassa
Executive Director

c.c.: U.S. Senator Patrick J. Leahy
U.S. Senator Arlen Specter

LA BELLA & MCNAMARA, LLP

January 12, 2009

Charles G. La Bella
[redacted]

Via Facsimile and U.S. Mail

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington D.C. 20510

Senator Arlen Specter
711 Hart Building
Washington D.C. 20510

Dear Senators Leahy and Specter:

I am writing in connection with the nomination of Eric Holder to be Attorney General of the United States. Eric's resume and credentials speak for themselves. What I can add is my own experience in working with Eric while I was in the Department of Justice.

As the First Assistant and Chief of the Criminal Division in the United States Attorney's Office in San Diego, I had the opportunity to work with Eric on many law enforcement issues that were of importance to the San Diego Community. These included narcotics trafficking, alien smuggling and other border related issues. These were persistent issues faced by the prosecutors at the U.S. Attorney's Office for the Southern District of California. Eric and the Department were extremely supportive of all our efforts to address these difficult issues. Eric and former Attorney General Reno paid close attention and lent valuable support to these efforts during my term in the United States Attorney's Office.

Apart from these issues, I had the opportunity to work closely with Eric when I was asked to head the Campaign Finance Task Force in Washington in 1997 through1998. In that capacity I reported regularly and directly to Mark Richard, Eric Holder and Attorney General Reno. During my tenure my marching orders from each of these supervisors was the same: "Follow every lead, and leave no stone unturned." And they each supported me in that mission. At no time was I ever asked to pull a punch or close an eye with respect to any fact, issue or development.

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At the conclusion of my tenure I recommended that an Independent Counsel be appointed on certain defined issues. The Attorney General disagreed. As a former prosecutor I recognize that reasonable minds can disagree on the conclusions to be drawn from certain circumstantial and direct evidence. In that regard, the resistance to the implications I urged was from the Department of Justice's Public Integrity Section. They urged alternative conclusions and a different application of the Independent Counsel Act. We discussed, we argued and we debated the facts, the evidence and application of the Independent Counsel Act. At the end of the process Attorney General Reno agreed with the Public Integrity Section. I was part of the discussions, the debates and the arguments. At all times they were on the merits. The only influence that was brought to bear based upon my observations was from within the Department of Justice and in particular from the Public Integrity Section. While I disagreed with the decision, it was the decision of the Attorney General and the Department of Justice.

My dealings with Eric were always professional and our discussions were always based upon the merits. As a former prosecutor and supervisor, I was often required to call balls and strikes. No prosecutor or supervisor makes all the calls perfectly. However, as long as the calls are made without improper influence or pressure, that is all anyone can ask. I believe Eric made all the calls on the merits based upon the arguments of the lawyers within the Department of Justice.

In 1998 I made a decision to recommend the appointment of an Independent Counsel. I believed then and still believe it was the correct decision. But whatever the merits of that recommendation, based upon my observations any disagreement with my recommendation within the Department of Justice was the result of the arguments and persistence of the Public Integrity Section and not some outside political force.

I am certainly free to answer any questions that anyone may have on these issues.

Very truly yours,

Charles G. La Bella

CGL:pas

WHITE & CASE

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Washington, DC [redacted]

Tel: – T [redacted]
Fax – T [redacted]
www.whitecase.com

Direct Dial [redacted]

December 27, 2008

VIA MAIL AND FACSIMILE

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Re: Eric Holder, Nominee for Attorney General of the United States

Dear Senator Leahy:

I have the pleasure of having known Eric Holder as a Judge on the Superior Court in the District of Columbia; as a top official at the US Department of Justice; and, as a practitioner in Washington, DC, at Covington & Burling. As President of the District of Columbia Bar, a practitioner in DC, and in various leadership positions in the ABA, I had the pleasure to know Eric Holder in a variety of these positions. His reputation in the District of Columbia is exceptional. He is well known by all who practice here as one of the stars of our Bar, and indeed, nationwide.

He is exceptionally talented in terms of legal and analytical ability, judgment, temperament, and integrity. All of the attributes that one would want in an Attorney General, Eric has displayed repeatedly in the variety of positions that he has held.

Even when challenged with very difficult situations, Eric operates in a very principled way — keeping the highest ideals of our profession in focus — and exercises his judgment accordingly. He has provided wise counsel to those with whom he works. Our President will be able to rely on him for independent, objective legal advice and the appropriate exercise of prosecutorial discretion. These are most important for the Attorney General of the United States. Eric will operate the Department with integrity, and all of us can rely on his firm but wise guidance for the legal matters of our country. At a time when our international relations and domestic economic situation are most challenging, it is important to have an Attorney General like Eric, with his superb intellectual and analytical ability and integrity. He will serve the public well and will make us all proud. Without any hesitation, I recommend that you confirm Eric Holder as Attorney General of the United States.

If you have any further questions, please feel free to contact me at any time.

Very truly yours,

Carolyn B. Lamm

Carolyn B. Lamm

cc: Eric Holder

January 14, 2009

Senator Patrick Leahy
U.S. Senate
433Russell Senate Office Building
Washington, DC 20510-4502

Senator Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Senator Leahy and Senator Specter:

We, the undersigned religious, human rights, social and economic justice organizations, write to urge swift Senate action to confirm President-Elect Barack Obama's nominee Eric Holder for Attorney General of the United States.

Mr. Holder is the right choice to lead the Department of Justice. He is a highly qualified veteran of the Department of Justice who is well respected in the legal community. He has earned a reputation as a fair-minded, tough and aggressive foe of public corruption. And he has put public service above partisan politics and has been tapped by both Democrats and Republicans to serve. At a time when the Department of Justice faces a crisis of confidence and integrity, Mr. Holder has the commitment and experience needed to restore independence and adherence to the rule of law to the Department of Justice.

Mr. Holder's credentials are unparalleled. His integrity and talent have impressed Republicans and Democrats alike. He served as United States Attorney for the District of Columbia before being nominated to the D.C. Superior Court by President Reagan. Mr. Holder was unanimously confirmed by the Senate for the position of Deputy Attorney General. As the first African-American nominee to this position, Mr. Holder's nomination is historic.

Swift Senate confirmation of Mr. Holder will mark an end to the recent politicization and the scandals that rocked the department and undermined its mission of impartial justice and law enforcement. Prompt confirmation will allow Holder to quickly work to repair morale and to restore the Department's historic reputation for professionalism, fairness and impartial justice. As the leading law-enforcement official in the Obama administration, the Attorney General position must be filled swiftly.

As organizations working on a broad array of urgent unmet needs, we are concerned that a protracted confirmation process will divert the Senate's time and resources away from addressing the pressing issues facing our country.

Eric Holder's integrity, independence, reputation, experience, judgment, inclusiveness, and temperament make him a stellar nominee for Attorney General. We urge the Senate to quickly confirm this eminently qualified nominee.

If you have any questions, please contact Nancy Zirkin, Executive Vice President, at [redacted] or Lisa Bornstein, LCCR Senior Counsel, [redacted]

Sincerely,

Leadership Conference on Civil Rights
A Network for Ideas & Action
Alliance for Justice
American Federation of Labor and Congress of Industrial Organizations
American Federation of State, County and Municipal Employees (AFSCME)
American-Arab Anti-Discrimination Committee (ADC)
Americans for Democratic Action, Inc.
Americans United for Change
Asian American Justice Center
Association of Community Organizations for Reform Now (ACORN)
Campaign for America's Future
Center for Community Change
Center for Inquiry
Center for the Study of Hate & Extremism
Coalition of Labor Union Women
Coalition on Human Needs
Common Cause
Communications Workers of America (CWA)
DC Vote
Family Equality Council
Feminist Majority
GLSEN - the Gay, Lesbian and Straight Education Network
Human Rights Campaign
International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America (UAW)
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund
NAACP Legal Defense & Educational Fund, Inc
National Abortion Federation
National Asian Pacific American Bar Association
National Association for the Advancement of Colored People
National Association of Human Rights Workers (NAHRW)
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for Asian Pacific American Community Development
National Council of Jewish Women
National Council of La Raza
National Council of Negro Women
National Education Association
National Employment Lawyers Association
National Fair Housing Alliance

National Gay and Lesbian Task Force Action Fund
National Health Law Program
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Urban League
National Women's Law Center
Parents, Families and Friends of Lesbians and Gays (PFLAG) National
People for the American Way
Planned Parenthood Federation of America
Progressive Future
Service Employees International Union
Sikh American Legal Defense and Education Fund (SALDEF)
The Judge David L. Bazelon Center for Mental Health Law
U.S. Public Interest Research Group
Unitarian Universalist Service Committee (UUSC)
United Food and Commercial Workers International Union
USAction
Wider Opportunities for Women
Women Employed

Leadership Conference on Civil Rights

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Fax: 202-466-3435
www.civilrights.org

January 14, 2009

Chairman Patrick Leahy
U.S. Senate U.S.
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
Senate
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 (LCCR), the nation's oldest, largest, and most diverse civil rights coalition, we write to express our strong support for the historic nomination of Eric Holder to the position of Attorney General of the United States. Mr. Holder is among the most qualified nominees for Attorney General in the last fifty years, and is uniquely suited to lead the Department at this moment in time.

Mr. Holder is precisely the nominee needed at this critical juncture to restore the integrity of the Department of Justice (DOJ). In the past eight years, scandal and controversy have rocked the Department, severely tarnishing its reputation. In almost every division of the DOJ, politics has trumped impartial enforcement of the law, and ideology has undermined competence. Further, the diminished efforts to prosecute and enforce civil rights cases have damaged Americans' constitutional rights and liberties and disrespected the rule of law. The Department has been disrupted by turmoil, instability, politics, massive turnover, loss of experienced staff, and a lack of confidence. The nation urgently needs an Attorney General dedicated to restoring the independence and integrity of the Department, with an unquestionable commitment to the Constitution and the rule of law. Eric Holder is the right person for this job.

Mr. Holder's qualifications and credentials are unparalleled. Collectively, his experiences in over 25 years of public service as a former Deputy Attorney General, U.S. Attorney for the District of Columbia, Associate Judge for the Superior Court of the District of Columbia, and a trial attorney in the Public Integrity section of the Department of Justice more than qualify him for the post. His tenure in each of these capacities demonstrates the autonomy, integrity, and effectiveness necessary to be a successful Attorney General.

Mr. Holder has demonstrated a willingness to exercise independent judgment on critical issues. As a trial attorney in the Public Integrity section of the Department of Justice, he fought corruption in both major political parties. Nominated by President Reagan for associate judge at the Superior Court for the District of Columbia, Mr. Holder served as a judge for five years and gained a reputation as a thoughtful, even-handed

jurist. As the U.S. Attorney for the District of Columbia for four years, Mr. Holder led one of the largest U.S. Attorney offices in the nation. Mr. Holder prosecuted Democratic Representative Dan Rostenkowski, then chair of the Ways and Means Committee. Despite the fact that Mr. Holder's indictment came at a time when the Clinton White House was working with Mr. Rostenkowski to enact important legislation, Mr. Holder pursued the case based on evidence, not politics.

His four years as Deputy Attorney General further illustrate Mr. Holder's independence, sound judgment, and character. Unanimously confirmed by the Senate in 1997, he supervised all of the Department's litigation, enforcement, and administrative components in both civil and criminal matters. During that time, Mr. Holder advised Attorney General Janet Reno to expand the scope of Kenneth Starr's investigation, a decision that ultimately led to President Clinton's impeachment. Mr. Holder made that decision – to allow an independent prosecutor to expand his investigation into a sitting Democratic president – despite heavy criticism by members of his own party. Mr. Holder also recommended that Attorney General Reno appoint a special prosecutor to investigate Clinton's Interior Secretary Bruce Babbitt and created a task force that developed the regulation, still in place today, regarding the appointment of special counsels in high-level federal investigations.

Mr. Holder's commitment to civil rights, and his ability to work with diverse communities, will also serve him well as Attorney General. Because civil and voting rights enforcement have been severely compromised within the Department of Justice for the last eight years, it is especially important that the next Attorney General have a thorough understanding of our civil rights laws and be committed to the vigorous and unbiased enforcement of those laws. As U.S. Attorney for the District of Columbia, Mr. Holder worked with a variety of organizations to renew emphasis on the enforcement of hate crimes so that criminal acts of intolerance would be severely punished. He created a Domestic Violence Unit, which was able to more effectively handle such cases. He also initiated and developed a comprehensive strategy to improve the manner by which child abuse cases were handled. In addition, Mr. Holder brought remarkable innovations to the office, including instituting a community prosecution program and localizing the U.S. Attorney's office by meeting with local citizens. We can expect the same sort of dedication, innovation, and creativity from Mr. Holder as Attorney General.

We believe that any close scrutiny of Mr. Holder's record in its entirety, including review of the depth and breadth of his experience, will leave no doubt that he should be confirmed as Attorney General. In evaluating any candidate for that position, LCCR conducts a close, in-depth analysis of the candidate's experience and commitment to human and civil rights. If the candidate is strong in those areas, we support the nominee. If the candidate's record is weak, we voice concerns or opposition. We support Holder's nomination because he has immense experience and demonstrated excellence as a lawyer, sound judgment, and a strong commitment to civil and human rights. Any effort to demonize Mr. Holder's nomination could not be based on his entire record, but would simply be motivated by politics or revenge.

In a country that has struggled to ensure equal rights and equal opportunity, Mr. Holder's nomination, as the first African-American Attorney General, validates those principles. It is a nomination in which all Americans can take pride. Mr. Holder's various experiences as a trial

attorney, judge, prosecutor, and lawyer in private practice make him uniquely qualified to run the Department of Justice. It would be difficult to find a candidate more experienced in the Department or better suited to lead it. His background will render him ready to lead the Department from day one. His even-mindedness and sound judgment will ensure that justice is dispensed fairly and equitably. His professional accomplishments and ability to put partisan politics aside make him above reproach. His commitment to the rule of law makes him the ideal candidate for the nation's top prosecutor.

Our country is facing several crises. It is critical that President-elect Obama's key appointments are filled swiftly so that the government is prepared to act as quickly as possible. It is a waste of precious limited resources and energy to haggle over such a qualified nominee. It is imperative that the nation have an experienced Attorney General who is respected for his abilities and integrity. Eric Holder is the right man at the right time.

Thank you for your consideration of our views. If you have any questions, please feel free to contact Nancy Zirkin at [redacted] or LCCR Senior Counsel Lisa Bornstein at [redacted]

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

Opening Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On Consideration of Eric H. Holder Jr.
To Be Attorney General of the United States
January 15, 2009

The election of Barack Obama and Joe Biden, and the President-elect's selection of Eric H. Holder Jr. to be Attorney General of the United States, provide an historic opportunity for the country to move past the partisanship of the past decades. We can make a real difference if we will come together to solve the Nation's problems, protect against serious threats, and meet the challenges of our time.

Let us honor the wishes of the American people who in November broke through debilitating divisions to join together in record numbers. Let us acknowledge that our inspirational new President-elect has moved forward promptly to assemble an extraordinarily well-qualified and diverse group of Cabinet officers and advisers. And let us move away from petty partisanship to serve the greater good.

It was seven score and four years ago that this Nation answered the fundamental question President Lincoln posed in his Gettysburg Address and the world learned that liberty, equality and democracy could serve as the foundation for this great and united Nation.

The American people have cause and occasion to reflect during the next several days about this great country. The inauguration of our new President is Tuesday, and Monday is the holiday the country has set aside to celebrate and rededicate ourselves to the cause of freedom and equality. Today is the anniversary of the birthday of the extraordinary man for whom that holiday is named. With this hearing, we take another step up the path toward the time Dr. King foresaw: when people are judged by the content of their character. Eric Holder has the character to serve as the Attorney General of the United States. He passes any fair confirmation standard. His record of public service has earned him strong support from law enforcement organizations, civil rights groups, victims' rights advocates, former Reagan and Bush administration officials, and many others.

This week, the Justice Department's Inspector General released a report about the shameful political interference in the Civil Rights Division of the Justice Department during the Bush administration. America's diversity when drawn together is a source of our Nation's strength and resilience. Americans must be able to trust their Justice Department. That trust must not be squandered or taken for granted. We need leaders who are prepared to take the laboring oars of a Justice Department whose dedicated law enforcement professionals have been misused and demoralized. Eric Holder is such a leader.

Before the November election I coauthored an article with our Ranking Republican member in which we wrote: "The Attorney General's duty is to uphold the Constitution and the rule of law, not to circumvent them. The president and the American people are best served by an Attorney General who gives sound advice and takes responsible action, rather than one who develops

legalistic loopholes to serve the partisan ends of a particular administration." I have every confidence that Eric Holder is such a person.

The career professionals at the Justice Department reacted with delight when he was designated by President-elect Obama because they, too, know him well. They know him from his 12 years as an anti-corruption prosecutor at the Public Integrity Section, from his time as the U.S. Attorney for the District of Columbia, from his tenure as a judge, and from his service as the Deputy Attorney General. His prompt confirmation will do a great deal to restore morale and purpose throughout the Justice Department.

It is important that the Justice Department have its senior leadership in place without delay. The Attorney General is the top law enforcement officer in the country and a key member of the national security team. With the Bush administration having devoted billions to bailouts in the last few months, we need to ensure that those resources are not diverted by fraud or deceit. We need the Justice Department to be at its best.

I was encouraged by the initial reaction of many Republicans, including Senators serving on this Committee, when Mr. Holder's name was reported as the likely nominee and when he was designated by the President-elect. I commended their bipartisanship, as I do that of Senator John Warner who will introduce Mr. Holder to the Committee.

The responsibilities of the Attorney General of the United States are too important to have this appointment delayed by partisan bickering. We have known and worked with Mr. Holder for more than 20 years. He has been nominated by a Republican President and by a Democratic President and confirmed three times by the Senate to important positions over the last 20 years. His record of public service, his integrity, his experience and his commitment to the rule of law merit our respect and deserve our support.

We need an Attorney General, as Robert H. Jackson said 68 years ago, "who serves the law and not factional purposes, and who approaches his task with humility." That is the kind of man Eric Holder is, the kind of prosecutor Eric Holder always was, and the kind of Attorney General he will be. The next Attorney General will understand our moral and legal obligation to protect the fundamental rights of all Americans and to respect the human rights of all people.

This is part of the change we need, the change the American people voted for. When he designated Mr. Holder, President-elect Obama said: "Let me be clear. The Attorney General serves the American people. And I have every expectation that Eric will protect our people, uphold the public trust, and adhere to our Constitution." The next president understands the role of the Attorney General of the United States. I have no doubt that Mr. Holder understands what is required of the Attorney General. His experience and the lessons he has learned will serve him and the American people well.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Consideration of Eric H. Holder Jr.
To Be Attorney General of the United States
January 16, 2009

Yesterday, the Judiciary Committee met for several hours between the hours of 9:30 a.m. and 7:15 p.m., in the Senate Caucus Room, to consider President-elect Obama's historic designee to be the Attorney General of the United States.

Senator Warner once again showed the bipartisanship and leadership that have made him a great senator for the past 30 years. He noted that the problems facing the Department of Justice and the country are so important that we must put aside partisanship and work together. He presented and endorsed Eric H. Holder Jr. to be Attorney General and described his outstanding qualifications, integrity, and independence. Congresswoman Norton was eloquent in her statement of support for a former judge and prosecutor from the District of Columbia.

Yesterday's session provided all members of the Judiciary Committee, Republicans and Democrats, the opportunity to ask Mr. Holder about issues that are important to them, and about any aspect of his career or background that raised questions or concerns for them. Senators of both parties have done so. Much of the questioning was substantive, and we touched on many important issues. All Senators were accorded such time as they needed in three extended rounds of questioning to ask whatever they chose.

Having heard Mr. Holder's testimony, I am more convinced than ever that Eric Holder is a person who will reinvigorate the Department of Justice and serve ably as a key member of the President's national security team. He will pursue the Justice Department's vital missions with skill, integrity, independence and a commitment to the rule of law.

This morning we will hear from a group of witnesses drawn from the public. I look forward to their testimony and thank them for cooperating with us.

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THE NATIONAL CENTER FOR
Victims of Crime

December 4, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

I am writing to congratulate you on your outstanding choice of Eric Holder for Attorney General, and to affirm the support of the National Center for Victims of Crime for his confirmation. As you know well, he is a person of tremendous intelligence and great integrity, and he will be a wonderful champion of justice for the people of the United States of America.

At the National Center for Victims of Crime, our mission is to forge a national commitment to help victims of crime rebuild their lives. As a member of our Board of Directors from 2003-2007, Mr. Holder has been a great supporter of our work serving individuals, families, and communities harmed by crime.

Mr. Holder's career in law has been marked by many important accomplishments for crime victims, such as helping to establish the District of Columbia's child advocacy center and greatly expanding the victim witness unit in his office as U.S. Attorney. As Deputy Attorney General, he championed the cause of the victims of the Pan Am crash and spearheaded an important educational effort on helping child witnesses to violence.

I had the privilege of working under Mr. Holder from 1993 to 2000, both at the U.S. Attorney's Office and at the Justice Department, and to observe first-hand his compassion for victims, his keen analysis of justice issues, and his integrity in upholding the law.

In sum, Mr. President-elect, you have made an excellent choice, and the National Center for Victims of Crime wholeheartedly supports the nomination of Eric Holder for Attorney General. We look forward to his quick confirmation and to continuing to work with him to advance the cause of justice for all the people of the United States.

Sincerely,

Mary Lou Leary

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HEIGHTS OFFICE:
420 WEST 19TH STREET
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(713) 861-4070

FIFTH WARD OFFICE:
3300 LYONS AVENUE, SUITE 301
HOUSTON, TX 77020

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEES:
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IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
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HOMELAND SECURITY
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AFRICA AND GLOBAL HEALTH
MIDDLE EAST AND SOUTH ASIA

SENIOR WHIP
DEMOCRATIC CAUCUS

WHIP
CONGRESSIONAL BLACK CAUCUS

CHAIR
CONGRESSIONAL CHILDREN'S CAUCUS

JANUARY 15, 2009

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510-6225

The Honorable Arlen Specter
Ranking Member
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510-6225

Dear Chairman Leahy and Ranking Member Specter:

Thank you, Chairman Leahy for your continued leadership as the Chair of the Senate Committee on the Judiciary and for your service to the Nation. I also thank you Ranking Member Specter for your leadership on this Committee.

I am honored to submit this letter of support on behalf of Attorney Eric Holder in his appointment by President-elect Barack Obama to be the Attorney General of the United States. I am pleased that our President-elect has chosen Attorney Eric Holder to serve as Attorney General. This selection is historic because Attorney Holder will be the first African-American Attorney General. Additionally, Attorney Holder has garnered the support of major civil and women's rights organizations.

As a Senior Member of the United States House of Representatives Judiciary Committee, I have the privilege of working upon a myriad of legal issues that come before the Judiciary Committee and I have the distinct pleasure of exercising oversight over the Department of Justice. Over the years, I have worked closely with previous Attorney Generals; therefore, I am uniquely qualified to discuss and support the candidacy of Attorney Eric Holder. America needs an Attorney General of the highest caliber to change over eight years of misdirection that has formerly occurred at the Department of Justice. I am confident that Attorney Holder can restore confidence in the Department of Justice and he may be one of the most the finest and most well-qualified candidate for Attorney General that I have seen in years.

Attorney Holder is a remarkable attorney with strong values and a breadth of legal experience that has spanned over 25 years. He has distinguished himself throughout his legal

career as a prosecutor by being a compassionate attorney. He has demonstrated his willingness to temper justice, incarceration, and prosecution with sensitivity, compassion, and a sincere interest for rehabilitation of the accused. Throughout the years, Attorney Holder has demonstrated his compassion in his prosecution of juvenile and adult criminal cases. He believes in the balance of fighting crime and the rehabilitation of those in the criminal justice system.

Attorney Holder is committed to public service and has demonstrated the highest level of leadership and integrity in each of the positions he has held throughout his career. He is an excellent lawyer, a fair prosecutor, and he is no stranger to Washington, D.C. He is a former judge of the D.C. Superior Court, United States Attorney, and Deputy Attorney General of the United States. He is currently a senior legal advisor to President-elect Barack Obama, a position he has also held since Obama's presidential campaign. He was also one of the three members of then-Senator Obama's vice-presidential selection committee.

Through the historic nomination of Attorney Holder, President-elect Obama has selected a man who has, throughout his career, demonstrated a commitment to justice, an even-handed nature, and an ability to lead. Attorney Holder knows the Department of Justice and knows what need to and can be done. He is the best candidate to swiftly and competently restore and reinvigorate the Department of Justice.

Attorney Holder worked for over twelve years at the U.S. Department of Justice's newly created Public Integrity Section where he prosecuted official corruption on the local, state, and federal levels, including a Democratic Congressman for bribery, the Treasurer of the state of Florida, the Ambassador to the Dominican Republic, a local judge in Philadelphia, an Assistant United States Attorney in New York City, agents of the Federal Bureau of Investigation, and organized crime members in Pennsylvania.

Because of his reputation for being a tough yet fair prosecutor, in 1988, President Ronald Reagan appointed Attorney Holder to serve on the Bench as a Judge of the Superior Court of the District of Columbia. Subsequently, in 1993, President Bill Clinton appointed him to be U.S. Attorney for the District of Columbia. He was the first African-American U.S. Attorney in that office. At the beginning of his tenure, he oversaw the conclusion of the corruption case against former U.S. House of Representatives, Ways and Means Committee Chairman Dan Rostenkowski, as part of the Congressional Post Office Scandal.

In 1997, President Bill Clinton nominated Attorney Holder to be the next Deputy Attorney General under then-Attorney General Janet Reno. He was confirmed several months later in the Senate by a unanimous vote. During his confirmation hearing, Attorney Holder's opposition to the death penalty was questioned, but he pledged his intention to cooperate with the current laws and Attorney General Janet Reno, declaring, "I am not a proponent of the death penalty, but I will enforce the law as this Congress gives it to us." Attorney Holder also briefly served as Acting Attorney General under President George W. Bush, until the Senate confirmed Bush's nominee John Ashcroft.

Attorney Holder has risen above partisan politics and has demonstrated his independence in his decision-making. As Deputy Attorney General, Holder advised then-Attorney General Janet Reno about how far to go in the Justice Department's use of the Independent Counsel statute. Ultimately, Attorney General Reno made the decision to permit Kenneth Star to expand the scope of his investigation. This is a demonstration of not only his impartiality but also his ability to be fair and just. There is no question that Attorney Holder has demonstrated autonomy and has risen above the foray of political decision-making and political prosecutions.

Keenly involved in the nation's struggle for civil rights, Attorney Holder has spent his lifetime combating injustice and expanding the protections afforded to all Americans. He has taken the lead on forging stronger ties between law enforcement and local communities and has fought to forge stronger ties between the prosecutors and the people in society that he has committed to serve and protect. While he was a tough but fair judge, he has had a prodigious record of community service and leadership and a concern for the well-being of all Americans.

I recommend that Attorney Eric Holder be confirmed as Attorney General based upon his astute legal acumen. Attorney Holder would make an excellent Attorney General and would help put this nation on a right track when it comes to its judiciary matters. America would be better and the plight of average Americans would improve if Attorney Eric Holder were confirmed as our next Attorney General.

Very Truly Yours,

Sheila Jackson Lee
Member of Congress

December 4, 2008

Honorable Barack Obama
President-elect, United States of America
C/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear Mr. Ogden;

I am writing to express my strong support of the selection and for the subsequent confirmation by the United States Senate of the Honorable Eric Holder who President-Elect Obama has put forth to be our next United States Attorney General.

I am a victim advocate on both the national and state levels and currently serve as the National President of Parents Of Murdered Children, Inc (POMC) and also as an Adviser for Victims to Arizona Governor Janet Napolitano. In November of 1996, my brother Howard Levey was murdered here in Phoenix by complete strangers as he sat in his vehicle waiting for his friends to show up for their weekly basketball game. The gang members who murdered Howard randomly selected him as he sat in his vehicle and this crime truly could have been committed against anyone's loved one in that car.

As a survivor of having a loved one murdered and in my daily work I have learned firsthand the importance of having a strong leader as our US Attorney General and one who understands the plight of victims and survivors of crime—Mr. Holder by all accounts understands the plight of victims and I believe he will ensure that victims voices are heard and understood at the highest level.

Mr. Holder's record speaks for itself in respect to being a champion for victims and among his many accomplishments;

- Was the motivating factor behind DC's initiative to improve its response to child abuse and created model protocols for child victims.
- Was a key leader in creating DC's Children's Advocacy Center (today considered a model for the nation).
- Created a renowned victim/witness unit, expanding its staff from six to 24 members in less than four years; and ensuring that the Victim Witness Unit Chief was present at senior staff meetings.
- Created the first domestic violence advocacy program within the victim/witness unit that functioned in DC Superior Court and in federal cases involving interstate domestic violence and stalking.

- Supported the creation of sexual assault advocates and homicide advocates within the Victim Witness Unit.
- Established a Kids Court.
- Established the first forensic child interview specialist position within the Federal government.

I have dedicated my life's work in memory of my beloved brother and victims need strong leaders such as Eric Holder to ensure our interest our represented and that victims of crime are always treated with dignity and respect.

It is for the above-reasons and many more that I wholeheartedly support Mr. Holder's confirmation by the United States Senate and I will ensure they receive a copy of this letter as well. If you have any questions please feel free to contact me directly at [redacted].

Very Truly Yours,

Dan Levey

Mothers Against Drunk Driving
NATIONAL OFFICE
511 E. John Carpenter Frwy., Suite 700
Irving, TX 75062-8187
Phone (214)744-MADD
Fax (972)869-2206/2207
www.madd.org

December 2, 2008

The Honorable Barack Obama
President-elect, United States of America
C/O David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

On behalf of Mothers Against Drunk Driving (MADD), I write in support of the Honorable Eric Holder for the position of Attorney General of the United States.

Having served more than 50,000 victims of drunk driving crashes in 2007, MADD works closely with the U.S. Department of Justice in an effort to serve these people. MADD believes that Judge Holder is an excellent candidate for Attorney General who will continue the excellent working relationship MADD enjoys with the Department of Justice.

Judge Holder is uniquely qualified for Attorney General. As a U.S. Attorney, he worked in Washington, D.C., to improve the city's response to child abuse and create a model protocol for child victims. He was a key leader in creating D.C.'s Children's Advocacy Center (today considered a model for the nation). He also created a renowned victim/witness unit, expanding its staff from six to 24 members in less than four years.

In addition, while serving as a U.S. Attorney, he created the first domestic violence advocacy program within the victim/witness unit that functioned in DC Superior Court and in federal cases involving interstate domestic violence and stalking. Finally, he created one of the first Community Prosecution Programs in the District of Columbia.

Judge Holder also served as deputy Attorney General under President Clinton. In this role, he was intimately involved in providing dynamic leadership in issues related to crime victims and survivors. He provided strong support to the Office of Victims of Crime's (OVC) efforts to support the families of the victims of the Pan Am 103 crash.

Judge Holder was also a driving force behind OVC's Children Exposed to Violence Initiative, which was a ground-breaking project that included a monograph, a series of training videos for various disciplines and a bulletin that outlined resources, tools, and services to improve responses to children who face crime and violence in their lives.

Judge Holder has as an excellent record working for victims of crime and MADD wholeheartedly supports his nomination to become Attorney General.

Thank you and best wishes for your new administration.

Sincerely,

J.T. Griffin
Vice President of Public Policy

MAJOR CITIES CHIEFS

MAJOR CITIES CHIEFS ASSOCIATION

Atlanta, Georgia
Austin, Texas
Baltimore City, Maryland
Baltimore Co., Maryland
Boston, Massachusetts
Buffalo, New York
Calgary, Alberta
Charlotte-Mecklenburg, North Carolina
Chicago, Illinios
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ohio
Dallas, Texas
Denver, Colorado
Detroit, Michigan
Edmonton, Alberta
El Paso, Texas
Fairfax County, Virginia
Fort Worth, Texas
Honolulu, Hawaii
Houston, Texas
Indianapolis, Indiana
Jacksonville, Florida
Kansas City, Missouri
Las Vegas Metro, Nevada
Long Beach, California
Los Angeles, California
Los Angeles Co., California
Louisville, Kentucky
Memphis, Tennessee
Miami-Dade, Florida
Milwaukee, Wisconsin
Minneapolis, Minnwsota
Montgomery Co., Maryland
Montreal, Quebec
Nashville, Tennessee
Nassau Co., New York
New Orleans, Louisiana
New York City, New York
Newark, New Jersey
Oakland, California
Oklahoma City, Oklahoma
Ottawa, Ontario
Philadelphia, Pennsylvania
Phoenix, Arizona
Pittsburgh, Pennsylvania
Portland, Oregon
Prince George's Co., Maryland
Salt Lake City, Utah
San Antonio, Texas
San Diego, California
San Francisco, California
San Jose, California
Seattle, Washington
St. Louis, Missouri
Suffolk Co., New York
Toronto, Ontario
Tuscon, Arizona
Tulsa, Oklahoma
Vancouver, British Columbia
Virginia Beach, Virginia
Washington, DC
Winnipeg, Manitoba

December 18, 2008

Senator Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, DC 20510
202-228-1229 fax

Dear Senator Leahy:

The purpose of this letter is to support the nomination of Mr. Eric Holder as Attorney General. The Major Cities Chiefs Association is comprised of the fifty-six largest city and county law enforcement agencies in the United States. On behalf of our organization we are enthusiastic about Mr. Holder's nomination and wish to add our voices in support of confirmation. Many members of our organization, including; myself, Commissioner Charles Ramsey, Philadelphia Police, and our Executive Director Tom Frazier, have worked alongside Mr. Holder and are very familiar with his record of integrity and accomplishment in the law enforcement arena. He has a well-deserved reputation for listening to the concerns of law enforcement executives and directing Department of Justice resources to work collaboratively to make our communities safer.

We believe Mr. Holder's knowledge, experience, and integrity are, without question, exactly what is required to lead the Department of Justice and what America's "top cop" should be armed with.

Sincerely,

Chief R. Gil Kerlikowske
President, MCC

Paul J. McNulty
815 Connecticut Avenue, NW
Washington, DC 20006

January 8, 2009

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

Dear Chairman Leahy,

I write in support of Eric Holder to be confirmed as the next Attorney General of the United States. I have known and worked with Eric for more than a decade, and I have always found him to be a consistently principled and an extraordinarily capable public servant. His unparalleled experience in the judicial system has thoroughly prepared him to be an outstanding Attorney General.

The job of Attorney General has never been more challenging. With your support, the Department has grown in size and mission, and the complexity of the issues it now faces are unprecedented. The next Attorney General will decide how to protect Americans from the persistent threat of terrorism within the framework of our Constitution, lead the way in prosecuting complex financial fraud, and assist international law enforcement partners in the high-stakes struggle against deadly drug cartels, to name just a few of the greatest challenges of our time. Only a highly seasoned and gifted leader will be capable of successfully addressing such matters.

This is why I was encouraged by President-elect Obama's selection of Eric Holder to be Attorney General. I have had the privilege of working with many Attorneys General for more than twenty years. I am fully aware of what it takes to succeed in this unique position. Eric possesses the knowledge and judgment to be the chief law enforcement official America needs at this time. I know you are well aware of his outstanding credentials.

Finally, I am convinced, as I suspect you are as well, that we learn more from our mistakes than our triumphs. When Eric Holder was Deputy Attorney General, he encountered a daily barrage of complex issues and demands. His challenge in each instance was to exercise sound judgment, often within severely limited time constraints. As a result, it should come as no surprise that Eric can now look back and wish that he had handled some things differently. What is most important, however, is that he remains the same person of high integrity, and through it all, he is far better prepared to lead the Department of Justice.

Eric Holder is one of the most qualified nominees for Attorney General in the nation's history. I respectfully urge the Senate Judiciary Committee to vote in favor of his confirmation as quickly as possible.

Sincerely,

Paul J. McNulty

Former Deputy Attorney General (2005-2007)
and United States Attorney, EDVA (2001-2005)

MALDEF
Mexican American Legal Defense and Educational Fund

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Los Angeles
Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Atlanta
Regional Office
84 Peachtree St NW
Suite 2500
Atlanta, GA 30303
Tel: 678.559.1071
Fax: 678.559.1070

Chicago
Regional Office
11 East Adams Street
Suite 700
Chicago, IL 60603
Tel: 312.427.0701
Fax: 312.427.0691

San Antonio
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Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

Houston
Program Office
Ripley House
4410 Navigation
Suite 118
Houston, TX 77011
Tel: 713.315-8494
Fax: 713.315-8404

Sacramento
Satellite Office
1107 9th Street
Suite 240
Sacramento, CA 95814
Tel: 916.443.7581
Fax: 916.443.1541

Washington, D.C.
Regional Office
1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

December 22, 2008

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

Dear Mr. Chairman:

On behalf of the Mexican American Legal Defense & Educational Fund (MALDEF), I am pleased to join civil rights, legal, civic and other organizations in support of the Senate's swift confirmation of Eric Holder to be the next Attorney General of the United States.

As you know, MALDEF is "the law firm for the Latino community", and specializes in impact litigation and public policy on immigrant rights, voting, education, employment and other civil rights issues. The leadership and partnership of the U.S. Department of Justice is sorely needed. President-elect Obama has selected wisely in nominating Eric Holder to restore integrity and to remove politics from the Department.

I have know and/or worked with Eric Holder since the mid-1980s when I was an officer and later president of the Hispanic Bar Association of the District of Columbia. On the Superior Court, Judge Holder was one of the first local jurists to reach out to our association and seek ways to ensure that Latinos in the District of Columbia understood court proceedings and felt welcome in their courts. Over the years, he has assisted Latinos seeking judicial posts and done much to be inclusive. As you know, I served in the Department from 1993 to 2001 and, while not working directly with the then-Deputy Attorney General, know he continued his exemplary work.

Of all the Cabinet members, the American people must be able to count on the Attorney General to put the national interest ahead of the President's agenda. It is a sacred trust for all appointees but its absence at the Department has, in previous years and decades, brought disastrous consequences. Eric Holder stands tall among his peers and deserves quick confirmation as Attorney General.

Sincerely,

John Trasvina
President and General Counsel

cc: Senator Arlen Specter, Ranking Minority Member

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Wednesday, January 21, 2009

U.S. Senator Patrick Leahy
Chairman, Democrat, and
U.S. Senator Arlen Specter
Ranking Member, Republican
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Faxes: 202-224-9516 (majority) and 202-224-9102 (minority)

NOMINATIONS: Opposition to the Senate Judiciary Committee on the Nomination of Eric Himpton Holder Jr. to be Attorney General of the United States

Dear Senators Leahy and Specter:

This is a statement in opposition to the Nomination of candidate Eric Himpton Holder, Jr. for U.S. Attorney General of the United States.

While I have been a resident of Florida since early 2000, I resided in the southwest quadrant of Washington, DC for over 21 years, from 1978 through early 2000. This was the same period which Mr. Holder assumed mostly US Department of Justice positions, which included extensive oversight of the District of Columbia.

During my long residency in the District of Columbia I worked as a health care professional (The George Washington University HMO and others), and simultaneously was a civic activist, a campaign volunteer for various DC council and mayoral candidates, and later was an Independent political candidate myself for City Council and/or DC Mayor from 1984 thru 1998.

After participating as a volunteer in Mayor Marion Barry's 1978 campaign, and observing and reading about extensive political corruption going on in the District shortly after the 1978 election, I became a vocal critic of Mr. Barry and even of his subsequent successors (Mayors Sharon Pratt Kelly & Anthony Williams). My public and campaign criticisms were of other political and business leaders as well, including the DC City Council, the DC Control Board and by inference, of Eric H. Holder, in his various oversight capacities for the U.S. Justice Department in the District of Columbia during the late 1970's, 1980's and 1990's.

01/21/2009 2:16PM

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Despite the overwhelming malfeasance reported on, on an ongoing basis, over the years, and subsequent convictions by Mr. Holder's U.S. Justice colleagues in the Attorney Generals office for DC in the 1980's, Mr. Holder appears to have been either silent or low-key in his approach to malfeasance in the District while in the Public Integrity (PI) section for ten years, 1978 to 1988. It is my understanding that this PI section, with a large cadre of lawyers, has jurisdiction in "combating political corruption at all levels of government through the prosecution of corrupt federal, state and local elected and appointed public officials." (Wikipedia definition).

Last week's testimony, at Mr. Holder's U.S. Senate Committee on the Judiciary Hearings, from several of Senator Specter's witnesses, mostly centered on criticism of two presidential pardons by President Bill Clinton based on recommendations to the president by Mr. Holder as Deputy Attorney General (i.e the Marc Rich matter and the FALN 12 pardon).

As Senator Leahy, Senator Specter, and many of their fellow Senate colleagues probably know, the District of Columbia, in the late 1970's and into the 1990's, under the administration of Mayor Marion Barry, descended into rampant political, criminal and financial corruption involving elected and appointed public officials, which included voter and financial fraud, bribe-taking, flagrant mismanagement by government officials and blatant cronyism.

The nation's capitol also turned into rampant lawlessness, high drug abuse (i.e. crack cocaine) and increased gang violence with record killings as well, The killings involved black-on-black crime, mostly among young adult blacks, even affecting students in the public high schools.

The District actually became "the murder capitol of the world" in the early 1990's, while Mr. Holder was its United States Attorney for the District of Columbia in that period. The District also has been listed now and before as one of the 10 most corrupt cities in America.

Even the U.S. Congress neglected its oversight responsibilities by keeping a "hands off" policy toward the District, thus allowing the city to teeter on the verge of bankruptcy for many years, and seriously jeopardizing its future status as a state with voting representatives in congress. As an Independent candidate for mayor, I filed a lawsuit in the early 90's to put the District of Columbia in a state of bankruptcy, and when that failed, as reported by the Washington Post, I advocated an independent control board. After the 1994 election, congress implemented such a Control Board in early 1995.

Congress was ultimately forced to take over jurisdiction of the Mayor and Council administrative powers and transfer authority to an independent Control Board for five or more years in order for DC to survive financially.

01/21/2009 2:16PM

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The problems of the District of Columbia reflect on the failures of the United States Justice Department to do its duties effectively. The Republican U.S. Attorneys, from 1981 thru 1992, did manage to indict and prosecute several deputy mayors and other city officials. However, when these prosecutors tried to go after Mayor Barry, the community accused the prosecutors of "politically and racially motivated crusades."

Mr. Holder, as US Attorney for the District of Columbia, from 1993 through 1997, appears to have demonstrated a lack of courage and/or independence to take on political leaders of his own Democratic Party. Mr. Holder has a lengthy history of bending to the pressures of the political party in power, and in the case of DC, his own party. Mr. Holder has done very little in the face of widespread and blatant fraud and public corruption, violence, drug abuse, public malfeasance and nepotism by District of Columbia officials.

A Washington City Paper article in March, 1997, by Stephanie Mencimer, wrote of the D.C. government's reputation as a "culture without consequence," and of Mr. Holder's inability or unwillingness to take prosecutorial action to hold those responsible for their criminal behavior. Granted, Holder has conducted some investigations, but, according to Ms. Mencimer, he [Holder] has a reputation, despite his popularity and "kid-glove treatment by the press" and the community, that "he [Holder] hasn't produced many visible results..."

DC Councilwoman Kathy Patterson stated in the same 1997 DC City Paper article that "Holder needs to use his prosecutorial power to hold the guilty parties responsible." Patterson said in the same article that she did not think that the D.C. government "would be any stronger for his [Holder] having been there."

Reporter Mencimer wrote that since race came up so often with his predecessors appears to make Mr. Holder gun-shy of DC juries and of powerful public officials, like Mayor Marion Barry. Mr. Holder denied in the article that it is not fear of DC juries or intimidation of officials, but what then held him back? Especially in light of what has come forth about so much malfeasance during that time period.

It appears that Mr. Holder will not take forceful action unless it does not jeopardize his own political position and that it is a safe action (i.e. going after congressmen in other parts of the country who were blatantly caught in malfeasance such as Congressman Jenrette and Congressman Rostenkowski). Again, Ms. Mencimer wrote that Holder "is running a low-key office because he wants to keep his head down so that he can get in line for a federal judgeship." Or, she quoted a Ward 8 activist, Sandra Seager, that [Holder] is just a good old' boy....He's part of the problem."

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Abner J. Mikva, former chief judge of the US Court of Appeals, DC Circuit, wrote in *Legal Times*, September, 1997, that Washington DC continues to fail as a city because of the "leadership that has [not] been provided...." to its citizens.

I submit that Mr. Holder's lack of leadership, his inaction and ineffectiveness, and apparent lack of a moral barometer, especially against officials of his own political party and of his own African-American race, should raise serious concerns about his candidacy for United State Attorney General.

The same circumstances that surrounded Mr. Holder, from 1978 through 2001, now reflect a similar situation in 2009. While Mr. Holder would be historically the first African-American U.S. Attorney General, he would also be working for the first African-American president in the history of the United States, and both would be of the same political party. While these circumstances are completely new for the nation, the formulary is quite familiar, and reflects what transpired on a smaller scale in the District of Columbia for the previous 30 years. I am not implying or questioning President Obama's character or integrity, but I am raising a flag as to whether Mr. Holder has the strength of character to not only stand up to the President's authority, if necessary, but also whether Mr. Holder has the strength to stand up for the rule of law as well.

Taking into consideration Mr. Holder's quiet and inactive history and lack of a commendable prosecuting track record, other than his impressive academic and government "credentials," should raise serious concerns and worries for the United States Senate Committee on the Judiciary, and for the U.S. Senate as a whole.

One has to wonder, how effective would or could Eric Holder be for the nation as its United States Attorney? One can only conclude that Mr. Holder moves with the circumstances other than standing up for principles, does not take political risks, other than when forced to, and plays favoritism with his own political party. Furthermore, Eric Holder apparently fears the repercussions of dealing firmly in matters of the law with people of his own race, which is a disservice to their community, as well as it would be to the country.

In light of the serious social and racial problems continuing to face our country, and the need for strong, principled leadership, Eric H. Holder, Jr, appears not to be a strong enough individual for such an important independent law enforcement and legal position.

If you have any questions, I can be reached at 352-686-9936; or by cell phone at 352-585-2907. Thank you.

Cordially,

Brian P. Moore

01/21/2009 2:16PM

Craig S. Morford
7000 Cardinal Place
Dublin, Ohio 43017

January 14, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

RE: Nomination of Eric Holder for Attorney General

Dear Chairman Leahy and Senator Specter:

I am writing to enthusiastically support Eric Holder's nomination for Attorney General based on my firm conviction that he is the ideal person to lead the Justice Department during this unique and challenging time.

I served in the Department of Justice for over 20 years, first as a line prosecutor, then as the United States Attorney in two different districts, and finally as interim Deputy Attorney General during the aftermath of the United States Attorney firing controversy. Coming into the Deputy role at a time of decreased public confidence, I reached out to several former deputies for counsel and perspective. Eric's candor, humility, passion for the Department and keen insights regarding the inner workings of Main Justice and Washington led me to greatly value and rely upon his counsel.

The Department of Justice faces greater challenges today than it has at any time in my experience. The continuing threat of terrorism raises significant issues that must be diligently addressed by our policy makers in Washington and prosecutors in the field. In addition to these unique and vexing national security challenges, the Department must address a multitude of ever increasing priorities, including corporate fraud, public corruption, immigration offenses, identify theft, child exploitation, mortgage fraud, healthcare fraud, government procurement fraud, drug trafficking and violent gang crime. As the fabric of our family, neighborhood and institutional structures continues to decline, the Department of Justice is increasingly called upon to do more and to do it with less. The budget demands of two wars, massive hurricane relief efforts and the current financial crises have and will continue to strain the budgets of all departments, including the Department of Justice. Accordingly, the next Attorney General must be a proven leader with keen understanding of the needs of the Department, the ability to prioritize its strained resources and the leadership qualities needed to inspire public confidence in the Department and its mission.

Eric Holder is that leader. Eric's two decades of public service include serving as a line prosecutor, the United States Attorney for the District of Columbia, and the Deputy Attorney General. His service as a line prosecutor will provide him the unique perspective of and credibility with the career prosecutors he will lead. His time as United States Attorney will enable him to understand, first hand, the challenges faced by the United States Attorneys in the 93 field districts, their many competing priorities and their struggles to address those priorities with ever tightening budgets. His tenure as Deputy Attorney General will provide the

understanding of the Justice Department, the White House and the Congress that an Attorney General must have to effectively lead at this critical juncture. Through these positions, Eric gained invaluable experience and exhibited strong leadership. His personal humility, candor, balance and work ethic inspired those who worked for him, and led two Presidents--one Republican and one Democrat--to appoint him to higher office.

I have talked with numerous attorneys who have worked with Eric, and each and every one, regardless of their political persuasion, respects him, admires his accomplishments and supports his nomination.

In closing, I believe Eric Holder will make a great Attorney General because I know him to be a very good man. He has the experience, personal integrity and balance to lead the Department during this critical time and I respectfully urge you to confirm him as our nation's next Attorney General.

Sincerely,

Craig S. Morford

CSM/lb
cc: US Senate Committee on the Judiciary

January 27, 2009

Member Organizations

National Bar Association
Association of Black Psychologists
National Association of Black Social Workers, Inc.
Howard University School of Law
Congressional Black Caucus Foundation, Inc.
National Dental Association
National Black Caucus of State Legislators
Association of Black Sociologists
National Black Nurses Association, Inc.
National Organization of Black Law Enforcement Executives
National Association of Blacks in Criminal Justice
National Black Alcoholism & Addictions Council, Inc.
Black Administrators in Child Welfare, Inc.
Association of Black Health-System Pharmacists
National Medical Association
National Black Police Association
National Alliance of Black School Educators
National Institute for Law and Equity
National Conference of Black Political Scientists
Black Psychiatrists of America, Inc.
National Black Prosecutors Association
National Organization of African Americans in Housing
Thurgood Marshall Action Coalition

Honorable Patrick J. Leahy
United States Senate
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
United States Senate
Ranking Member, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

The National African American Drug Policy Coalition, Inc. is an organization consisting of a coalition of twenty-five (25) member organizations and entities which since April 2004 have joined together to promote educating and advocating to the public the effective treatment of alcohol and illegal drug abuse and addiction as diseases and to advance policies to eliminate racial and ethnic disparities in our criminal and juvenile justice systems and in the related healthcare system aspects dealing with substance abuse, mental health issues, and physical ailments and medical conditions resulting from substance abuse.

In addition to the organizations and entities listed in the margin, the National Historically Black Colleges and Universities (HBCU) Substance Abuse Consortium, Inc. of 82 such institutions and the National Association of Health Services Executives are now member organizations of the Coalition, representing, we estimate, between 400,000 – 500,000 African American professionals working together to bring about a more just America in dealing with these issues.

The leaders of our member organizations and entities have reviewed the publicly available information concerning the qualifications and experience of Eric H. Holder to be Attorney General of the United States. Based on the public record as a Department of Justice staff attorney, as an Associate Judge of the Superior Court of the District of

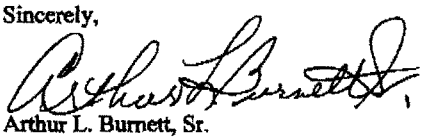
Center for Drug Abuse Research at Howard University
Phone: (202) 806-8600
2900 Van Ness Street, N.W., Suite 400
Fax: (202) 537-3806
Washington, D.C. 20008
www.naadpc.org

Promoting Health and Justice

Columbia, as United States Attorney for the District of Columbia, as Deputy Attorney General of the United States, and finally the public record as to his experience in private practice, we strongly support his nomination to be Attorney General of the United States and urge his confirmation. We are satisfied that he will be as objective and as fair as it is possible for any human being to be and that he will apply the rule of law in accord with the Constitution of the United States equally to all citizens and persons coming under the jurisdiction and power of the United States of America.

Accordingly, we respectfully urge prompt action on his nomination and that he be confirmed as Attorney General of the United States of America.

Sincerely,



Arthur L. Burnett, Sr.
National Executive Director

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

January 9, 2008

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510-4502

Dear Chairman Leahy:

I am writing on behalf of the National Asian Pacific American Bar Association (NAPABA) to endorse Eric H. Holder, Jr. for the position of United States Attorney General. NAPABA is the national association of Asian Pacific American (APA) attorneys, judges, law professors, and law students. Now in its twentieth year, NAPABA represents the interests of approximately 57 affiliate organizations nationwide 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.

Mr. Holder is exceptionally qualified for this job. He possesses over 25 years of public service as Deputy Attorney General, United States Attorney for the District of Columbia, and Associate Judge for the Superior Court of the District of Columbia. Throughout these positions, Mr. Holder carried out his responsibilities with legal excellence, professionalism, and integrity of the highest rate.

As a national bar association that engages in advocacy on behalf of Asian Pacific Americans, we are particularly pleased to endorse Mr. Holder, an attorney of color who includes Asian Pacific American communities in discourse related to public policy. For example, as Deputy Attorney General, Mr. Holder opened an Interagency Working Group meeting of the White House Initiative on Asian Americans and Pacific Islanders. NAPABA is also pleased to endorse Mr. Holder because of his commitment to hate crimes enforcement.

1612 K STREET NW, SUITE 1400 • WASHINGTON, DC 20006
PHONE: (202)775-9555 • FAX: (202)775-9333 • WWW.NAPABA.ORG

Finally, NAPABA urges the Senate Judiciary Committee to move expeditiously on Mr. Holder's nomination. The new Attorney General will face tremendous challenges with regard to civil rights enforcement and other issues in the Department of Justice's jurisdiction. Mr. Holder's leadership is needed as soon after January 20th as possible.

Please do not hesitate to contact me should you have any questions or if NAPABA can provide the Senate Judiciary Committee with additional information that is helpful to its process.

Sincerely,

Andrew T. Hahn, Sr.
President
National Asian Pacific American Bar Association

Tina Matsuoka
Executive Director
National Asian Pacific American Bar Association

John C. Yang
Co-Chair, Judiciary Committee
National Asian Pacific American Bar Association

cc: President-elect Barack Obama
Eric Holder, Attorney General Designee

Dec-19-08 01:28pm From-NAACP T-508 P.01/02 F-959

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MD 21215-3297 • (410) 580-5777

BENJAMIN TODD JEALOUS
President & Chief Executive Officer

JULIAN BOND
Chairman, Board of Directors

December 19, 2008

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Minority Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

via fax

RE: NAACP SUPPORT FOR THE CONFIRMATION OF ERIC HOLDER TO BE UNITED STATES' ATTORNEY GENERAL

Dear Chairman Leahy and Ranking Member Specter;

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots–based civil rights organization, we strongly urge you to support the historic nomination of Eric Holder to be the next Attorney General of the United States. Mr. Holder is perhaps the most qualified of nominees for Attorney General in memory and there is no doubt in our minds that he will lead the U.S. Department of Justice, and the United States, with an integrity and strength that is sorely needed at this time.

Mr. Holder's is perhaps uniquely qualified for this position. Not only did he serve the nation and the Department of Justice with unqualified success as Deputy Director under Attorney General Janet Reno, but he also led a smooth and successful transition team between the Clinton and Bush administrations. Furthermore, throughout his career not only as Deputy Director of the Department of Justice and as the United States Attorney for the District of Columbia, as Associate Judge for the Superior Court for the District of Columbia and as a trial attorney in the Public Integrity section of the Department of Justice Mr. Holder has demonstrated a willingness to use his independent judgment along with his even-handed nature to advance the principles of justice and the Constitution that is admirable.

Our nation, and especially our racial and ethnic minority citizens, is clearly facing a crisis in confidence that the US Department of Justice is not a true defender of our rights. Eric Holder is the right person at this time to rebuild not only the Department, but also our country's reputation as a defender of the rights of all

Americans to pursue the Constitutional promises of life, liberty and happiness. Thus, we urge you again, in the strongest terms possible, to swiftly and resoundingly confirm Eric Holder to be the next Attorney General of these United States.

Thank you in advance for your attention to the NAACP position. Should you have any questions or comments, please do not hesitate to contact Hilary Shelton, the NAACP Vice President for Advocacy and the Director of the NAACP Washington Bureau at [redacted].

Sincerely,

Benjamin T. Jealous
President & CEO

Julian Bond, Chairman
NAACP National Board of Directors

12/19/2008 1:13PM

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

January 14, 2009

Members
Committee on the Judiciary
United States Senate
Washington, DC 20510

via fax

RE: NAACP SUPPORT FOR THE SWIFT CONFIRMATION OF ERIC HOLDER TO SERVE AS U.S. ATTORNEY GENERAL

Dear Senator;

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots–based civil rights organization, I strongly urge you to support the historic nomination of Eric Holder as he comes before you and the other members of the Senate Judiciary Committee. Due to his background, his even-handed nature and his proven commitment to justice for all Americans and the U.S. Constitution, Mr. Holder is clearly the best nominee for the job.

As you can see form the attached letter from the Chairman of the NAACP National Board of Directors Julian Bond, as well as the NAACP President & CEO Benjamin Todd Jealous, the NAACP has been a strong supporter of Mr. Holder's nomination from the beginning. Not only did he serve the nation and the Department of Justice with unqualified success as Deputy Director under Attorney General Janet Reno, but he also led a smooth and successful transition team between the Clinton and Bush administrations. Mr. Holder has demonstrated a willingness to use his independent judgment along with his even-handed nature to advance the principles of justice and the U.S. Constitution that is admirable.

Our nation, and especially our racial and ethnic minority citizens, is clearly facing a crisis in confidence that the US Department of Justice is not a true egalitarian defender of our rights. Eric Holder is the right person at this time to rebuild not only the Department, but also our country's reputation as a defender of the rights of all Americans to pursue the Constitutional promises of life, liberty and happiness.

Thank you in advance for your attention to the NAACP position. Should you have any questions or comments, please do not hesitate to contact me at my office at (202) 463-2940.

Sincerely,

Hilary O. Shelton
Vice President for Advocacy /
Director, NAACP Washington Bureau

National Association of Assistant United States Attorneys
12427 Hedges Run Dr. • Ste 104 • Lake Ridge, VA 22192-1715
Tel: (800) 455-5661 • Fax: (800) 528-3492
Web: www.naausa.org

December 22, 2008

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

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I write on behalf of the National Association of Assistant United States Attorneys to endorse the nomination of Eric Holder, Jr. to become Attorney General of the United States.

Our association, which represents the interests of the 5,300 career Assistant United States Attorneys employed by the Department of Justice, maintains the highest respect for Mr. Holder, his qualifications and record of accomplishment.

Mr. Holder's experience as a senior-level DOJ official, federal prosecutor and municipal judge make him an exceptionally well-qualified candidate to serve as our nation's top law enforcement official. Mr. Holder possesses a deep understanding of the Department of Justice, its operations and its culture, having served as Deputy Attorney General from 1997-2001 and previously as the United States Attorney for the District of Columbia from 1993-97. During his tenure at the Department of Justice, Mr. Holder earned the wide respect of the Department's employees, including Assistant United States Attorneys and members of the law enforcement community. He became known as a strong and impartial proponent of the Department's independence and integrity. Mr. Holder's attributes are particularly noteworthy, given the concerns regarding the dismissal of some United States Attorneys over the last several years.

Mr. Holder possesses the leadership skills, legal experience, and integrity to serve with distinction as Attorney General. We urge the Senate Judiciary Committee to act promptly in reviewing and reporting out his nomination. Thank you for your consideration of these views.

Sincerely,

Richard L. Delonis

Richard Delonis
National President

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
2030 M Street, 8th Floor
WASHINGTON, D.C. 20036
Phone (202) 326-6000
Fax (202) 331-1427
http://www.naag.org/

JAMES E. MCPHERSON
Executive Director

PRESIDENT
PATRICK LYNCH
Attorney General of Rhode Island

PRESIDENT-ELECT
JON BRUNING
Attorney General of Nebraska

VICE PRESIDENT
ROY COOPER
Attorney General of North Carolina

IMMEDIATE PAST PRESIDENT
LAWRENCE WASDEN
Attorney General of Idaho

January 14, 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 Eric H. Holder, Jr. for Attorney General of the United States. As the Nation's chief law enforcement officer, he will set policies for how the Federal government relates to and works with us as well as with other state, county and local prosecutors and law enforcement officers within our jurisdictions. We believe that Mr. Holder has the knowledge and experience necessary to run the Department of Justice and work with us to enforce our laws.

Mr. Holder is a known quantity to some of us. Having served as the Deputy Attorney General from 1999-2001, he worked hard to assure that our concerns were answered and the partnerships we sought were established. We look forward to working with him again. He also served as United States Attorney for the District of Columbia. Although a Federal prosecutor serving by appointment of the President, this is a unique position in America because this United States Attorney is responsible for local prosecutions in the District.

We are also encouraged because Mr. Holder started his legal work as a career prosecutor in the Department of Justice's Public Integrity Section and was then appointed by the first President Bush to the District of Columbia Superior Court. Throughout his career, Mr. Holder has displayed the fairness and balance which is so important in a person who will wield such vast power and authority.

As our Nation's economy suffers, we are deeply concerned that, along with unemployment, crime will rise as well. We fully appreciate that funds are limited, but we know that Mr. Holder will work, as he did as Deputy Attorney General, to provide funding for state and local law enforcement so that we and our colleagues at the state and local level can be effective in our mission.

Therefore, we urge you to confirm the nomination of Eric H. Holder, Jr. for Attorney General.

Sincerely,

Tom Miller
Attorney General of Iowa

Jon Bruning
Attorney General of Nebraska

Patrick Lynch
Attorney General of Rhode Island

Terry Goddard
Attorney General of Arizona

Dustin B. McDaniel
Attorney General of Arkansas

Edmund G. Brown, Jr.
Attorney General of California

John W. Suthers
Attorney General of Colorado

Richard Blumenthal
Attorney General of Connecticut

Richard S. Gebelein
Acting Attorney General of Delaware

Bill McCollum
Attorney General of Florida

Thurbert E. Baker
Attorney General of Georgia

Alicia G. Limtiaco
Attorney General of Guam

Mark J. Bennett
Attorney General of Hawaii

Lawrence Wasden
Attorney General of Idaho

Lisa Madigan
Attorney General of Illinois

Stephen Carter
Attorney General of Indiana

Steve Six
Attorney General of Kansas

Jack Conway
Attorney General of Kentucky

James D. "Buddy" Caldwell
Attorney General of Louisiana

Douglas F. Gansler
Attorney General of Maryland

Lori Swanson
Attorney General of Minnesota

Mike McGrath
Attorney General of Montana

Gary King
Attorney General of New Mexico

Roy Cooper
Attorney General of North Carolina

Larry Long
Attorney General of South Dakota

Mark Shurtleff
Attorney General of Utah

Rob McKenna
Attorney General of Washington

Bruce A. Salzburg
Attorney General of Wyoming

Janet T. Mills
Attorney General of Maine

Martha Coakley
Attorney General of Massachusetts

Jim Hood
Attorney General of Mississippi

Catherine Cortez Masto
Attorney General of Nevada

Andrew Cuomo
Attorney General of New York

W. A. Drew Edmondson
Attorney General of Oklahoma

Robert E. Cooper, Jr.
Attorney General of Tennessee

William H. Sorrell
Attorney General of Vermont

Darrell V. McGraw, Jr.
Attorney General of West Virginia

Cc: Members of the Senate Committee on the Judiciary

ROBERT L. MATTHEWS
PRESIDENT
THE NATIONAL ASSOCIATION OF BLACKS IN CRIMINAL JUSTICE

705 Birkdale Drive
Fayetteville, GA 3 0215
[redacted]

12/29/2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 2 0510-6275

Dear Senators Leahy and Specter:

As President of the National Association of Blacks in Criminal Justice (NABCJ) I am writing to express our Organization's strong support for the Senate Confirmation of Eric Holder as Attorney General of the United States.

NABCJ was established in 1974 and among it's founders was the first African American Director of State Corrections, Dr. Bennett Cooper, and since it's inception our Organization has comprised of Criminal Justice Professionals that include Corrections Directors, Administrators, Line Staff, Peace Officers, Judges, Lawyers, Community Leaders, Probation and Parole Officials, Students and Educators.

We are a multi-ethnic and non-partisan organization that focuses on Criminal Justice issues in order to find solutions to problems that impact the African American and other Communities.
We believe that Eric Holder has demonstrated his concern for equal justice for all and has exemplified a high level of integrity and fairness throughout his career in Public Service.

I served over 28 years in the Department of Justice and had the opportunity to experience first hand the positive impact of Mr. Holders' outstanding leadership at the Department when he was Deputy Attorney General. When I served as Regional Director and Assistant Director of the Federal Bureau of Prisons our agency and all others received the attention, support and resources to effectively perform our mission and protect our citizens.

Consequently, The National Association of Blacks in Criminal Justice stand with many other Criminal Justice Professionals and Organizations in our belief that President -Elect Obama could not have made a

better choice in nominating Eric Holder as the next Attorney General of the United States and pledge our support.

Sincerely,

Robert L. Matthews
President
The National Association of Blacks in Criminal Justice

NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS
NADCP

4900 Seminary Road, Suite 320
Alexandria, VA 22311
Phone:703.575.9400
Fax:703.575.9402
www.nadcp.org

January 5, 2009

The Honorable Patrick J. Leahy,
Chairman
The Honorable Arlen Specter,
Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the over 22,000 judges, prosecutors, public defenders, probation and law enforcement officers, court administrations, substance abuse and mental health treatment professionals, and community leaders the **National Association of Drug Court Professionals (NADCP)** represents, it gives me great pride to strongly support the nomination of Eric H. Holder, Jr. for the position of Attorney General of the Department of Justice.

Throughout his professional endeavors, Mr. Holder has served with integrity, honor, and respect and he has demonstrated time and time again his ability to uphold the public trust and protect the American people.

During his tenure as a prosecutor, a trial judge, the United States Attorney for the District of Columbia, and the Deputy Attorney General of the United States, Mr. Holder has also demonstrated a profound commitment to improving the administration of justice at the national, state and local level. In doing so, he has been an ardent supporter for effective alternative sentencing dispositions like drug courts and under his leadership as AG, drug courts and other problem-solving courts are bound to expand their reach to every American in need.

Today represents a critical time in the history of the Department of Justice and Eric Holder is ideally suited to lead the Department to a renewed position of strength, respect, leadership, and integrity.

Thank you in advance for consideration of our support.

Sincerely,

West Huddleston
Chief Executive Officer

NADCP

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest
317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501
(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515
www.napo.org ~ Email: info@napo.org

December 11, 2008

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

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Association of Police Organizations (NAPO) representing more than 241,000 law enforcement officers throughout the United States, I am writing to advise you of our endorsement of the nomination of Eric Holder for Attorney General of the United States. As the top law enforcement official in the nation, the Attorney General sets the policies for how the federal government relates to and works with state and local law enforcement. NAPO believes Mr. Holder has the experience and knowledge necessary to run the Department of Justice and create a comprehensive, multilateral national crime fighting strategy.

Mr. Holder started his career as a prosecutor before moving on to be a Superior Court judge and then U.S. attorney in Washington, D.C. While he was U.S. Attorney in D.C., he fought hard for mandatory minimum sentences and harsher punishments for drug offenses. The time he spent in D.C. also made Mr. Holder a champion of community policing. He recognized the importance of communities trusting their police and worked with the D.C. Metropolitan Police Department to improve their standing within the community. Additionally, Mr. Holder took community policing to a new level in the District, assigning prosecutors to "beats" in order that they might better know the communities they served. He took his strong belief in the value of community policing with him when he was deputy U.S. attorney general, from 1997-2001. He was a key player in developing the Community Oriented Policing Services (COPS) program established by the 1994 Crime Bill, which put over 100,000 cops on the street.

As Attorney General, we believe Mr. Holder will make the Justice Department more efficient and effective, particularly in regards to programs that aim to help states and localities fight crime. State and local law enforcement will once again be regarded as a vital part of the national crime-fighting strategy and will be provided the tools and resources necessary to protect our neighborhoods from crime. Therefore, we urge you to confirm the nomination of Eric Holder for Attorney General. If you have any questions, please feel free to contact me, or NAPO's Director of Governmental Affairs, Andrea Mournighan, at [redacted]

Sincerely,

William J. Johnson
Executive Director

NATIONAL BAR ASSOCIATION REGION II
646 642-7748 - 2100 East Tremont Avenue Suite 1C Bronx, NY 10462 - [redacted]

Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Bldg
Washington, D.C., 20510

(VIA FACSIMILE 202 224-3479)

January 26, 2009

Dear Senator Leahy:

On behalf of the National Bar Association Region II, encompassing New York State as well as Connecticut and Vermont with ten affiliate chapters representing over 10,000 attorneys of color in the region,and other bar associations of color named at the end of this letter representing thousands more, I urge you, the members of the United States Senate Judiciary Committee and your colleagues in the Senate to confirm the nomination of Eric H. Holder, Jr., to the position of Attorney General of the United States of America.

We echo the National Bar Association's (NBA) position that Eric Holder, Jr, is the most qualified individual ever nominated as Attorney General. As new leadership is necessary immediately in our new administration, we strongly urge that his confirmation be done expeditiously.

In addition to receiving the NBA 2008 Justice Award, and the Metropolitan Black Bar Association 2001 Lawyer of the Year Award, Mr. Holder has received numerous awards from local, city and state bar associations in New York, Washington, D.C. and across the nation as well as numerous honorary degrees and community awards.

As a native son of New York, Mr. Holder hails from humble beginnings in the Bronx and throughout his illustrative career in the public and private sector has maintained the highest standards of integrity and justice that our national, state and local bar associations seek for the protection and freedom for all Americans under the U.S. Constitution.

Mr. Holder is supremely qualified to hold the office of Attorney General of the United States of America.

As exemplified by nearly 30 years of experience, Mr. Holder is extraordinarily qualified. He possesses the critical skills and qualifications so necessary to carry out the duties and obligations of the Attorney General and to meet the challenges that he and the President will be faced with at this critical time in our nation's history.

As you are aware, the Attorney General supervises and directs the operations of the Department of Justice. Mr. Holder's principal responsibilities as Attorney General will be to:

- represent the United States in legal matters;
- supervise and direct the administration and operation of the offices, boards, divisions, and bureaus that comprise the department;
- furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the government;
- make recommendations to the President concerning appointments to Federal Judiciary Positions and to positions within the Department including United States Attorneys and United States Marshalls;

- represent or supervise the representation of the United States Government in the Supreme Court of the United States and all other courts, foreign and domestic, in which the United States is a party or has an interest as may be deemed appropriate and
- perform or supervise the performance of other duties required by statute or executive order.

Born in the Bronx, New York in the early 1950's, to parents who had emigrated from Barbados, Mr. Holder later grew up in Queens. He graduated from Stuyvesant High School in the Bronx and attended Columbia University in Manhattan, where he earned his Bachelor of Arts degree and his Juris Doctor degree.

Upon graduating from Columbia Law School, Mr. Holder moved to Washington, DC and joined the Department of Justice as part of the Attorney General's Honors Program. Thereafter he worked in the U.S. Justice Department as an outstanding trial attorney in the Public Integrity section and was assigned to investigate and prosecute official corruption on the local, state and federal levels.

His exemplary legal career continued when in 1988, Mr. Holder was appointed by President Ronald Reagan to serve as an Associate Judge of the Superior Court of the District of Columbia. He was confirmed by the Senate. As a Judge, Mr. Holder presided over hundreds of civil and criminal trials and matters.

In 1993, Mr. Holder was appointed U.S. Attorney for the District of Columbia by President Bill Clinton. He became head of the largest United States Attorney's Office in the nation for nearly four years and during his tenure created a Domestic Violence Unit to more effectively handle those types of cases, implemented a community prosecution project to work hand in hand with residents and local government agencies in order to make neighborhoods safer, supported a renewed enforcement emphasis on hate crimes so that criminal acts of intolerance would be severely punished, developed a comprehensive strategy to improve the manner in which agencies handled cases involving the abuse of children, launched a community outreach program to reconnect the U.S. Attorney's office with the citizens it serves, revitalized the Victim/Witness Assistance Program to better serve those individuals who were directly affected by crime and developed "Operation Ceasefire," an initiative designed to reduce violent crime by getting guns out of the hands of criminals.

Due to his extraordinary service as U.S. Attorney for the District of Columbia, in 1997, upon the retirement of Jamie Gorelick, President Clinton nominated Mr. Holder to be the next Deputy Attorney General. Mr. Holder was quickly confirmed in the Senate by a unanimous vote.

As Deputy Attorney General, Mr. Holder supervised all of the Justice Department's litigating, enforcement, and administrative components in both civil and criminal matters. Under his guidance, the Department developed and issued its guidelines on the criminal prosecution of corporations (the so called "Holder Memorandum") and issued guidelines on the use of the False Claims Act in civil health care matters. A task force he created also developed the existing regulation concerning the appointment of special counsels to investigate allegations involving high-level federal officials. He began the Department's Children Exposed to Violence Initiative and made Department priorities enforcement efforts in health care fraud, computer crimes and software piracy. Mr. Holder successfully worked to fund and expand nationwide the concept of community prosecution which seeks to connect more directly prosecutors with the citizens they serve.

While Deputy Attorney General, Mr. Holder began and directed Lawyers for One America, a multi-agency, public/private partnership designed to diversify the legal profession and to increase the amount of pro bono work done by the nation's attorneys. NBA Region II attorneys, its affiliate bar

associations of color and its members are in the forefront of diversity and pro bono publico of the highest order.

As Deputy Attorney General Mr. Holder was at that time the highest-ranking black person in law enforcement in the history of the United States.

During those hearings he stated emphatically, "I will enforce the law as this Congress gives it to us," evincing his ultimate duty to uphold the law pursuant to our nation's Constitution.

Mr. Holder also served as Acting Attorney General under President George W. Bush for a brief time pending the Senate's confirmation of President Bush's nominee to the position.

Mr. Holder was the first African American to serve in each of the respective governmental positions outlined here.

Since 2001, Mr. Holder has worked with distinction as one of the most extraordinary attorneys in the nation as a litigation partner handling complex civil and criminal cases, domestic and international advisory matters and internal corporate investigations, at Covington & Burling LLP in Washington, D.C.

Mr. Holder has also been avidly involved in community service in New York as well as Washington, D.C. His service has included a number of philanthropic boards including, Columbia University, the Meyer Foundation, Save the Children, and his long time membership in the organization Concerned Black Men, a group that seeks to help the youth of the District of Columbia with problems ranging from teenage pregnancy to sub-par academic achievement.

He was featured in The Best Lawyers in America 2007 and was profiled in the June 2008 issue of *The American Lawyer* and was recognized as one of "The 50 Most Influential Minority Lawyers in America" by *The National Law Journal*. Mr. Holder has also been touted by *Legal Times* as one of the "Greatest Washington Lawyers of the Past 30 Years."

Mr. Holder brings a wealth of considerable exemplary skills, experience, and knowledge in legal, judicial and administrative matters gained from decades of service in the public and private sector and would be ready to lead the Justice Department from the moment he takes office.

For these reasons the National Bar Association Region II and the NBA affiliate chapters along with the Joint Bars of Color Ad Hoc Judiciary Committee and sister bar associations of color named below urge the swift confirmation of Eric H. Holder, Jr. as Attorney General of the United States of America.

Should you have any questions regarding our support,do not hesitate to contact me. You may reach me at 646 642-7748.

Sincerely,

Nadine C. Johnson
National Bar Association Director, Region II; Founder/Director Joint Bars of Color Ad Hoc Judiciary Committee

Endorsements of support by Bar Associations of New York follow:

Further to the letter of support signed by Nadine C. Johnson, Director, Region II, of the National Bar Association, the following organizations support the nomination of Eric H. Holder, Jr. for United States Attorney General:

Amistad Suffolk County Black Bar Assn
Ghenya Grant, President

Association of Black Lawyers of Westchester County
Lyndon D. Williams, President

Association of Black Women Attorneys
Jamila Smoot, President

Black Bar Association of Bronx County
Michelle Smith, President

Capitol District Black and Hispanic Bar Association
John E. Higgins, President

Macon B. Allen Black Bar Association
Fearonce LaLande, President

Metropolitan Black Bar Association
Xavier Donaldson, President

Minority Bar Association of Western New York
Jessica Lazarin, President

Rochester Black Bar Association
Rashondra M. Jackson, President

George Crawford Black Bar Association of Ct
Vanessa Roberts, President

NY Sterling Johnson Chapter Black Prosecutors
Candace McLaren, President

Asian American Bar Association
Yang Chen, President

Dominican Bar Association
Raysa Castillo, President

Nigerian Bar Association
Emeka Chinwuba, President

Puerto Rican Bar Association
Maria Matos, President

NATIONAL BAR ASSOCIATION REGION II
646 642-7748 - 2100 East Tremont Avenue Suite 1C Bronx, NY 10462 - [redacted]

NATIONAL BAR ASSOCIATION

Reply To:
Alfreda Robinson
Judicial Selection Standing Committee
[redacted]

December 29, 2008

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: National Bar Association Letter of Support for Nomination of Eric H. Holder Jr., Attorney General of the United States

Dear Senator Leahy:

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 Eric H. Holder Jr., to the position of Attorney General of the United States of America. Mr. Holder is the most qualified person ever nominated as Attorney General. His confirmation should occur quickly because, among other reasons, the U.S. Department of Justice desperately requires new leadership immediately. We strongly urge Mr. Holder's confirmation as Attorney General. The NBA would be privileged and honored to testify at Mr. Holder's confirmation hearing.

Eric Holder is the recipient of the NBA's 2008 Equal Justice Award. On August 1, 1925, during the first quarter of the 20th century, twelve African American pioneers dedicated to justice and civil rights for all people gave birth to the National Bar Association. The objectives of the National Bar Association established then, continue to form the basis of the organization today: to advance the science of jurisprudence; improve the administration of justice; preserve the independence of the judiciary and to uphold the honor and integrity of the legal profession; to promote public policy that will improve the economic condition of all American citizens, regardless of race, national origin, sex, religion; to secure for all citizens the freedoms protected and guaranteed by the Constitution; and to protect the civil and political rights of the citizens and residents of the United States of America.

Indeed, as demonstrated by his illustrative career, both in the public and private sectors, Mr. Holder exemplifies the high standards sought by the National Bar Association for the protections and freedoms of all Americans under the Constitution of the United States. Moreover, Mr. Holder possesses the skills and qualifications necessary to carry out the responsibilities of the Attorney General and the challenges that both he and the President will confront in what can only be characterized as "unprecedented times."

As you are aware, the Attorney General supervises and directs the administration and operation of the Department of Justice. As Attorney General, Mr. Holder's principal duties will be to:

- represent the United States in legal matters;
- supervise and direct the administration and operation of the offices, boards, divisions, and bureaus that comprise the Department;
- furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the government;
- make recommendations to the President concerning appointments to federal judicial positions and to positions with the Department, including U.S. Attorneys and U.S. Marshalls;
- represent or supervise the representation of the United States Government in the Supreme Court of the United States and all other courts, foreign and domestic, in which the United States is a party or has an interest as may be deemed appropriate; and
- perform or supervise the performance of other duties required by statute or Executive Order.

Mr. Holder is extraordinarily qualified to perform these duties as evidenced by his more than thirty years of experience as a jurist and an attorney in both the public and private sectors. Of significant note is his Justice Department experience during the Clinton Administration and nomination by President Reagan to serve as an Associate Judge of the Superior Court of the District of Columbia.

His experience and qualifications to serve as the Attorney General of the United States is supported by the exemplary performance he demonstrated while serving as the United States Attorney for the District of Columbia.

In 1993, President Clinton nominated Mr. Holder to serve as the United States Attorney for the District of Columbia, the largest United States Attorneys office in the Nation. He served in this capacity for four years. During his tenure as United States Attorney for the District of Columbia, he created a Domestic Violence Unit, implemented a community prosecution project aimed at creating safer neighborhoods, led an effort to enhance enforcement of hate crimes and the manner in which agencies handled cases

involving the abuse of children, and implemented "Operation Ceasefire," an initiative designated to reduce violent crime by getting guns out of the hands of criminals.

The direct experience that Mr. Holder gained by serving as the United States Attorney for the District of Columbia has exceptionally prepared him to lead the Department, manage the myriad of issues that he will confront from multiple agencies, and prioritize complex and difficult issues in the context of a large administrative agency.

Furthermore, his overall qualifications to serve are enhanced and buttressed by the invaluable experience he obtained while serving as the Deputy Attorney General for the United States, second only to the Attorney General.

In 1997, President Clinton appointed Mr. Holder to serve as Deputy Attorney General in the United States Department of Justice. For a brief period, Mr. Holder served under President Bush as Acting Attorney General, prior to the confirmation of Attorney General John Ashcroft. As Deputy Attorney General, Mr. Holder supervised all of the Department's litigation, enforcement, and administrative components in both civil and criminal matters. Indisputably, this appointment gave Mr. Holder an incomparable experience in serving as the head of the top law enforcement agency.

During his tenure as Deputy Attorney General, the Department developed and issued its guidelines on the Federal Prosecution of Corporations, the so called "Holder Memorandum." As Deputy Attorney General, Mr. Holder noted, more and more often, federal prosecutors were faced with criminal conduct committed by or on behalf of corporations. Through his leadership, the Department was committed to prosecuting both the culpable individuals and, when appropriate, the corporation on whose behalf they acted. The "Holder Memorandum" provided federal prosecutors with guidance as to what factors should generally inform a prosecutor in making the decision whether to charge a corporation in a particular case. These factors provided a useful framework in which prosecutors could analyze cases and provided a common vocabulary for decisions. In today's uncertain economic environment, with corporations seeking multibillion dollar bailouts from taxpayers, the leadership and vision that Mr. Holder will bring to the Department of Justice on corporate governance and accountability is of vital importance to the overall economic recovery of the nation.

Moreover, during his tenure as Deputy Attorney General, Mr. Holder led a task force to examine existing regulation concerning the appointment of special counsels to investigate allegations involving high-level federal officials. He implemented the Department's Children Exposed to Violence Initiative and prioritized the Department's enforcement efforts in the area of health care fraud. Indeed, in order to reform the current health care system and to close the affordability disparities so that health care is available and accessible to all citizens, the Justice Department will play an important role in eliminating the unnecessary cost associated with health care fraud. Mr. Holder has already demonstrated a commitment to achieving this goal, one of President-Elect Obama's top priorities.

In addition, during his tenure as Deputy United States Attorney General, Mr. Holder targeted additional funding and expanding programs nationwide in the area of community prosecution. At the request of then President Clinton, Mr. Holder began and directed Lawyers For One America, a multi-agency, public/private partnership intended to enhance the diversity of the legal profession and to increase pro bono work performed by the Nation's attorneys. Diversifying the legal profession continues to be a top priority of the National Bar Association.

In addition to his public service, Mr. Holder has held several positions in the private sector that have given him significant preparation for execution of the duties and responsibilities of the Attorney General, including his current position as a successful litigation partner for the law firm of Covington & Burling LLP. At the firm, Mr. Holder handles complex civil and criminal cases, domestic and international advisory matters, and internal corporate investigations. Mr. Holder brings a wealth of considerable legal and administrative knowledge and experience. He would he ready to lead the Department of Justice on day one.

For these reasons, the National Bar Association urges the swift confirmation of Eric H. Holder Jr., as Attorney General of the United States.

Should you have any questions regarding our support, please do not hesitate to give me a call. I can be reached at [redacted].

Sincerely,

Rodney G. Moore

Rodney G. Moore, President
NATIONAL BAR ASSOCIATION
Mailing Address:
The Forum, Suite 400
3290 Northside Parkway NW
Atlanta, GA 30327
Tel: (678) 553-2603
Fax: (678) 553-2604
Email: moorero@gtlaw.com

cc: Members of the United States Senate Committee on the Judiciary
Alfreda Robinson, Judicial Selection Standing Committee

NATIONAL BLACK PROSECUTORS ASSOCIATION
1507 East 53rd Street, Suite 108 • Chicago, IL 60615

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Bldg
Washington, D.C. 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Bldg
Washington, D.C. 20510-6275

RE: Confirmation of Eric H. Holder Jr. as the 82nd Attorney General of the United States of America

Dear Senators Leahy and Specter:

As the President of the National Black Prosecutors Association (NBPA), I am proud and honored to write this letter on behalf of the NBPA Board and members, to express our endorsement and strong support for the historic nomination of Eric H. Holder Jr. to the position of the Attorney General of the United States of America. Mr. Holder is one of the most qualified nominees for Attorney General this country has ever seen.

Founded in 1983, the National Black Prosecutors Association is the only professional membership organization dedicated to the advancement of Blacks as prosecutors. Our membership is comprised of local, state and Federal prosecutors nationwide and also includes law students, former prosecutors, and law enforcement personnel.

Having been a prosecutor since 1990, as Philadelphia local prosecutor and now a Federal prosecutor, I believe that Mr. Holder is a perfect choice for Attorney General because he knows what the nation's prosecutors face every day. Mr. Holder brings a wealth of balanced experience to the position of Attorney General and clearly understands both the complicated nature of crime and knows the ways in which to address it. His years of public service give him a thorough understanding of why it is essential that a strong working relationship exist between federal, state and local law enforcement to fight crime. He began his legal career as a trial prosecutor as an Assistant United States Attorney with the Public Integrity Section, where as lead trial counsel, he was responsible for the prosecution of complex sensitive official corruption matters in both of the major political parties. As an Associate Judge at the Superior Court for the District of Columbia, Mr. Holder was respected for being knowledgeable in the law and fair to all of the parties involved. While the US Attorney for the District of Columbia, Mr. Holder innovatively managed the largest office in the nation, functioning as both a local district attorney and Federal prosecutor while supervising 300 lawyers and another 300 in staff involved in civil, appellate and criminal matters with a $48,000,000 budget. As Deputy Attorney General, Mr. Holder was able to fearlessly supervise all of the Department's litigation, enforcement, and administrative components in both civil and criminal matters, while exercising independence, sound judgment and character, while being criticized by members of his own party.

Mr. Holder possesses the legal experience, leadership skills, commitment and the integrity to serve with distinction as Attorney General. We urge you to act swiftly and unanimously confirm the nomination of Eric H. Holder Jr., for Attorney General of the United States. If you have any questions, feel free to contact me directly at [redacted].

Carmen M. Lineberger
President
National Black Prosecutors Association

January 12, 2009

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510
FAX 202-224-9516

Dear Chairman Leahy:

On behalf of the National Crime Prevention Council (NCPC), I am writing to express our very strong support for the nomination of Eric H. Holder, Jr. to be the Attorney General of the United States. We urge you to confirm his nomination.

Mr. Holder has an extraordinary record of public service throughout his tenure as a federal prosecutor, a trial judge, the U.S. Attorney for the District of Columbia, and Deputy U.S. Attorney General. We believe his accomplishments and independent judgment will help him lead the Department of Justice with fairness and integrity. These qualities will be vitally important as the Department helps law enforcement agencies and communities throughout the nation address emerging and persistent crime challenges, including those brought on by the recent economic downturn.

Established in 1980 by officials from nine states, the U.S. Department of Justice, the FBI, and generous private individuals, the NCPC-led Campaign and related initiatives feature McGruff the Crime Dog® and his signature message that beckons all Americans to help "Take A Bite Out of Crime®." This call to action and national citizen mobilization represents the embodiment of the fundamental principle that preventing crime is everyone's business.

During his tenure at the Department of Justice, Mr. Holder was a leading force in the implementation of the Anti-Violent Crime Initiative. This strategy helped reinforce crime-fighting partnerships at every level of government. He was also instrumental in forging important initiatives such as community courts in Washington, DC, and national programs to help domestic violence survivors and children exposed to violence at home and in the community. These partnerships have proven successful in engaging citizens, government, and the private sector and protecting some of the most vulnerable of our fellow citizens. And, as you know from your experience as a prosecutor, crime prevention saves money and lives.

Over 23 million Americans of all ages were victims of crime in 2008. Individuals victimized by these crimes can experience personal injury and significant property loss. These individuals, their neighbors, and area businesses are too often victimized further by the fear of crime and virtual victimization. The best, most cost-effective way to prevent these unacceptable assaults on Americans' sense of security is to provide citizens the information, tools, and strategies to help them learn how to stay safe in their homes, neighborhoods, schools, and workplaces. The effort to provide these resources directly, and in partnership with law enforcement, is the mission of NCPC and the National Citizens' Crime Prevention Campaign (Campaign) we lead.

2345 Crystal Drive
Fifth Floor
Arlington, VA 22202
tel 202-466-6272
fax 202-296-1356
www.ncpc.org

We believe that as the nation's top law enforcement officer Mr. Holder will take advantage of the opportunity to marshal law enforcement and government at all levels in a resurgent effort to reinforce hometown security and ensure our communities are safe places to live, learn, work, and play. NCPC and the over 400-member agencies of the Crime Prevention Coalition of America stand ready to assist the new leadership of the Department of Justice in any way possible.

Again, on behalf of the nation's leading resource in helping keep individuals, families, and communities safe from crime, we call on the United States Senate to confirm Eric H. Holder, Jr. as the next Attorney General of the United States.

I have taken the liberty of sending a similar letter to Senator Specter and ask that the letters be made part of the hearing record for Mr. Holder's nomination.

Respectfully,

Alfonso E. Lenhardt
President and CEO

MUSC
MEDICAL UNIVERSITY
of SOUTH CAROLINA

National Crime Victims
Research & Treatment Center
165 Cannon Street
MSC 852
Charleston SC 29425-8520
Tel 843 792 2945
Fax 843 792 3388
http://www.musc.edu/cvc

Honorable Barack Obama
President-elect, United States of America
C/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-Elect Obama,

On behalf of my colleagues at the National Crime Victims Research and Treatment Center, I wish to express our strong support for Mr. Eric Holder who has been nominated for the Office of U.S. Attorney General. Mr. Holder has our support for two reasons. First, he has a demonstrated reputation for being an excellent, ethical, leader with considerable administrative skills. These are attributes that are greatly needed in the Justice Department, and Mr. Holder is clearly well-qualified to assume this leadership position. Second, Mr. Holder has always been extremely supportive of crime victims, and the Justice Department really needs someone who understands and values crime victims as well as the programs that serve crime victims. Mr. Holder is the right person for this important position, and he will be an outstanding Attorney General.

Sincerely,

Dean G. Kilpatrick Ph.D.

Dean G. Kilpatrick, Ph.D.
Distinguished University Professor, Medical University of South Carolina
Director, National Crime Victims Research and Treatment Center

NCJA National Criminal Justice Association

January 7, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

Thank you for this opportunity to express our support for Eric H. Holder, Jr. to become the next Attorney General of the United States. Members of the National Criminal Justice Association (NCJA) include the state, territorial and tribal chief executive officers of criminal justice agencies charged with managing federal, state, and tribal justice assistance resources as well as practitioners from all components of the criminal and juvenile justice systems. As an association and as the representatives of their individual jurisdictions, our members work closely with many of the Department of Justice's (DOJ) agencies and bureaus, principally the Office of Justice Programs (OJP).

Mr. Holder, a former judge and U.S. Attorney for the District of Columbia, has broad experience working within the criminal justice system. He understands the challenges we in state, tribal, and local governments face as we seek to improve the functioning and efficiency of the nation's justice system.

Throughout his career, Mr. Holder has shown a deep commitment to, and passion for, using the tools of government to bring positive change to communities nationwide. While United States Deputy Attorney General, Mr. Holder oversaw the programs our members manage. He understands the goals, as well as the complexities and barriers, of the many worthy federal programs that support crime prevention and suppression in states, tribal nations, and local communities. In this environment of tight budgets and a worsening economy, it is critical that the next attorney general use all the tools of the department to keep our streets safe, protect our kids, and respond to the needs of crime victims.

Mr. Holder's experience, record of public service, and prior tenure at the DOJ demonstrate that he has the judgment, experience, temperament, depth of knowledge, and commitment to best practices to be Attorney General of the United States. We strongly urge his speedy confirmation.

Sincerely,

David Steingraber
President

Cabell Cropper
Executive Director

720 7TH STREET, N W THIRD FLOOR • WASHINGTON, D C 20001 • OFFICE (202)628-8550 • FAX (202)448-1723 • WWW NCJA ORG

National District Attorneys Association
44 Canal Center Plaza, Suite 110, Alexandria, Virginia 22314
703.549.9222/703.863.3195Fax
www.ndaa.org

December 10, 2008

The Honorable Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510

RE: Recommendation of Eric H. Holder, Jr. to be Attorney General

Dear Senator Leahy:

On behalf of the National District Attorneys Association, the oldest and largest national association of State and local prosecutors in the nation, I wish to convey our support for Eric H. Holder, Jr. to become the next Attorney General of the United States.

State and local prosecutors handle 95% of the criminal prosecutions nationally; yet too often we feel that our perspective is not heard in Washington. Mr. Holder has already recognized that and invited our association and others representing state, local and tribal segments of the criminal justice system to meet with members of the transition team in Washington. The attitude at the meeting was one of enthusiasm for the chance to be heard and we were assured that Mr. Holder will continue to ask for our input.

The members of NDAA fee a special relationship with Mr. Holder because as U.S. Attorney for the District of Columbia he was a street crime prosecutor faced with our challenges and our responsibilities to a community. Many of us also had the opportunity to meet Mr. Holder when he served with Attorney General Reno.

Although NDAA is comprised of elected officials, we are not divided by political affiliation because we believe that decisions related to the protection of our citizens from crime and improvement of the justice system should be removed from party considerations. Our 7,000 members urge the Judiciary Committee to ratify Eric Holder, Jr. as our next Attorney General.

Sincerely,

Joseph I. Cassilly
President
National District Attorneys Association

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

12/10/2008 1:16PM

National District Attorneys Association
44 Canal Center Plaza, Suite 110, Alexandria, Virginia
703.549.9222 / 703.836.3195 Fax
www.ndaa.org

The National District Attorneys Association (NDAA) is a non-partisan organization with over 7,000 members including more that 2000 elected local prosecutors. The NDAA was founded in 1950 to foster and maintain the honor and integrity of all of America's state and local prosecutors and to improve and facilitate the administration of justice in the United States. State and local prosecutors are responsible for more than 95% of the criminal prosecutions in this Country.

The National College of District Attorneys (NCDA) is the education and training division of the NDAA. The College trains thousands of local prosecutors every year. The training ranges from basic trial skills for new prosecutors to the latest developments in DNA technology and other forensic areas.

Our research and development division, American Prosecutors Research Institute (APRI), serves as a nationwide, interdisciplinary technical assistance resource center maintaining the highest standards and cutting edge practices of our profession.

Many of our members have also served as federal prosecutors. Others have moved to the Judiciary branch at both the state and federal level. Still others serve in the Legislative and Executive branch of State and Federal government including U.S. Senators and Representatives, State Senators and Representatives, and Governors and Attorneys General.

The United States Department of Justice is a critical partner of NDAA in maintaining the profession of prosecution, attracting and retaining skilled men and women to prosecution and the ongoing training of America's prosecutors. Because of that relationship the Office of Attorney General of the United States is of vital importance to the NDAA and the people we serve.

Eric H. Holder, Jr. is well known to the Department of Justice, the NDAA and the law enforcement community. After graduating from Columbia Law School in 1976, Mr. Holder joined the Attorney General's Honors Program at the Dept of Justice. Subsequently, he was assigned to the Public Integrity Section where he successfully prosecuted numerous cases of public corruption across the country. He developed a reputation as an aggressive, ethical advocate for the citizens of the Country. Following his success as a prosecutor he was appointed by President Ronald Reagan to the Superior Court of the District of Columbia where he served with distinction for the next five years. In 1993, President Bill Clinton appointed Mr. Holder the United States Attorney for the District of Columbia.

As U.S. Attorney for the District of Columbia, Mr. Holder also served as the local prosecutor responsible for the prosecution of all street crimes in D.C., a duty reserved for state and local prosecutors in the rest of the country. As in his other assignments, Mr. Holder served with distinction. President Clinton then appointed him Deputy Attorney General of the United States in 1997.

During his tenure as U. S. Attorney and Deputy Attorney General Mr. Holder worked closely with the NDAA, Congress and within the Dept of Justice to address the growing issues of Domestic Violence, Child Abuse, and many other issues of great importance to prosecutors. He was instrumental in implementing community prosecution programs and in addressing the rights of crime victims.

The National District Attorneys Association has examined the career of Eric Holder and has worked with him on various criminal justice matters for many years. As a result, The NDAA finds Eric H. Holder, Jr. to be an **exceptionally qualified candidate** for the Office of Attorney General of the United States of America.

Issued by the
Board of Directors of the National District Attorneys Association
By and through the Executive Committee

Joseph I. Cassilly, President
State's Attorney, Harford County, MD

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District Attorney, San Mateo County, CA

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Michael Wright, Member
Prosecuting Attorney, Warren County, MO

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FRATERNAL ORDER OF POLICE®

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PHONE 202-547-8189 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

8 January 2009

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

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

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of Eric H. Holder, Jr. to be the next Attorney General of the United States.

The FOP undertook an exhaustive examination of Mr. Holder's record of public service, from his first twelve years in the U.S. Department of Justice in the Public Integrity Section, to his rulings from the bench of the Superior Court of the District of Columbia and his role as a prosecutor while the U.S. Attorney, to his service as Deputy Attorney General and Acting Attorney General of the United States. Our review concluded that his positions and actions were consistent with the goals and objectives of the Fraternal Order of Police, and we support his nomination.

The FOP brings a unique perspective to this nomination because of our familiarity with Mr. Holder's record in the courtroom, both as a judge and as a U.S. Attorney. As part of our review, we consulted with the leadership of the District of Columbia FOP Lodge and spoke with many of our members from the numerous law enforcement agencies in the city. Our members reported that they found Judge Holder fair and U.S. Attorney Holder an able and aggressive prosecutor. Our D.C. members strongly support the decision to endorse his nomination to be our nation's top law enforcement officer.

Finally, we were privileged to have the opportunity to discuss personally with Mr. Holder a number of different issues, including his vision for the Department of Justice in the new Administration. Mr. Holder stated that the FOP will remain engaged and involved in the full spectrum of public safety issues and will be consulted during the formulation of our nation's crime-fighting strategies and policies.

—BUILDING ON A PROUD TRADITION—

I believe that the President-elect has made a fine choice in Eric H. Holder, Jr. to be the next Attorney General of the United States, and I urge you and your Committee to favorably report his nomination in an expeditious manner. We look forward to working with him as he leads the dedicated employees of the Justice Department to even greater efforts in the public interest. 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

National Leadership Council for Crime Victim Justice
Post Office Box 15551
Washington, DC 20003

November 25, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden, Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

It is truly an honor for the National Leadership Council for Crime Victim Justice to strongly support your nomination of Eric H. Holder, Jr. to be the Attorney General of the United States.

The Council has developed a list of crime victim policy recommendations for the nation that we could make available to you upon request. Our multi-partisan members and affiliates represent decades of experience from almost all of the states. A list of those proposing the recommendations is also available.

For over 20 years, Mr. Holder has been a local and national leader in promoting the rights and needs of crime victims and survivors. As a Superior Court judge in the District of Columbia, he came to understand first-hand the traumatic impact of crime on victims through the domestic violence and child abuse cases he heard.

As the U.S. Attorney for the District of Columbia, he made victims' rights and needs an important priority in his agency. He greatly expanded his victim/witness unit, which became a model for the Nation, creating designated victim advocate positions for victims of domestic violence and sexual assault, and for the surviving family members of homicide victims. Through his leadership, the DC Children's Advocacy Center was created, and remains today a beacon of hope for child victims and their families. His commitment to child victims was also evidenced by his creation of a "Kids Court" to promote child-friendly practices in DC courts.

As the U.S. Department of Justice Deputy Attorney General, Eric Holder continued his commitment to victims' issues simply by promoting the important work of the Office for Victims of Crime (OVC) within the Office of Justice Programs. OVC's landmark "Children Exposed to Violence" initiative, which produced a wide range of resources that addressed the needs of children who witness violence in their homes, neighborhoods and schools, would *not* have happened without his leadership and support.

Crime victims, survivors and those who serve them know that they will have a strong advocate and true visionary for crime victim issues if Eric Holder is confirmed as the Attorney General for the United States. He truly understands the many needs of crime victims, and the hurdles that they face in their recovery.

As a group of long-time victim advocates, we are grateful to you for nominating Eric Holder to be the U.S. Attorney General, and strongly support this nomination.

If you have any questions about this letter of support, please contact me at [redacted] or at [redacted]...

Sincerely,

SHARON J. ENGLISH
Council Coordinator and Spokesperson

NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS COALITION

P.O. Box 2456 West Covina, California 91793-2456 • (626) 960-3328 • Fax (626) 960-3328

www.natlnarc.org

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Narcotic Officers' Assn. of Hawaii
National HIDTA Directors' Assn.
National Drug Enforcers Officers' Assn.
Nevada Narcotic Officers' Assn.
New England Narcotic Enforcement Officers' Assn.
New Jersey Narcotic Enforcement Officers' Assn.
County Narcotic Commanders Assn. of New Jersey
New Mexico Narcotic Officers' Assn.
New York Organization of Narcotic Enforcers
North Carolina Narcotic Enforcement Officers' Assn
Narcotic Assn. of Regional Coordinating Officers' of Ohio
Assn. of Oklahoma Narcotic Enforcers
Oregon Narcotics Enforcements Assn.
Pennsylvania Narcotic Officers' Assn.
Puerto Rico Narcotic Officers' Assn.
R.I.S.S. Projects
Tennessee Narcotic Officers' Assn
Texas Narcotic Officers' Assn
Utah Narcotic Officers' Assn
Washington State Narcotics Investigators' Assn
Wisconsin Narcotics Officers' Assn.

December 23, 2008

The Honorable Patrick Leahy
Chairman
The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Narcotic Officers' Associations' Coalition (NNOAC) and the more than 70,000 law enforcement officers we represent, I'm pleased to offer my full support for the nomination of Eric Holder for the office of Attorney General of the United States.

Mr. Holder possesses an outstanding mix of legal, managerial and policy expertise desperately needed within the Department of Justice. Given the critical national security issues the Department of Justice is grappling with today, is has never been more important to have a steady, experienced leader like Mr. Holder serving as Attorney General.

As state and local law enforcement continue to battle home-grown criminals across America, we look forward to working with an Attorney General who appreciates the challenges we face. While serving as Deputy Attorney General under Attorney General Janet Reno, Mr. Holder built a strong record of prosecuting drug traffickers, gangs and violent offenders. His background is important since drug traffickers launch biochemical attacks daily on America's communities, resulting in more than 20,000 overdose deaths each year.

Mr. Holder is a dedicated and well qualified professional and we can think of no one more qualified than he to serve as United States Attorney General. Please feel free to contact me at [redacted] or [redacted] if you require further information as you work through the nomination process. Correspondence may be sent directly to me at PO Box 36102, San Francisco, CA 94102. Thank you again for taking time to review our position.

Sincerely,

Ronald E. Brooks
President

12/23/2008 10:20AM

NATIONAL NETWORK TO END DOMESTIC VIOLENCE
NNEDV

2001 S STREET, NW
SUITE 400
WASHINGTON, DC 20009

www.nnedv.org

January 14, 2009

Senator Patrick Leahy
Chairman
Senate Committee on Judiciary
Dirksen Room 224
Washington, D.C. 20510

Senator Arlen Specter
Ranking Member
Senate Committee on Judiciary
Dirksen Room 152
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the members of the National Network to End Domestic Violence (NNEDV) comprising 56 state and territory domestic violence coalitions and millions of victims of domestic violence, I am pleased to express support for the nomination of Eric H. Holder, Jr. as Attorney General of the U.S. Department of Justice.

Mr. Holder is supremely qualified to be the Attorney General given his distinguished legal career and record as a staunch victim-centered advocate for justice. Throughout Mr. Holder's five year tenure as an Associate Judge of the Superior Court of the District of Columbia he served with integrity, making sound decisions that held offenders accountable. As the first African American appointed as United States Attorney for the District of Columbia, Mr. Holder instituted a Domestic Violence Unit to address the growing caseload following the implementation of the Violence Against Women Act (VAWA), which criminalized domestic violence. Further, following his appointment as Deputy Attorney General, Mr. Holder aggressively prosecuted interstate domestic violence crimes and offered significant guidance on how to implement VAWA.

Mr. Holder recognizes that in order to break the cycle of violence and curb criminal behavior, greater attention must be focused on programs addressing prevention and intervention. While serving as the Deputy Attorney General, Mr. Holder started the Child and Family Abuse Unit in Kentucky – a model unit specifically focused on these crimes. In addition, Mr. Holder demonstrates his personal commitment to these issues through his involvement with numerous community youth organizations.

The Department of Justice needs a leader with a superior legal mind, well-versed on the complexities of legal issues facing our nation. The Department of Justice needs a leader who will not compromise the integrity of the law for personal gain. Most importantly, the Department of Justice needs a leader who will tenaciously fight for victims and who will support the funding and implementation of key programs that aid in breaking the cycle of violence.

Mr. Holder is exceptionally qualified to lead the U.S. Department of Justice as Attorney General and I am certain that his leadership will greatly benefit victims. NNEDV urges his swift confirmation. If you have any questions, please do not hesitate to contact Tralonne R. Shorter, Public Policy Director at the National Network to End Domestic Violence at 202.543.5566 or via email at tshorter@nnedv.org.

Sincerely,

Sue Else
President

National Network to End Violence Against Immigrant Women --- Co-chaired by:

Web site: www.immigrantwomennetwork.org

Immigrant Women Program, Legal Momentum
1101 14th Street, N.W. Suite 300
Washington, DC 20005
(202) 326-0040
iwp@legalmomentum.org

Family Violence Prevention Fund
383 Rhode Island St., Suite 304
San Francisco, CA 94103
(415) 252-8900
immigration@endabuse.org

Advanced Special Immigration for Survivors Technical Assistance (ASISTA)
515 28th St.
Des Moines, Iowa 50312
questions@asistaonline.org

January 13, 2009

Senator Patrick Leahy
Chairman
Judiciary Committee
Dirksen Senate Office Building, Room 224
Washington, D.C. 20510

Senator Arlen Specter
Ranking Member
Judiciary Committee
Dirksen Senate Office Building, Room 152
Washington, D.C. 20510

Re: Nomination of Eric Holder for Attorney General

Dear Chairman Leahy and Ranking Member Specter,

We are writing as the National Network to End Violence Against Immigrant Women (Network)[1] to express our strong and unequivocal support for Eric Holder for Attorney General. The U.S. Department of Justice is one of the federal agencies charged with ensuring that these laws are enforced in states and by the federal government in a manner that is sensitive to immigrant victims' safety. We strongly support Mr. Holder to become Attorney General of the United States because throughout his career he has demonstrated a deep understanding of the impact that crime victimization has had on the lives of women and children in the United States. Both as a judge and as a prosecutor, Mr. Holder has repeatedly demonstrated the true sensitivity to the needs of immigrant victims from diverse communities that is rare to encounter.

The Network, through its Washington representative Legal Momentum, has worked for many years with Democratic and Republican members of the House and Senate Judiciary Committees crafting policy legislation that accomplishes dual purposes – promoting successful prosecution of perpetrators who commit crimes against immigrant women and children and

[1] The Network is a 15-year old broad-based coalition of over 3,000 organizations and individuals that advocates for, provides services, and offers assistance to immigrant victims of domestic violence, trafficking, sexual assault and child abuse. Our members include victim advocates, attorneys, social services providers, immigrant survivors, educators, prosecutors, and other professionals including experts who formerly worked in government as DHS and law enforcement officials. We are committed to ending violence against immigrant women, providing services, and offering language accessible, culturally competent assistance to immigrant victims of domestic violence, sexual assault, and trafficking. The Network is co-chaired by The Immigrant Women Program of Legal Momentum, The Family Violence Prevention Fund and The ASISTA Immigration Technical Assistance Project.

securing a range or legal protections including protection from retaliation through deportation for immigrant crime victims and their children.

Our bipartisan work with the House and the Senate over the course of 15 years has led to inclusion of protections and humanitarian assistance for immigrant crime victims in numerous pieces of legislation. This legislation has been successful in supporting victims and helping them find the courage to come forward and collaborate with law enforcement officials in prosecuting the criminals who subjected them to human trafficking, domestic violence, child abuse, sexual assault and other often violent crimes. We have worked closely with many Senators in drafting and securing passage of several pieces of legislation that have dramatically improved safety for immigrant crime victim in the United States and have increased the ability of federal and state prosecutors to convict perpetrators. These include particularly: The Violence Against Women Act (VAWA) of 1994 (Kennedy, Biden, Simpson, Hatch); VAWA Confidentiality and Access to Benefits for Immigrant Victims in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Simpson, Kennedy), Access to Legal Services for Immigrant Victims (Kennedy 1997 and Durbin 2005), VAWA 2000 and the Trafficking Victim's Protection Act of 2000 (Abraham, Brownback, Hatch, Kennedy, Biden, Leahy, Wellstone), VAWA 2005 (Specter, Biden, Kennedy, Leahy, Durbin, Brownback) and the Trafficking Victims Protection and Reauthorization Act of 2008 (Brownback, Biden, Kennedy, Leahy).

One of the National Network's co-founding organizations was Ayuda, a legal services program serving immigrant domestic violence victims. In the 1980's, when Mr. Holder was a D.C. Superior Court Judge, Ayuda attorneys appeared before him in numerous cases in which they were representing immigration victims of domestic violence seeking civil protection orders, child support and custody of their children. Through personal experience in our work in D.C. representing immigrant victims, we witnessed first hand how in his role as a D.C. Superior Court Judge and as U.S. Attorney for the District of Columbia, Mr. Holder routinely encountered victims and litigants who came from a wide range of cultural backgrounds. He always provided access to a fair trial for all.

We are certain that under his leadership the U.S. Justice System in the United States will make great strides toward the goal of guaranteeing that all crime victims are able to access the relief our justice system has to offer, regardless of their cultural background, language abilities, country of origin, or immigration status. Further Mr. Holder has always recognized the importance of respecting victims both as an act of compassion and more importantly, as an essential component of good law enforcement

While serving as U.S. Attorney for the District of Columbia, Mr. Holder showed great concern for victims of domestic violence and child abuse. He created a specialized domestic violence unit staffed with prosecutors specially trained to more effectively handle cases of violence against women and their children. Mr. Holder showed himself to be thoughtful, fair and determined to help those who had been victimized receive justice and to help those who were accused receive fair treatment. He also demonstrated his keen ability to offer culturally appropriate assistance to victims and their families.

Mr. Holder is also a tireless advocate for the protection of children from violence. As Deputy Attorney General, Mr. Holder led several initiatives and projects aimed at improving

services and protections for victims. He directed the Justice Department's Children Exposed to Violence Initiative, and in this capacity, he developed a comprehensive strategy to improve the way child abuse cases were handled and to minimize harm to traumatized children. His leadership and advocacy on these issues at the Justice Department also extended to supporting a strong victims' assistance program and launching the Safe Start Initiative, designed to help children exposed to domestic violence and other forms of violence. Our experience in the field and as advocates has taught us that offering services for children exposed to domestic violence is one of the single most effective strategies for preventing physical, sexual and youth violence.

We know you will hear extensively about Mr. Holder's acute legal mind, leadership abilities, and tough law enforcement background. We would like you to also know that he has demonstrated over the years a great compassion for victims of crime, including immigrant and non-English speaking victims. He has equally demonstrated a willingness to hold offenders accountable and the good sense to simultaneously invest in prevention programs focused on vulnerable youth as a means of ultimately breaking the cycle of violence.

Based on our knowledge of his record and our own personal experiences, we ask that you confirm him as quickly and with as much support as possible. Victims of violence of all cultural backgrounds, including women and children who have been brutalized by family violence and sexual abuse, need his leadership at the Department of Justice. We ask that you support his nomination as vigorously as possible.

If you have any questions please do not hesitate to contact Leslye E. Orloff, Director, Immigrant Women Program, Legal Momentum [redacted] or Kiersten Stewart at the Family Violence Prevention Fund, [redacted].

Sincerely,

Leslye E. Orloff

The National Network to End Violence Against Immigrant Women

Legal Momentum (Washington, D.C. and New York)
The Family Violence Prevention Fund (San Francisco, Boston, Washington, D.C.)
ASISTA, Advanced Special Immigration for Survivors Technical Assistance (Des Moines, Miami, Boston, San Francisco, Seattle)

December 8, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

NOVA

Dear President-elect Obama,

On behalf of the Board of Directors of the National Organization for Victim Assistance, I want to congratulate you for an extremely successful presidential campaign that demonstrates our country's need for meaningful change and your timely leadership to bring about that change.

Your nomination of Eric Holder for United States Attorney General reflects your dedication to serve victims of crime. Mr. Holder's credentials and commitment have the depth and breadth necessary to serve in the nation's chief law enforcement position. His devotion to upholding justice for victims is significant and essential especially when primary stakeholders in that pursuit are the victims.

We commend you for taking decisive action to appoint such a capable leader over the Department of Justice. With the significant challenges that crime victims and those who serve them are facing today, we are renewed at the prospect of visionary direction that can, once again, give victims a voice.

We also extend to your our very best wishes and support in your role as President of the United States.

Most sincerely,

A. Robert Denton
President

510 King Street, Suite 424 Alexandria, VA 22314 www.trynova.org office: 703.535.NOVA (6682) fax: 703.535.5500

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES

HUBERT T. BELL, JR. OFFICE COMPLEX
4609 PINECREST OFFICE PARK DR. • SUITE F
ALEXANDRIA, VA 22312-1442
(703) 658-1529 • FAX: (703) 658-9479
Website: http/www.noblenational.org

Jessie Lee, Jr.
Executive Director

Joseph A. McMillan
National President

December 19, 2008

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
(at Constitution and Delaware)
Washington, DC 20510

Dear Senator Leahy:

As Executive Director of the National Organization of Black Law Enforcement Executives (NOBLE) and on behalf of the NOBLE Executive Board, it gives me great pleasure to support the endorsement of Mr. Eric Holder as U.S. Attorney General.

Mr. Holder has a long history of commitment to public service. His 10 years as a prosecutor in the Justice Department, immediately following his graduation from law school, and his subsequent appointments by President Bill Clinton as U.S. Attorney for the District of Columbia, prosecuting violent criminals and corrupt public officials, and later as Deputy Attorney General has afforded him the experience to ensure that the Office of the Attorney General will be one of integrity, commitment to upholding the laws of the United States, and one that will place enforcing the law above politics.

During Mr. Holder's tenure as Deputy Attorney General, NOBLE had the pleasure of meeting with Mr. Holder on various issues of mutual interest. During those meetings, Mr. Holder's legal expertise and concern for the issues that were germane to NOBLE were demonstrated and greatly appreciated.

NOBLE is an incorporated, non-profit organization, representing approximately 3,500 members nationwide, of primarily law enforcement chief executive officers and command-level officials for federal, state, county, and municipal law enforcement agencies, criminal justice educators, and persons interested in furthering the goals and objectives of the organization. NOBLE now has over 57 chapters throughout the U.S. and the Caribbean. The national organization was first conceptualized during a 1976 symposium on reducing crime in urban low-income areas, sponsored by the Joint Center for Political Studies, the Police Foundation, and the Law Enforcement Assistance Administration.

Known as the "conscience of law enforcement," NOBLE is one of most respected law enforcement associations in the nation. Providing some of the best training for law enforcement officials and mentoring programs for aspiring CEO's in law enforcement gives us a keen insight on necessary qualifications for persons seeking CEO positions in law enforcement—individuals who must be prepared for the unique challenges of today that criminal justice officials are facing on a daily basis.

The Honorable Patrick Leahy
Page 2
December 19, 2008

It is with this keen insight that NOBLE strongly supports President-Elect Barack Obama's appointment of Mr. Eric Holder for U.S. Attorney General.

Should you have questions or desire additional information, please do not hesitate to contact me at (703) 658-1529.

Sincerely,

Jessie Lee
Executive Director

JOSEPH A. McMILLAN
National President

The National Organization of Victims
Of "Juvenile Lifers"
www.jlwopvictims.org

December 2, 2008

To Whom It May Concern:

We are writing in strong support for the nomination of Eric Holder to be the next Attorney General for the United States of America.

We are a national group of murder victims' family members who live in ten different states who share the common bond of having our family members murdered by killers who were under age 18, but who were transferred from the Juvenile system to the adult Criminal Justice system and were sentenced to life because of the exceptionally heinous nature of their crimes. We have been, as a group, acutely aware of the many ways that Victims Rights and the enforcement of victims' rights need to be improved upon in the United States. Some of these juvenile offenders are extremely mature, cold, calculating killers who represent a grave danger to our society and we need wise and strong leadership to handle the many complicated aspects of our victimization. We represent a very extreme example of the extremely difficult problems that face law enforcement and the criminal justice system in our nation.

We believe that Eric Holder will be an excellent leader for the nation's top law enforcement position, the Attorney General. We know that he will bring expertise, commitment, wisdom, and experience. And we are confident that he will be the voice for victims rights that many of us know is greatly needed.

Please proceed with his confirmation process in a speedy and positive manner and let us all work together to help bring justice for the many victims of violent crime in the United States of America.

Sincerely,

Jennifer Bishop, Secretary
The National Organization of Victims of Juvenile Lifers
NOVJL
www.jlwopvictims.org

January 14, 2009

VIA FACSIMILE

Dear Senator,

On behalf of the National Partnership for Women & Families, I write to express our strong support for the nomination of Eric Holder, Jr. to be Attorney General of the United States. Mr. Holder will bring a breadth and depth of experience to the position of Attorney General that is sorely needed to rebuild and reinvigorate the Department of Justice. It is vitally important that the Department of Justice – the nation's civil rights law firm – inspires the confidence of individuals across the country from all walks of life, as an agency with an unyielding commitment to equal justice under law and to vigorous enforcement of laws protecting our civil rights and civil liberties. We believe Mr. Holder is uniquely qualified to lead the Department at this critical time, and we urge you to vote in favor of his swift confirmation.

The National Partnership is a nonprofit, nonpartisan organization that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. Central to our mission is an unflinching commitment to equal opportunity and equal treatment under the law. We believe Mr. Holder's record demonstrates his dedication to these core principles.

- As a public servant, Mr. Holder has proven both his integrity and compassion for those the law is designed to protect. He has worked to root out corruption and hold public officials accountable for violations of the public trust, approving meritorious investigations and prosecutions of Democratic and Republican officials alike.
- As a United States Attorney in the District of Columbia, Mr. Holder emphasized prosecution of hate crimes, and spearheaded initiatives working with and protecting women and children from domestic abuse.
- Mr. Holder has been a strong advocate throughout his career in support of equal employment opportunity and gender and racial diversity in the legal and other professions.
- Mr. Holder has developed a reputation of the highest caliber with regard to his legal skills and his ability to apply the law in a fair, impartial manner. It is these qualities that led to his appointment as Deputy Attorney General by President Bill Clinton, and as a judge by President Ronald Reagan. It also is why his nomination enjoys the support of numerous lawyers and colleagues of distinction, including former Attorney Generals and Department of Justice and law enforcement officials of every political stripe.

Mr. Holder's talents and skills are particularly suited for the role of Attorney General in the wake of recent controversies about the Department's declining enforcement numbers in key areas and about politicization of the Department's enforcement efforts. The Civil Rights Division's Employment Litigation Section, for example, has seen a marked decline in the number of Title VII cases filed over the past eight years. The Section has filed a little over half as many cases

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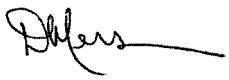
email: info@nationalpartnership.org ~ web: www.nationalpartnership.org

challenging sex-based discrimination in employment under President Bush as it did under President Clinton. It has brought fewer than half as many such cases alleging a systemic pattern and practice of sex-based discrimination as were brought during the Clinton administration.

This record falls far short of what our country has come to expect of the agency many rely on to uphold and enforce our national commitment to equality and fairness in the workplace.

We believe that Eric Holder has the talent, skills, and commitment to be an exemplary Attorney General – the right candidate for the difficult task of guiding the Justice Department back to its historic core mission of vigorous law enforcement and protecting the rights of all Americans, regardless of their personal characteristics or ideologies. His leadership is urgently needed and we ask that you join with us in enthusiastic support of his nomination.

Sincerely,



Debra L. Ness
President, National Partnership for Women & Families

NATIONAL RIFLE ASSOCIATION OF AMERICA
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030

January 9, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter,

I am writing to express the National Rifle Association's serious concerns regarding the nomination of Eric Holder as Attorney General of the United States. Mr. Holder has long opposed the Second Amendment's guarantee of an individual right to keep and bear arms, supported extremely restrictive laws that curtail gun owners' rights, and, in one particularly egregious case, was personally involved in prosecuting a gun owner under circumstances where any prosecution at all can only be considered grossly excessive.

While serving as Deputy Attorney General, Mr. Holder said in an appearance on ABC's "This Week" that the Second Amendment "talks about bearing guns in a well regulated militia. And I don't think anywhere it talks about an individual." He said he was not "at all certain that any court [had] ever said" otherwise, disregarding numerous cases in which the U.S. Supreme Court and lower federal and state courts had either stated or clearly implied that the Second Amendment does, indeed, protect an individual right.

Since returning to private practice, Mr. Holder joined a number of other former Justice Department officials in a brief in the case of *District of Columbia v. Heller*, arguing that the District of Columbia's ban on handguns and self-defense in the home was constitutional because the Second Amendment "does not protect firearms possession or use that is unrelated to participation in a well-regulated militia." The Supreme Court universally rejected that view. We believe Mr. Holder's strong and clear personal views on this issue will make it difficult, if not impossible, for him to faithfully protect the Second Amendment rights of law-abiding Americans as Attorney General.

Consistent with his belief that Americans have no individual right to own a firearm, Mr. Holder has supported extremely restrictive gun control legislation. This

included support for a Clinton administration gun control package in 1999 (introduced by Congressman John Conyers as H.R. 1768) that included the following provisions:

- A three-day waiting period on the purchase of handguns, although licensed firearms dealers had already been required for several months to conduct a federal instant background check on all gun buyers
- An increase in the age limit for handgun possession—not just purchase—to 21, treating voters, jurors and members of the armed forces as "juveniles"
- Imposition of criminal liability on adults who allow juveniles to gain access to firearms under some circumstances
- A limit on handgun purchases to one per month
- A requirement for firearms dealers to make monthly reports to ATF of all firearms they receive from non-licensees. This provision would have laid the groundwork for national federal registration of all firearm purchases

Mr. Holder continued this advocacy after leaving the Department. In October 2001, he wrote an op-ed in the *Washington Post* in which he proposed that the Bureau of Alcohol, Tobacco, Firearms and Explosives should get "a record of every firearm sale," despite the fact that building a Government database of gun owners is a violation of federal law and would be the equivalent of a national gun registration system.

Mr. Holder's opposition to the rights of gun owners has not been limited to legislative advocacy. It includes at least one especially abusive prosecution.

When Mr. Holder was the U.S. Attorney for the District of Columbia, he was involved in the prosecution of Robert Bieder, an individual who was arrested for carrying a pistol without a D.C. license. Mr. Bieder was a New York City resident. As a small businessman, he had been a victim of several burglaries and armed robberies. As a result, he received a city permit to carry a handgun—a permit granted only rarely in that city.

After visiting Virginia with his family, Mr. Bieder decided to stop in Washington, D.C. to show his young daughter the Capitol. In a misguided attempt to comply with the law, Mr. Bieder was arrested when he tried to leave his gun with the Capitol Police for safekeeping. (Mr. Bieder did this because New York authorities warn permit holders not to leave firearms in unattended vehicles.) After a five-year process that included two trials and two appeals, Mr. Bieder's conviction was upheld, and he was punished with a $150 fine.

Mr. Holder was on the briefs for both appeals. Pursuing this trivial case to such lengths imposed substantial costs on taxpayers, with no benefit at all to public safety. A reasonable prosecutor might have exercised his discretion by sending Mr. Bieder home to New York with a far better understanding of the District's strict gun laws. That Mr. Holder chose to do otherwise raises serious questions about his judgment.

In contrast to that case, Mr. Holder was among those in the Clinton administration who strongly resisted a national expansion of Project Exile, a successful anti-crime

program in Richmond, Virginia that used true "zero-tolerance" federal prosecution of convicted felons, drug dealers and armed robbers to achieve a remarkable reduction in that city's murder and violent crime rates. Despite the program's success in Richmond, Philadelphia, and other cities in which it was implemented, Mr. Holder dismissed NRA's and congressional efforts to implement it nationwide as a "cookie-cutter approach."

In light of his past positions and actions, we believe that Mr. Holder's overall record raises substantial concerns about his ability to perform the duties of Attorney General in a manner that respects the Second Amendment rights of law-abiding gun owners. We hope you will consider our concerns carefully as you review his nomination. Should you need any further information, please do not hesitate to contact me personally.

Sincerely,

Wayne LaPierre
Executive Vice President
National Rifle Association

Chris W. Cox
Executive Director
National Rifle Association Institute
for Legislative Action

NATIONAL SHERIFFS' ASSOCIATION
1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314-3490 • 703-836-7827 • Fax 703-683-6541
WWW.SHERIFFS.ORG • NSAMAIL@SHERIFFS.ORG

December 22, 2008 VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9516

The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee
711 Hart Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9102

Dear Senators Leahy and Specter:

On behalf of the National Sheriffs' Association, I am writing to express our strong support for the nomination of Eric Holder to be the Attorney General of the United States. We urge you to confirm his nomination without delay.

Mr. Holder has an outstanding record of public service in his role as a federal prosecutor, a trial judge, the United States Attorney for the District of Columbia and the Deputy Attorney General for the Department of Justice. We believe that Mr. Holder is the right candidate to lead the Department of Justice to guide us in strength, respect and independence and ensure the fair and impartial administration of justice for the nation.

During his tenure at the Department of Justice, Mr. Holder was instrumental in the implementation of the Anti-Violent Crime Initiative, a strategy created to forge partnerships among law enforcement agencies at every level of government. A key element in the success of the Anti-Violent Crime Initiative was community policing, an idea developed by local law enforcement and implemented by the Department's Office of Community Oriented Policing Services. The COPS program is undoubtedly the most successful federal law enforcement program in the nation's history.

In addition to his record of fostering a strong partnership with local law enforcement from an "enforcement" perspective, Mr. Holder has demonstrated his commitment to crime prevention through his strong support for innovative community policing strategies aimed at domestic violence.

As elected law enforcement officials, sheriffs not only respond to crimes and enforce the law, but are intimately attuned to the needs of the communities that we serve. We continue to be steadfast in our outreach efforts to victims of crimes, youths, to parents

and to the elderly to build understanding and trust, all with the aim of making our neighborhoods safer places to live.

The nation's chief law enforcement officer must understand that to overcome the pathological environment of distrust which may exist between law enforcement and the communities they serve, we must continue to collectively reassess our methods for fighting crime. Without a strong partnership at all levels of government, the ultimate consequences are too great and troublesome, including increased criminality in affected neighborhoods and citizen reluctance to participate in the criminal process as the legitimacy of law and its enforcers are undermined.

But this mission will only be fully realized through the collaborative efforts of the law enforcement agencies and the community by employing effective community policing strategies and problem solving techniques, supported by aggressive enforcement of federal, state, and local laws.

It is in this spirit of partnership and a holistic approach to criminal justice that the National Sheriffs' Association fully supports the nomination of Mr. Holder to be the nation's top law enforcement officer. The nation's sheriffs are committed to doing everything we can to expand the kind of partnership and dialog essential to engender community confidence throughout the country.

As one of the largest law enforcement organizations in the nation, the National Sheriffs' Association is calling on the United States Senate to approve Eric Holder to be the next Attorney General of the United States.

Respectfully,

Sheriff David A. Goad
President

Aaron D. Kennard
Executive Director

Serving Our Nation's Sheriffs Since 1940

12/22/2008 2:26PM

December 23, 2008

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224
Washington, D.C. 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-224
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Troopers Coalition (NTC) and its 40,000 State Troopers and Highway Patrol Officers, I am pleased to voice our support for the Honorable Eric Holder's nomination for the office of United States Attorney General. The NTC believes Eric Holder possesses the strength of character and intellectual acumen to lead our nation's law enforcement efforts.

Attorney General nominee Holder presents a distinguished career as a prosecutor, Superior Court Justice and Deputy Attorney General. This unmatched experience will prove to be invaluable in directing our law enforcement efforts at this difficult time in history.

We appreciate your consideration of Attorney General nominee Eric Holder and urge his speedy confirmation to the office of Attorney General. Thank you for your attention in this vital matter.

Respectfully,

Dennis Hallion
Chairman
National Troopers Coalition
1308 9th Street
Washington, DC 20001
(202) 387-1682

January 14, 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 Eric H. Holder, Jr. to be Attorney General of the United States*

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 Eric H. Holder, Jr. to be Attorney General of the United States.

As the nation's chief law enforcement official, the Attorney General is responsible for enforcing federal laws, including laws of the utmost importance to women such as Title VII, Title IX, the Freedom of Access to Clinic Entrances Act (FACE), and the Violence Against Women Act (VAWA), and core constitutional protections. Consequently, the actions of the Attorney General have a serious impact on the legal rights and very futures of women across this country.

As a former United States Attorney, judge, and Deputy Attorney General, Mr. Holder is eminently qualified for this position. As an attorney in the Department of Justice's Public Integrity Section and as Deputy Attorney General, he repeatedly demonstrated the wisdom, judgment, breadth of legal experience and independence necessary in an Attorney General. Further, throughout his career, Mr. Holder has worked to protect and further legal rights and protections crucial to the women of this country. Specifically, Mr. Holder has a strong record with regard to combating violence against women, increasing diversity in the legal profession, and enforcing civil rights and constitutional protections.

As the U.S. Attorney for the District of Columbia, Mr. Holder made combating domestic violence a priority. Among other initiatives, he created a Domestic Violence Unit and staffed the unit with specially trained prosecutors to combat this pervasive problem.

11 Dupont Circle # Suite 800 # Washington, DC 20036 # 202.588.5180 # 202.588.5185 Fax # www.nwlc.org

Mr. Holder also has an extensive record of fostering diversity in the legal profession. As Deputy Attorney General, he led a Clinton Administration initiative that eventually resulted in the formation of Lawyers for One America, a non-profit organization designed to increase diversity within the legal profession and provide pro bono legal services to underserved communities. Mr. Holder served on the Board of Lawyers for One America for four years. In addition, both in government service and since entering private practice, he has written and spoken extensively on the need to foster diversity in the legal profession, including increasing the number of women in leadership positions in law firms and in the legal community more broadly.

Moreover, as Deputy Attorney General, Mr. Holder worked to ensure that our nation's laws designed to promote fairness and equality were enforced. He supported strong stands taken in key cases involving Title VII, Title IX, FACE, and VAWA, among other statutory and constitutional protections of equality and privacy that women depend on for access to jobs, to education, to adequate health care and to an equal place in our society. And he supported sorely needed legislation that would qualify bias-motivated crimes committed on the basis of gender and sexual orientation for enhanced penalties under federal hate crimes laws.

Mr. Holder's nomination could not come at a more crucial time. Over the past eight years, the Department of Justice 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 Department has been politicized and the excellence of the career attorney ranks has been tested and undermined.

- During the Bush Administration, the Employment Section 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 means fewer jobs, lower paychecks and more suffering and struggle for women and their families.

- It took positions in Supreme Court cases that cut back on women's pension rights and ability to secure justice for the equal pay and other discrimination they suffered, cases like *Hulteen v. AT&T*, 498 F.3d 1001 (9th Cir. 2007), *cert. granted*, 76 U.S.L.W. 3672 (U.S. June 23, 2008) (No. 07-543), and *Ledbetter v. Goodyear Tire*, 550 U.S. 618 (2007), that simply upended settled law and longstanding government interpretations.

- The Department of Justice, which is responsible for criminal and civil actions stemming from violations of FACE, has 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.

- The Department was instrumental in the decision of the Small Business Administration to issue regulations that gut the Women's Procurement Program, a federally authorized affirmative action program designed to ensure that women-

owned small businesses receive a fair share of federal contracting opportunities. It also brought a Title VII challenge against a program that would have provided fellowships to minorities and women to pursue post-graduate work in science-related fields.

- The Department, and the Attorney General, advise the President on nominations to Article III judgeships. Many of President Bush's nominees to the federal courts of appeal had records that demonstrated hostility to reproductive rights, and not a single one was known to publicly support the vital constitutional rights set forth in *Roe v. Wade*. Similarly, both of Bush's nominees to the Supreme Court had records of hostility to *Roe*, and, once confirmed, voted in *Gonzales v. Carhart* to undermine core principles of *Roe v. Wade* that protect women's health.

It is therefore crucial to confirm as Attorney General an individual who will restore the Department of Justice's ability to fully enforce the rights and legal protections so important to all Americans, and especially to women, and who will make the enforcement of those rights a priority of the Department.

Based on the foregoing, we believe that Mr. Holder is such an individual. Mr. Holder has the experience and the commitment to equal justice to restore the mission and vitality of the Department of Justice at this critical moment. Consequently, the Center offers its strong support of Eric H. Holder, Jr. to be Attorney General of the United States, 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

January 16, 2009

Intelligence Court Rules Wiretapping Power Legal

By ERIC LICHTBLAU

WASHINGTON — A federal intelligence court, in a rare public opinion, is expected to issue a major ruling validating the power of the president and Congress to wiretap international phone calls and intercept e-mail messages without a court order, even when Americans' private communications may be involved, according to a person with knowledge of the opinion.

The court decision, made in December by the Foreign Intelligence Surveillance Court of Review, is expected to be disclosed as early as Thursday in an unclassified, redacted form, the person said. The review court has issued only two other rulings in its 30-year history.

The decision marks the first time since the disclosure of the National Security Agency's warrantless eavesdropping program three years ago that an appellate court has addressed the constitutionality of the federal government's wiretapping powers. In validating the government's wide authority to collect foreign intelligence, it may offer legal credence to the Bush administration's repeated assertions that the president has constitutional authority to act without specific court approval in ordering national security eavesdropping.

The appeals court is expected to uphold a secret ruling issued last year by the intelligence court that it oversees, known as the Foreign Intelligence Surveillance, or FISA, court. In that initial opinion, the secret court found that Congress had acted within its authority in August of 2007 when it passed a hotly debated law known as the Protect America Act, which gave the executive branch broad power to eavesdrop on international communications, according to the person familiar with the ruling.

The Justice Department declined to comment on the matter; so did a spokesman for the FISA and appeals courts.

The court ruling grew out of a previously undisclosed challenge from a telecommunications provider, which questioned the constitutional authority of the executive branch in ordering it to capture and turn over international communications without court authority, according to the person with knowledge of the opinion.

The telecommunications company, which was not identified, apparently refused to comply with the order and instead challenged the legal basis of the order under the 2007 law in a claim before the FISA court.

The FISA court rejected the telecommunication companies' challenge. It found that the Protect America Act did not violate the Constitution because the Fourth Amendment, which prohibits unreasonable searches and

4th AMD. NOT APPLICABLE

seizures, contained an exception for the collection of foreign intelligence information, according to the person familiar with the ruling.

The opinion is not expected to directly rule on the legality of the once-secret operation authorized by President Bush between October 2001 and early 2007, which allowed the National Security Agency to eavesdrop on the international communications of Americans suspected of ties to terrorists. The disclosure of the program's existence in The New York Times in December 2005 set off a national debate on wiretapping, privacy and the limits of presidential power. Critics charged that Mr. Bush had violated a 1978 law requiring that the government obtain a court order to listen in on Americans' communications.

Still, the new ruling is expected to have broad implications for federal wiretapping law, because it is the first time that any appeals court has ruled on the constitutional question of the president's wiretapping power.

It could also influence a number of court challenges now pending in federal court in California against telecommunications companies that took part in the N.S.A. program. Last year, Congress approved legal immunity against lawsuits for the telecommunications companies, but a federal judge has yet to decide whether the lawsuits should be thrown out.

The Protect America Act was a temporary, six-month measure that gave the president the authority to collect international phone calls and e-mail messages in large batches in search of possible terrorist connections without getting individual warrants. The international communications of Americans could be collected, so long as the target of the wiretapping operations was outside the United States.

The law drew strong objections from congressional Democrats, who blocked its renewal in early 2008 despite repeated warnings from President Bush that national security would be compromised. Ultimately, Congress approved a plan last June that authorized the same basic framework for international eavesdropping — along with the long-sought immunity for the phone companies — but added some restrictions.

Barack Obama, then a United States senator, was highly critical of the presidential wiretapping power claimed by Mr. Bush, and threatened to filibuster the final bill. But he ultimately voted for it, angering some of his liberal supporters. His administration is expected to examine possible changes in wiretapping law and operations, a review that will probably be affected by the findings of the FISA appeals court.

Statement of
Ronald Noble, Director General of INTERPOL
Endorsing Eric Holder in His Personal Capacity

Background:

I have known Eric Holder and his commitment to the rule of law since 1985 when I was a young Assistant United States Attorney in the Eastern District of Pennsylvania and Eric Holder was an attorney from the Public Integrity Section working on a case in Philadelphia. Thereafter, I served in Main Justice as Chief of Staff to the Justice Department's Criminal Division when he was a judge in the District of Columbia's Superior Court.

In 1993 he was appointed United States Attorney for the District of Columbia and I was appointed Treasury's Assistant Secretary for Enforcement. So, my Secret Service, ATF and Customs Agents had cases in this office.

Finally, he was named Deputy Attorney General and I worked closely with him during my candidacy to become Secretary General from 1999 until being confirmed in 2000.

So, in sum I have known Eric Holder for over 20 years and base my strong belief on the merits of his candidacy on a long history of direct and indirect interaction with him.

Overall Assessment:

Eric Holder is smart, able and experienced attorney as well as a person of integrity. I believe that most, if not all, former prosecutors would agree that his pardon of Mark Rich was unfortunate and out of character with the Eric Holder that we all knew. From what I have read, Eric has recognized that he should have handled matters differently, and I respect him for having done so.

I also have made mistakes, and I too have recognized them and committed myself to do better. I believe that is all that we can ask of any thoughtful and honest human being.

Although my work outside the United States prevents me from testifying in his behalf, please do not hesitate to say that I have authorized you to say that if the Committee in session or any member out of session wanted to hear from me directly, I would be happy to fly to the US at a mutually convenient time to speak in strong support of Eric Holder's nomination to become United States Attorney General.

GIBSON, DUNN & CRUTCHER LLP

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[redacted]

January 14, 2009

[redacted] [redacted]

HAND DELIVERY

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Eric H. Holder, Jr.*

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Eric H. Holder, Jr. as Attorney General of the United States.

As you know, I have served in two capacities, in the Administrations of Ronald Reagan and George W. Bush, in leadership positions in the United States Department of Justice. I have great respect for the Department, its missions and for the men and woman who serve there, and deep convictions concerning the qualities that are important in leadership positions in the Department. I believe that Eric Holder will be a strong, courageous and inspirational leader of the Department at a time when experience, vision, maturity, and integrity in our Attorney General will be exceedingly important to this nation.

Eric Holder is well-qualified to be Attorney General. He has served as one of the nation's leading prosecutors, as a judge and as the Deputy Attorney General. He knows the personnel in the Department and the issues facing it. He is both liked and highly respected in the Department. He is intelligent, a good manager, and a good listener. He is articulate and is likely to be a persuasive advocate for the Department and for law enforcement. He understands the importance of working with Congress. He has a steady, well-grounded personality and engages well with people. He is a fine lawyer. And, I am convinced that he is a man of courage and character, and understands the importance of standing steadfastly for the rule of law.

In short, I believe that Eric Holder is a fine choice to be this nation's Attorney General. And I believe that it is important that he be confirmed and be in a position to assume the leadership of the Department immediately. Our nation faces serious threats, and an absence of an Attorney General to lead the Department at this time would ill-serve our country and its citizens.

Very truly yours,

Theodore B. Olson

TBO/hlv

Document5

51 Louisiana Avenue, N.W. Washington, DC 2001-2113

Direct Dial: [redacted]

January 14, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United Sates Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Via facsimile (202)224-5225

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275
Via facsimile (202)224-9102

Re: Eric H. Holder, Jr., Nominee for Attorney General of the United States

Dear Chairman Leahy and Ranking Member Specter:

This letter is respectfully submitted to the Senate Committee on the Judiciary to voice our collective, unqualified support for the nomination of Eric H. Holder, Jr., Esq. as the next Attorney General of the United States. We are essentially a collection of partners-of-color in the Washington, D.C. area of diverse political stripes who practice law at numerous national and international law firms. To a person, we believe Eric Holder will be one of the fairest, most competent, independent and honorable Attorneys General in the history of our great country. While neither Eric nor anyone on his behalf asked us to submit this letter, we feel compelled to voice our support of his nomination to you directly.

As a well-regarded, esteemed and long-standing public servant, Eric's professional qualifications are well known. Eric oversaw and prosecuted some very high profile precedent-setting cases as a trial attorney in the Department's then nascent Public Integrity Section in the late 1970s and early 1980s. As you know, he was subsequently appointed by President Ronald Reagan to the Superior Court of the District of Columbia where he served with distinction. In 1993, Eric stepped down from the bench when he was selected by President Bill Clinton to become the United States Attorney for the District of Columbia and was again tapped by President Clinton in 1997 to become the Department of Justice's Deputy Attorney General. He was unanimously confirmed by the Senate to that position.

Throughout more than two decades of public service, Eric has demonstrated the highest level of integrity, professional competence, leadership and independence. Many of us have had various roles in government and military service and virtually all of us are veteran practicing attorneys. Moreover, some of us were either hired by Eric in the course of his public service career or worked with him at a number of his various billets. As partners-of-color in majority law firms, we all recognize the commitment and focus it takes to excel in this arena and the balance with which one must approach any professional leadership undertaking. We strongly believe that throughout his public and private sector careers, Eric has amply demonstrated that he has the judgment, character and perspective to lead the

Department of Justice at this crucial time, the skill set to guide the Department into a new era of reason, and the deft hand and resolve to help restore it to its traditional role as the administrator of the impartial justice that is the hallmark of our judicial system.

In short, as noted in the many letters supporting Eric's candidacy that have already been submitted to the Committee, we are honored to have this opportunity to lend our names in support of his nomination and are pleased to give him our very highest professional and personal recommendation. For your convenience, attached hereto is a list of our colleagues who have authorized us to represent that they join in this letter. I trust you understand and appreciate that the support expressed in this letter is made solely in our personal capacities and does not represent an endorsement by any of our law firms.

Each and every one of us would be pleased to testify before the Committee in support of this recommendation or to discuss our support with your staff.

Respectfully yours,

Kevyn D. Orr Jones Day	Ben F. Wilson Beveridge & Diamond Managing Principal	Vernon E. Jordan, Jr.
M. Carter DeLorme Jones Day	Leslie C. Overton Jones Day	Grace E. Speights Morgan Lewis & Bockius, LLP
Karl A. Racine Venable LLP	Fred McClure Sonnenschein LLP	Shemin V. Proctor Andrews Kurth LLP
Anthony T. Pierce Akin Gump Strauss Hauer & Feld LLP		A. Scott Bolden Reed Smith

cc: Members of the Committee
Eric H. Holder, Jr., Esq.

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Testimony of John Payton

President and Director-Counsel of the
NAACP Legal Defense & Educational Fund, Inc.

United States Senate
Committee on the Judiciary

Hearing on the
Nomination of Eric Holder, Jr. to be
Attorney General of the United States

Russell Senate Office Building
Room 325

January 15, 2009

On behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), I am pleased to testify in support of the nomination of Eric Holder, Jr. for Attorney General of the United States. LDF was founded in 1940 by Thurgood Marshall and is the nation's oldest civil and human rights law firm. We view it as a national imperative that the Department of Justice live up to its name by delivering justice and equality for all people in the United States.

For issues of justice and equality, there is no more important position in the Cabinet than that of Attorney General. When the Department of Justice has functioned as it should, it has brought us together and strengthened our democracy by reflecting our nation's collective commitment to fair enforcement of the law and to ensuring equal opportunity in every facet of society. Led by Robert Kennedy and Nicholas Katzenbach, and many of those who followed, the Department's courageous enforcement of federal civil rights laws opened countless doors for African Americans and millions of others who needed protection against discrimination.

The decisive election of Barack Obama as the first African-American President of the United States is momentous and has generated a spirit of optimism and commitment that is extraordinary. In turn, the nomination of Eric Holder as our first African-American Attorney General is also historic. But the President-elect and his Attorney General will take office in perilous times. This will be the first Administration to transition during wartime in forty years. Issues relating to national security, counter-terrorism and detention will remain at the forefront for the foreseeable future. At the same time, this will be the first Administration in over seventy years to transition in a time of economic catastrophe. Issues of racial justice and equality are often compromised in such stressful economic times. We at LDF, along with other human rights organizations, will do our part to see that our democracy is strengthened and our society made more just. But, more than ever, the Attorney General must inspire trust and confidence through an unwavering commitment to justice and to keeping the American people safe and secure in their rights and freedoms.

The harsh reality is that today the Justice Department is in shambles. Mr. Holder will inherit a Department with its very credibility in question. The entire Department has been decimated by scandal and controversy. From the firings of United States Attorneys to the dismantling of the Honors Program, the Department has suffered greatly. But the area in which the Department has been most damaged is the Civil Rights Division, which has been plagued by problems that have shaken its very foundation. Press reports and hearings before this Committee have revealed the politicization of litigation, the weakening of enforcement, improper or possible illegal personnel practices, and a substantial decline in cases filed to protect racial and ethnic minorities. Politics and ideology have triumphed over even-handed law enforcement at almost every turn. Career civil rights lawyers in the department have been demoralized and many were literally driven out of the Department.

Two days ago, the Department's Office of the Inspector General and the Office of Professional Responsibility released their joint Report on "An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division." This Report was completed on July 2, 2008, but was only released this week. An earlier report provided some insight into the troublesome practices of recent years, including the political corruption of the Department of Justice Honors Program which excluded from consideration applicants who had any contact with a list of "liberal" organizations. LDF was on that list. But,

that said, this second report is nevertheless shocking. It concludes that hiring in the Special Litigation Section, the Employment Litigation Section, the Voting Section, the Criminal Section, and the Appellate Section was illegally infected with political and ideological considerations and it makes a criminal referral of this matter to the United States Attorney's Office for the District of Columbia.

The task at hand is nothing less than to reclaim the soul of the Department of Justice, as former Attorney General Edward Levi phrased it immediately after Watergate. And the core of that soul is the Department's Civil Rights Division. Yes, integrity must be restored to all of the Department's operations. And yes, it must regain its independence from political influence. But the mission of restoring the Civil Rights Division requires very special leadership and commitment from the Attorney General.

At this critical juncture, I can think of no better person than Eric Holder to restore integrity and honor to the Department of Justice, and the ethical standing and reputation for excellence of the Civil Rights Division. He has an exceptional resume: Columbia College and Columbia Law School; Honors Program at the Department of Justice; a lawyer in the Public Integrity Section of the Department; a Judge on the Superior Court of the District of Columbia; United States Attorney for the District of Columbia; Deputy Attorney General of the United States; and partner at Covington & Burling. He began his legal career as a summer intern at LDF. Ironically, in the recent past this would have disqualified him from consideration for entry level positions at the Department. I have known Mr. Holder for two decades. His experience and the strength of his commitment to fairness assure me – as they should assure you – that the odious practices identified in this week's Report would never be tolerated on his watch.

Before I was appointed LDF's President and Director-Counsel I was a partner with WilmerHale for twenty years, served as the Corporation Counsel for the District of Columbia from 1991 to 1994, and served as president of the D.C. Bar from 2001 to 2002. Through these and other experiences, I have had years of professional contact with Mr. Holder, consider him a friend as well, and know personally his commitment to justice and equality.

In these times, it is imperative that the Attorney General be prepared to lead the Department of Justice on Day One with integrity and the requisite independence. Our country cannot afford to provide on-the-job training for the next Attorney General. Eric Holder is a proven leader who is prepared to meet the challenges that the Department will face. Most importantly, Mr. Holder can live up to Attorney General Levi's aspiration and restore the soul of the Department.

Mr. Holder is also the right person to restore the credibility of the Department of Justice in the eyes of Congress, the courts, and the American people. He served for two decades in the Department, as trial attorney, United States Attorney and finally Deputy Attorney General. He understands the mission of the Department and its influence, and he appreciates the great significance of appearing in court as the representative of the people of the United States. Mr. Holder will work tirelessly to erase the stain of political influence on the Department's recent record and ensure once again that the administration of justice is impartial and transparent. This is particularly important for the Civil Rights Division, which has been dealt a severe blow in its public standing. I am confident that strong civil rights enforcement on behalf of all persons

protected by our civil rights laws will be a top priority for Attorney General Holder. As a Department veteran, Mr. Holder is well-positioned to lift the morale of thousands of lawyers and other employees of the Department which, by all accounts, has declined substantially in recent years. Finally, the breadth and depth of the support for his nomination for Attorney General signifies that Mr. Holder inspires public confidence across the political and ideological spectrum.

With Eric Holder's nomination, we can begin to restore the crown jewel of our nation's legal system. I urge the Senate to confirm Eric Holder as the next Attorney General of the United States.

Thank you for the opportunity to testify. I would be happy to answer any questions.

January 14, 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, we write in strong support of the nomination of Eric Holder to be Attorney General of the United States. We urge the Committee to confirm this historic nominee as expeditiously as possible. The nation can ill afford a vacuum in leadership at this critical position, particularly given the huge agenda for reform, revitalization, and recommitment to the rule of law that is so essential for the Department of Justice (DOJ) and the nation.

Eric Holder is eminently qualified to serve as Attorney General. His background of public service in the law, as a Superior Court judge for the District of Columbia, as a US Attorney, and as Deputy Attorney General is exceptional. He has the respect of career professionals at the Justice Department with whom he served as Deputy Attorney General under President Clinton. And he has strong bipartisan support for his capacity and willingness to exercise independent judgment.

On any number of occasions, Mr. Holder has put the public's interest above partisan politics, earning him a reputation as a fair-minded, thoughtful, and independent man of integrity. As Attorney General he will restore the DOJ's reputation for fairness and even-handedness, a reputation that has been seriously eroded over the past eight years. His tenure with the Public Integrity Section of the DOJ evidences his commitment to justice as does his later service as Deputy Attorney General. During that time he advised Attorney General Janet Reno to expand the ongoing investigation of the President of the United States. He recommended to Attorney General Reno the appointment of a special prosecutor to investigate Interior Secretary Bruce Babbitt and created a task force to develop regulations on the appointment of special prosecutors in high-level federal investigations. And, as US Attorney for the District of Columbia, Mr. Holder prosecuted Democratic Representative Dan Rostenkowski, then chair of the House Ways and Means Committee, despite ongoing negotiations by the sitting administration on the content of legislation before the Committee.

Mr. Holder has also demonstrated a commitment to using his office to advance protections for those who are most vulnerable. As US Attorney for the District of Columbia, he renewed that office's emphasis on hate crimes, which is particularly noteworthy given ongoing struggles to ensure equal protection for LGBT Americans and the DOJ's de-emphasis of hate violence as a priority in recent years. Mr. Holder's history of fairly prioritizing and enforcing laws, especially

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those for protected classes, is a critical step forward. We need a strong DOJ that responds appropriately to the needs of the LGBT community.

Additionally, during his tenure as US Attorney, Mr. Holder created a Domestic Violence Unit and developed comprehensive strategies for improving the prosecution of child abuse cases. As Deputy Attorney General he played a key role in the "Lawyers for One America" initiative to increase diversity within the legal profession and provide civil pro bono legal services to underserved communities. Also as Deputy Attorney General, he supported strong statutory and constitutional protections for women involving Title VII, Title IX, the Freedom of Access to Clinic Entrances Act, and the Violence Against Women Act.

Lastly, the DOJ plays a significant role in ensuring the protection and promotion of the voting rights for all Americans, rights that are critical to the health of our democracy. Mr. Holder's service as Attorney General would signal a significant shift in the Department's prioritization of voting rights with a focus on removing barriers to the ballot, instead of subverting the intent of voting laws. Already, the atmosphere is becoming electric as experienced career attorneys are once again excited about the prospects of working for a proactive and just DOJ.

It is no wonder that this nominee, appointed to the District of Columbia Superior Court by Ronald Reagan, has garnered the widespread, bipartisan support we see today. The DOJ is desperately in need of strong leadership to restore its independence and integrity and reputation for fair and competent adherence to the rule of law. There are enormously critical issues involving Americans' constitutional rights and liberties that must be addressed by the Department. We need to have an individual of unquestioned competence, integrity, and judgment at the helm.

Eric Holder is such a person. We urge his prompt confirmation.

Sincerely,

Kathryn Kolbert
President

Tanya Clay House
Director, Public Policy

POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

December 12, 2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senators Leahy and Specter,

On behalf of the Police Executive Research Forum (PERF), I am writing to wholeheartedly endorse the nomination of Eric Holder to be the nation's next Attorney General.

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and consulting firm specializing in helping police agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

As an organization that, on a daily basis, works with hundreds of local police chiefs and has its finger on the pulse of policing and homeland security issues, PERF is very familiar with the career of Eric Holder, and we have always been impressed by Mr. Holder's commitment to local police.

As recently as October 8, Mr. Holder spent several hours at a PERF meeting of police chiefs and mayors here in Washington—listening to their concerns about violent crime issues, the effect of the economic recession on police budgets and operations, and other matters. In addition, Mr. Holder made a presentation to PERF members detailing Sen. Barack Obama's positions on crime and justice issues, and listened as former Deputy Attorney General George J. Terwilliger III presented the views of Senator John McCain.

PERF has long been impressed not only with Eric Holder's impeccable career as a U.S. Attorney, federal judge, and Deputy Attorney General, but also with his strong understanding of the many challenges facing local police departments. Because Mr. Holder has experience as a career prosecutor, our members know that he has "been there" and understands what it is like to deal with violent crime. This real-world experience gives him strong credibility among police officials and others in the criminal justice system.

WE PROVIDE PROGRESS IN POLICING

1120 Connecticut Avenue, NW Suite 930 Washington, D.C. 20036
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Furthermore, as U.S. Attorney for the District of Columbia, Mr. Holder created a domestic violence unit, implemented a community prosecution initiative that involved working with local residents on public safety issues, expanded on a hate crimes program, developed a strategy to help prevent child abuse, improved a crime victim/witness program, and developed an "Operation Ceasefire" gun violence reduction program.

These are the very types of issues that local police executives have been dealing with in recent years. PERF's member chiefs have noticed that Mr. Holder has gone out of his way during his career to create new initiatives aimed at solving the types of problems faced by local police.

Indeed, at our October meeting, Mr. Holder said to our member police chiefs, "In an Obama Administration, one of the things that will be key is to be in partnership with the people in local and state law enforcement. We're going to listen to what you have to say." Those words were welcomed by many police chiefs who believe that federal policies sometimes seem to have been crafted without the benefit of their experience and expertise.

And of course, anyone who has followed Mr. Holder's career cannot help but be impressed by his brilliant intellect, his strong work ethic, and his lifetime of public service. He is an American success story, and his wide range of experience makes him ready to immediately assume the duties of the position of Attorney General.

On behalf of PERF, I urge you to give expeditious consideration to Mr. Holder's nomination and to confirm his appointment to this critically important post in the Obama Administration.

Respectfully,

Chuck Wexler
Executive Director

GUN OWNERS OF AMERICA
8001 FORBES PLACE /SUITE 102 / SPRINGFIELD, VA 22151 / 703-321-8585

January 7, 2009

Dear Senator:

Barack Obama campaigned for the presidency on the proposition that he supported the Second Amendment as an individual right which protects law-abiding Americans. Time and again, we witnessed him and his supporters reassuring gun owners in pivotal states like Virginia, Pennsylvania, and Ohio.

So it comes as a bit of a surprise that one of his first actions as president-elect was his choice to give jurisdiction over Second Amendment issues to a proposed attorney general who is one of the most rabid gun-haters in recent years.

Eric Holder, who served as Deputy Attorney General from 1997-2001, is on record supporting a 3-day waiting period for handgun purchases, one-gun-a-month rationing, licensing and registering of all gun owners, mandatory so-called smart gun technology, a lifetime gun ban for certain juvenile offenses and regulating gun shows out of existence.

As Janet Reno's top deputy, Holder was the go-to person on gun control. In a 1999 statement, Holder told members of Congress not to cave in to "the special interest that value the cold hard steel of guns more than the lives of children, neighbors and police officers," and urged them to pass legislation that would have destroyed the gun show industry. Holder's inflammatory anti-gun screed made no reference to the millions of successful self-defense uses of firearms every year by law-abiding citizens.

In 2000, Holder was instrumental in the Clinton Administration's effort to strong arm firearms manufacturers into voluntarily accepting regulations that it could not get through the Congress. In a brazen legislation-by-extortion plot, the federal government filed suit against gun makers but offered to drop the suit if the companies would bow to the administration's demands. One company, British owned Smith & Wesson, went along with the deal, but no others joined the unholy alliance.

After the 9/11 terrorist attacks, in an op-ed in the Washington Post Holder pushed for more gun control and greater restrictions on gun shows, even though the terrorists were armed with box cutters that could be purchased at any hardware store.

This year, Holder joined Janet Reno and 11 other former Justice Department officials in an amicus brief before the Supreme Court arguing *in favor* of the gun ban in Washington D.C. The Holder/Reno brief also lambastes John Ashcroft for having the temerity to take the position that the Second Amendment protects an individual right -- not just the right of the government.

The selection of Eric Holder as nominee for Attorney General is a cynical slap in the face of law-abiding gun owners. Gun Owners of America urges the U.S. Senate to reject this anti-Second Amendment activist should the incoming president persist in pushing this nomination forward.

GOA will score this vote in its 2010 Congressional rating.

Sincerely,

Larry Pratt

Larry Pratt
Executive Director

Mother shoots intruder; Saves daughters from knife-wielding assailant
Brian Reilly
The Washington Times
December 14, 1994

A Northwest woman thwarted an apparent kidnapping when she shot a knife-wielding attacker as he fought with two of her daughters yesterday morning, police said.

Darryl Burton, 26, was in serious condition and under guard at the Washington Hospital Center late yesterday. Police charged him with first-degree burglary, and he will be arraigned in D.C. Superior Court when he recovers from gunshot wounds to the head, chest and groin.

Police said Mr. Burton and a teen-age roommate broke into the row house in Petworth to kidnap sisters Esther and Vicki Griffin, who witnessed an assault two months ago.

But the two women; a third sister, Laquanda Turner; and their mother, **Rebecca Griffin,** fended off the assailants during a brutal battle that saw the mother tumble down the stairs with Mr. Burton before she ran for a hidden revolver and shot him four times.

The men broke through a back door of the home in the 4000 block of Fourth Street NW, just west of the Old Soldiers Home, and burst into 24-year-old Esther's second-floor bedroom about 1:30 a.m., police said. They tried to bind her and cover her mouth with duct tape while she slept, but she woke up screaming.

Within moments, the three other women in the house joined the fray, trying to get the knife away from Mr. Burton. He wildly waved the knife at the women, slashing two of them.

"He was trying to cut my mother, but they were wrestling and fell down the stairs together," Miss Turner, 27, said yesterday afternoon.

When they rolled to the floor, Miss Turner and Esther ran to help their mother while Vicki, 22, phoned police. Around this time, Miss Turner recalled, the unarmed second attacker ran out of the house.

Miss Turner and her 24-year-old sister jumped on Mr. Burton, giving their mother a chance to dart into the basement and grab a .32-caliber revolver left to her by a friend who died, Miss Turner said.

She ran upstairs and shot Mr. Burton four times as he ran at her with the knife. Though injured, he swiped the gun from the woman and turned it on her.

Before he could fire, Miss Turner wrested the gun from him, and he ran out of the house.

Police found him lying unconscious in a fetal position about two blocks away in front of a home in the 400 block of Shepherd Street NW.

Mr. Burton, of the 600 block of 15th Street NW, was admitted in critical condition, but his condition was upgraded to serious late yesterday.

Rebecca Griffin, 48, was treated and released for cuts to her hand. Miss Turner received several stitches in her hand and leg and was released.

Police sources said they are investigating whether Mr. Burton and his 16-year-old accomplice went to the house to abduct or at least threaten the Griffin sisters.

The sisters testified yesterday in a simple-assault case against James Alexander, 28, a former roommate who is accused of attacking both women with a knife at the house in September.

PARTNERSHIP FOR SAFETY and JUSTICE

www.safetyandjustice.org
503-335-8449 • 825 NE 20th, Suite 250, Portland, OR 97232 • 503-232-1922 (fax)

December 5, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

I am pleased to write this letter in support of Eric Holder as the next Attorney General of the United States of America.

Partnership for Safety and Justice (PSJ) is a unique non-profit organization. Based in Portland, Oregon, PSJ advocates for statewide public safety policies that address the rights and needs of the people directly affected by crime: both victims and offenders. Crime is a complicated issue, which has multifaceted dynamics contributing to the commission of crime and stemming as a result of the crime. A successful response to crime can be no less multi-faceted than the issue of crime itself.

Mr. Holder has an impressive career of understanding the complicated nature of crime and developing ways to address the many issues involved. As U.S. Attorney for the District of Columbia, Mr. Holder created one of the first Community Prosecution Programs in the District. The program brought prosecutors to the community and enabled this key piece of the criminal justice system to respond to the community's needs in an innovative, proactive way. Prosecutors and community leaders worked together on early prevention and intervention efforts. They addressed the root causes of crime in the community, while they also developed ways to assist crime victims. This holistic approach exemplifies the criminal justice system's ultimate goal: public safety.

At PSJ, we believe that to achieve public safety, we need to be smart on crime. We need to understand both the causes of crime and the effects of crime. We need to protect the rights of both defendants and victims, while supporting services that help each rebuild their lives.

Mr. Holder is an outstanding choice for Attorney General. PSJ proudly supports his nomination and appreciates his holistic approach to being smart on crime.

Sincerely,

David Rogers
Executive Director

Maryland Crime Victims' Resource Center, Inc.

Continuing the Missions of the Stephanie Roper Committee and Foundation, Inc.

Email: mail@mdcrimevictims.org • Web Page: www.mdcrimevictims.org
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218 E. Lexington Street, Suite 401
Baltimore, MD 21202
410-234-9885 (phone)
410-234-9886 (fax)

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, D C 20510

December 5, 2008

Dear Senator Leahy:

On behalf of its staff, Board of Directors and thousands of crime victims and families we have been privileged to serve, we wish to express our strong support for the nomination of Eric Holder as Attorney General

The Maryland Crime Victims' Resource Center, Inc. (MCVRC) is a non-profit organization formerly known as the Stephanie Roper Committee and Foundation, Inc with a twenty-six year history of distinguished achievement and service to victims of criminal violence Like many of our nation's leading non-profits agencies serving crime victims, MCVRC 's grass roots efforts were born out of tragedy Roberta and Vincent Roper founded the organization bearing their slain daughter, Stephanie's name following their family's experience with the criminal justice system in 1982

Over the past twenty-six years, we have worked with many individuals and agencies on the federal, state and local level Under President Clinton's administration, we witnessed Mr Holder's accomplishments as U.S. Attorney for the District of Columbia As a neighboring victim services agency to those in the District, we often found ourselves partnering with the U.S Attorney's programs of victim services Mr Holder was a leader in creating DC's Children Advocacy Center, and its first domestic violence advocacy program within the victim witness unit. He demonstrated his commitment to vulnerable child victims by establishing a Kids Court program

As a small non-profit agency, MCVRC has had a strong working relationship with the Office for Victims of Crime (OVC) When Mr Holder was appointed the Deputy Director of the U.S Department of Justice, we observed and benefitted from his leadership in advancing the nation's awareness and support of crime victims' issues As a result, many innovative approaches were developed to better meet the needs of citizens who bear the undeserved consequences of crime.

MCVRC mentors other non-profit and faith based victim services providers We assist all victims of all crimes including identity theft and fraud victims so that all victims receive comprehensive services and rights including legal representation to make victims' rights a reality rather than a paper promise These are a few of the many necessities that must be continued even in these difficult economic times It is important that the Department have victim friendly leaders who will demand that justice for all includes justice for victims of crime We have faith and trust in Mr Holder and MCVRC supports his nomination and confirmation If you need any additional information, please feel free to contact us

Sincerely,

Roberta Roper, Chairperson and Founder

Russell P. Butler, Executive Director

Polk County Attorney

JOHN F. SARCONE
County Attorney

ADDRESS REPLY TO:
[illegible]
Des Moines, IA [illegible]
(515) 286-3277
Fax (515) 286-3430

December 12, 2008

Honorable Patrick J. Leahy
United States Senator
433 Russell Senate State Office Building
Washington, DC 20510

Dear Senator Leahy,

My purpose in writing to you is to express my support for Eric Holder who has been nominated by President-elect Barack Obama to be the next Attorney General of the United States. Mr. Holder is an excellent lawyer who understands the importance of the position of Attorney General and how the actions of the Department of Justice affect the administration of justice in this country. I am confident that he is the right person to lead the Justice Department and restore the respect and dignity of the department which has been tarnished in recent years.

Mr. Holder has served our country with great distinction throughout his legal career. In 1976, he joined the Department of Justice and was assigned to the Public Integrity Section where he investigated and prosecuted public corruption cases. In 1988 President Reagan appointed him to serve as Superior Court Judge for the District of Columbia and in 1993, Mr. Holder was appointed by President Clinton to serve as the United States Attorney for the District of Columbia. In 1997, he was appointed by President Clinton to the position of Deputy Attorney General where he was responsible for overseeing the daily operations of the Department of Justice. His background in these positions makes him extremely well-qualified to be the chief law enforcement officer of our country.

As a local prosecutor and member of the National District Attorneys Board of Directors, I am particularly pleased by the fact that Mr. Holder has been in the trenches prosecuting street crime and at the same time managing an office. He understands what the nation's prosecutors deal with every day and why it is essential that a strong working relationship must exist between federal, state and local law enforcement and prosecution authorities to keep our communities safe. He also understands that continuing training of our prosecutors is the key to improving our justice system.

I know that if Mr. Holder's nomination as Attorney General of the United States is confirmed, he will serve our country in a manner that will bring great respect and honor to the Department of Justice. He will make you proud of the trust you place in him.

Thank you for your consideration in this matter.

Very truly yours,

JOHN P. SARCONE
Polk County Attorney

JPS:rcp

12/12/2008 3:31PM

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November 30, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

RE: Nomination of Eric Holder to be Attorney General of the United States

Dear President-elect Obama:

Your nomination of Eric Holder to serve as Attorney General of the United States has met with great enthusiasm among professionals who serve and assist victims and survivors of crime. Appriss, Inc. is pleased to join our colleagues in strongly supporting this nomination.

Throughout his justice career, Mr. Holder has paid close attention to the rights and needs of crime victims. As the main provider of Victim Information and Notification (VINE) services, Statewide Automated Victim Information and Notification (SAVIN) services, and the Federal Victim Notification System (VNS), Appriss appreciates his longstanding understanding of and commitment to the critical victims' rights of information and notification. We know he will be a strong supporter of ongoing efforts of the U.S. Department of Justice to ensure that victims are informed about their cases, and notified about the status and location of their offenders.

Eric Holder is a well-respected justice practitioner, and a nationally-recognized leader and visionary in justice- and victim-related issues. He will serve you, our Nation, and crime victims and survivors well in his tenure as Attorney General of the United States.

Thank you for considering Appriss' recommendation for Eric Holder. If you need further information, please contact me at [redacted].

Sincerely,

Thomas R. Seigle
Executive Vice President
Public Safety Group

Provider of the Service

JEFF SESSIONS
ALABAMA

COMMITTEES:
ARMED SERVICES
JUDICIARY
HEALTH, EDUCATION, LABOR, AND PENSIONS
BUDGET
JOINT ECONOMIC

United States Senate
WASHINGTON, DC 20510-0104

January 16, 2009

Eric H. Holder, Jr.
Covington & Burling LLP
1201 Pennsylvania Ave. NW
Washington, D.C. 20004-2401

Dear Mr. Holder:

The Chairman has scheduled a Judiciary Committee executive business meeting next Wednesday to consider your nomination. Before the Committee considers your nomination, I believe it is important for you to clarify your role, if any, in the Department of Justice's internal debate over whether to authorize an unrestricted lethal operation against Osama Bin Laden after the embassy bombings in 1998.

As we discussed at your hearing, Jack Goldsmith's book, *The Terror Presidency*, describes how "White House and Department [of Justice] lawyers opposed an unrestricted lethal operation against Bin Laden, and would authorize his killing only if it were necessary for self-defense in the course of legitimately arresting him." *Id.* at 95. This opposition came despite the fact "[t]he CIA had Bin Laden in its sights," and after the Office of Legal Counsel (OLC) had decreed that Executive Order 12333's assassination ban "did not apply to a military target, like Osama Bin Laden, who posed an imminent threat to the United States." *Id.* at 94-95. Mr. Goldsmith concludes by noting, "[f]ear of retroactive discipline, induced by cautious legal authorizations, led the CIA to forego the covert operation." *Id.* at 95.

I am deeply troubled by the above account in Mr. Goldsmith's book. Not only did some Department of Justice lawyers oppose an action that appeared to be authorized by a previous OLC opinion, the result was to impede the country's ability to stop Osama Bin Laden before he was able to harm American interests again. In addition to the September 11, 2001 attacks, the attack on the U.S.S. Cole might have been averted had Department lawyers provided unambiguous legal advice that squared with the OLC opinion.

I fully respect your reluctance to discuss this matter during your public hearing due to concerns about classified information. Before I vote on your nomination, however, I feel it is vitally important to know your position on this internal debate. I therefore ask that you please ascertain whether this matter is classified or unclassified and then make arrangements to inform me of your position and role, if any, on this issue when it was discussed at the Justice Department. Specifically, I would like to know whether you counseled in favor of a broad authorization consistent with the OLC opinion

or backed the opposing view described in Mr. Goldsmith's book. I would also like to know your current view on this question.

I look forward to hearing from you on this matter.

Sincerely,

Jeff Sessions
United States Senator

Anne K. Seymour
National Crime Victim Advocate
[redacted]

November 25, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-elect Obama:

I am very pleased to support your nominee for the Attorney General of the United States, Eric H. Holder, Jr. As a long-time national victim advocate and resident of the District of Columbia, I have known Mr. Holder for 20 years, and have closely followed his career with tremendous pride, admiration and gratitude.

Mr. Holder became the U.S. Attorney for the District of Columbia at a time when violent crime in our Nation's capital was at an all-time high. Instead of simply focusing on reducing crime, he made *crime victims' needs and concerns* a priority of his agency. During his tenure, he increased staffing of his victim/witness unit from six to 24 members, and created designated victim advocates for victims of sexual assault, domestic violence, and family members of homicide victims. He helped create the DC Children's Advocacy Center which, today, is considered a national model of excellence.

As President Clinton's appointee to serve as Deputy Attorney General of the U.S. Department of Justice, Mr. Holder provided strong support to the small but vital Office for Victims of Crime (OVC) within the Office of Justice Programs. He helped create new protocols for children who are exposed to violence, and ensured that the surviving family members of the victims of the Pan Am 103 crash were treated with dignity and afforded rights and services, among other significant efforts.

Eric Holder is truly a gift to those of us who dedicate our lives to serving victims and survivors of crime. He understands the importance of our issues and concerns, and will require *no* on-the-job training in regards to crime victims' needs, rights and services.

I join countless colleagues in my field in strongly supporting Eric H. Holder, Jr. to serve as the Attorney General of the United States, and thank you for your wisdom in nominating him.

If I can provide you with additional information or answer any questions, please contact me at [redacted]. Thank you very much.

Sincerely,

ANNE SEYMOUR
National Victim Advocate

January 14, 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 Mr. Chairman and Senator Specter:

As former Presidents of the American Bar Association we enthusiastically support the confirmation of Eric Holder as Attorney General of the United States. He is a principled leader and a dedicated attorney committed to equal justice for all. As members of the Bar we can attest to his unparalleled respect within the legal community. Mr. Holder's longstanding commitment to public service is exemplary and his stellar record of achievement and leadership has been recognized by Democrats and Republicans alike.

In a time when integrity at the U.S. Department of Justice is in question, a person of Mr. Holder's qualifications and character is needed to help restore the Department of Justice to the stature it deserves. It is in such formidable times that we need leaders who are both well qualified and well respected.

For these reasons we strongly recommend the confirmation of Eric Holder to the honored position of Attorney General of the United States.

Sincerely,

Jerome Shestack	(1997-1998)
Martha Barnett	(2000-2001)
Dennis Archer	(2003-2004)
Robert Grey	(2004-2005)
Michael Greco	(2005-2006)

CITY OF MENDOTA

"Cantaloupe Center Of The World"

January 9, 2009

The Honorable Patrick J. Leahy
Chair
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

VIA FACSIMILE: 202-224-9516

RE: Nomination of Eric H. Holder Jr., to be Attorney General of the United States

Dear Chairman Leahy:

On behalf of the City of Mendota, California we are encouraged by the nomination of Eric Holder as the next Attorney General of the United States of America.

We are appreciative of the Committees timely nomination process. The Attorney General has jurisdiction over the Federal Bureau of Prisons which is of prime concern for our City.

The City of Mendota is located in the San Joaquin Valley of California within the 20th Congressional District. We face double-digit unemployment and have suffered from high poverty for years. *The Measure of America: American Human Development Report 2008-2009* which was modeled after the United Nations global Human Development Report, ranked the 20th Congressional District last—436th on the index.

With the hard work and dedication from Senator Dianne Feinstein, Barbara Boxer and Congressman Jim Costa we were successful in securing the construction of a medium security prison from the Federal Bureau of Prisons. The federal prison is expected to bring much need jobs to our communities.

I am pleased to report that construction of the federal prison is on schedule for completion next year. However, without additional federal funding to activate the prison we will not be able to secure the 350 new jobs for the region.

643 Quince Street Mendota, California 93640
Telephone: (559) 655-3291 Fresno Line: (559) 266-6456 Fax: (559) 655-4064
01/12/2009 12:36PM

We are hopeful the next Attorney General will continue to place a high priority on activation funding and will request the necessary funds of the Congress to bring the Federal Correctional Institution at Mendota on line.

Once again, thank you consideration.

Sincerely,

ROBERT SILVA
Mayor

cc: The Honorable Dianne Feinstein
The Honorable Barbara Boxer
The Honorable Jim Costa

01/12/2009 12:36PM

SENATE JUDICIARY COMMITTEE
SENATOR ARLEN SPECTER, RANKING MEMBER
PHONE: 202-224-5225 | E-MAIL: SJCPRESS@JUDICIARY-REP.SENATE.GOV

Specter Opening Statement at Holder Hearing

Washington, D.C. (January 15, 2009)—U.S. Senator Arlen Specter (R-PA), Ranking Member of the Senate Judiciary Committee, today delivered the following opening remarks at the Committee hearing for Attorney General Designate Eric Holder:

"Next to the president of the United States, there is no federal officer more important than the attorney general. The attorney general is different from any other Cabinet officer because Cabinet officers ordinarily carry out the policies of the president. But the attorney general has an independent duty to the people and to uphold the rule of law.

"The Constitution calls for the United States Senate to advise and consent. And I agree with the chairman about the necessity to help President-elect Obama tackle the problems of enormous difficulties which this nation faces. There is provided, in the Constitution, separation of power and checks and balances so that it is the duty of the United States Senate to exercise its responsibilities and to make an appropriate inquiry.

"Independence is a very important item. Harry Daugherty was attorney general during the Teapot Dome scandals. I mention Attorney General Daugherty because, coming in, I took a look at the long list of hearings, proceedings which have been held in this room. One of them was Teapot Dome. Another was the sinking of the Lusitania, the McClellan committee, Iran-Contra, many, many hearings. There has been a question raised as to whether the issues when I have posed for Mr. Holder are political in nature. I have not hesitated to oppose prominent members of my own party asking pointed questions which is the constitutional responsibility of a senator and making an independent judgment and voting against them when I thought it was warranted. And one of those hearings was held right here in this room.

"Almost every major newspaper in the country has commented about the importance of questioning Mr. Holder. And as I said on the floor, I have an open mind but I think there are important questions to be asked and upon the questions to be answered. The editorials have commented about the need for the questioning of Mr. Holder based upon some of the factors in his background. There's no doubt he comes with an excellent resume, but there are questions nonetheless. So says the New York Times, the Washington Post, the Wall Street Journal, the Philadelphia Enquirer, the Rocky Mountain News, and many other newspapers across the country.

"The basic issue of national security is, perhaps, the attorney general's most important responsibility to protect the American people. And I think we need to know how Mr. Holder is going to approach that job. What does he think about the Patriot Act? What does he think about the interrogation techniques? There's a big

difference between what is faced by those who are following the Army Field Manual compared to what the FBI does compared to what the CIA does. There are very different lines of questioning and I saw that in the 104th Congress when I chaired the Intelligence Committee.

"I voted against water boarding. It's torture. And I took the lead to the Senate floor in fighting for habeas corpus. And I opposed President Bush's signing statements. So I have no hesitancy to stand up on those issues. But there's a very important question of balance. And we want to find out how Mr. Holder is going to approach those issues.

"We have major issues of violent crime in this country. Career criminals have to be treated one way. I want to know what he has in mind about realistic rehabilitation, to try to take first offenders – and especially juveniles – out of the recidivist crime cycle.

"We have to know where he stands on antitrust. We need to know what he will do on the prosecution of white collar crime. There have been a spate of fines, which look heavy on their surface, $1 million. But contrasted with the billions involved in the fraud, it's insufficient. I want to know how tough he's going to be along that line, especially with what we've seen with corporate fraud leading to the tremendous financial problems this country has today.

"At the same time, there has to be a balance of right to counsel. Mr. Holder authored in 1999, the memorandum which provides that the Department of Justice will go easy on a corporation if they will cooperate where individual constitutional privileges are involved. That's a matter which has to be inquired into, where he stands under the antitrust laws.

"All of these matters, I think, are appropriate for inquiry. And I look forward to an opportunity to discuss them with the nominee.

"One additional comment. And I want to read this, because I want to get it right. I ordinarily don't read, but I will on this:

"Aside from the substance of Mr. Holder's qualifications, there is a serious issue on senators' minority rights and the inadequacy of our opportunity for preparation. On this I speak for the Republican Senatorial Caucus. Ordinarily, I speak only for myself. But today, I speak for the caucus.

"In light of Mr. Holder's extensive record – and we looked at some 86 boxes at one stage – there has been insufficient time for the examination of those records. On the Roberts and Alito confirmations, the minority was consulted and accorded the time they requested on scheduling. That was not done here.

"The chairman declined to co-sign the letter requesting records from the Clinton Library. With only my signature representing 40-plus Republican senators, my request was treated as any other citizen's request under the Freedom of Information Act, and the records have not been obtained.

"When the minority previously had a dozen witnesses under similar circumstances, we got three. When two witnesses, Ms. Mary Jo White and Mr. Roger Adams, refused to appear, our requests for subpoenas were denied.

"Realizing the public's understandable disdain for Washington's political bickering, we have sought to temper these objections. And I retain the cordial relationship with the chairman, with whom I've worked very closely for many years, but feel constrained to recite them here briefly for the record. I thank the chairman."

###

January 12, 2009

BOYS & GIRLS CLUBS OF AMERICA

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

National Headquarters
1275 Peachtree St. NE
Atlanta, GA 30309
Tel 404-487-5700
Fax 404-487-5757
www.bgca.org

Dear Mr. Chairman and Ranking Member,

It is with great pride that, on behalf of Boys & Girls Clubs of America (BGCA), I send this letter in support of Mr. Eric Holder on his nomination as Attorney General of the United States. Mr. Holder understands the value of working in the community as a tool to help prevent and reduce crime in some of the most distressed cities and neighborhoods in this country. He has a proven track record of doing so throughout his career, especially as it relates to his work with BGCA.

Boys & Girls Clubs of America has enjoyed a strong partnership with Congress and the Department of Justice for a number of years. We provide programs and services for thousands of young people in some of the most distressed communities in all 50 states. In the mid 1990's we started to work with Native American tribes to establish Boys & Girls Clubs on Native American land. This was not an easy task, for a variety of reasons, so by 1996 we had managed to establish only 12 sites.

As Deputy Attorney General, Mr. Holder recognized the benefits to Native American children and families to have Boys & Girls Clubs on Native American land. Under his watch and with the direct support of Congress, the Department of Justice and Boys & Girls Clubs of America, the number of Clubs on Native American land began to grow.

Today, we are proud to report there are 222 Clubs on Native American land with more than 145,000 members. Some 86 tribes work in partnership with DOJ and BGCA to bring these important programs to the young people, but it would have been impossible without the foundation laid by the earlier work of Eric Holder.

Mr. Holder was also instrumental in supporting prevention programs for our more than 4,000 traditional Clubs where we have partnered with DOJ on gang prevention, education and mentoring initiatives. We are proud of our work and honored to be working with individuals like Eric Holder.

Prior to his work at the Department of Justice, Mr. Holder was the U.S. Attorney for the District of Columbia. In this position, he recognized the importance of collaborating with community-based agencies to improve the lives of the residents in the District. Here he developed the "Community Model" where prosecutors worked directly in the community to prevent and reduce crime.

It was during this time that we at Boys & Girls Clubs began to realize Mr. Holder truly understood the value of community-based organizations like Boys & Girls Clubs as an effective crime prevention tool. He demonstrated this on numerous occasions by holding meetings and participating in many activities at local Boys & Girls Clubs to further illustrate the program's value.

As you know, we work well with Democrats and Republicans on the Committee, and our support of Mr. Holder is not about partisan politics. Rather, it is all about the more than 4.8 million young people we serve through membership and community outreach. Mr. Holder shares our passion for closing the gap between hope and opportunity for each one of them.

Our thoughts are with Mr. Holder, with our many friends on the Judiciary Committee, and with you during the confirmation process and hopefully throughout Mr. Holder's tenure in President Obama's Cabinet.

If we can ever be of help to the Committee, to Mr. Holder, or you, please contact me. You know I treasure all the Committee and you have done to ensure a prosperous future for all of America's young people.

Sincerely,

Roxanne Spillett
President and CEO
Boys & Girls Clubs of America

RS/kt

State Attorneys General

A Communication From the Chief Legal Officers
of the Following States and Territories:

Arizona * Arkansas
California * Colorado * Connecticut * Florida
Georgia * Hawaii * Idaho * Illinois * Indiana * Iowa * Kansas * Kentucky
Louisiana * Maine * Maryland * Massachusetts * Mississippi * Montana
Nebraska * Nevada * New Mexico * New York * North Carolina * Oklahoma
Rhode Island * South Dakota * Tennessee * Utah * Vermont * Washington
West Virginia * Wyoming

January 7, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
Via facsimile (202)-224-5225

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 Eric H. Holder, Jr. for Attorney General of the United States. As the Nation's chief law enforcement officer, he will set policies for how the Federal government relates to and works with us as well as with other state, county and local prosecutors and law enforcement officers within our jurisdictions. We believe that Mr. Holder has the knowledge and experience necessary to run the Department of Justice and work with us to enforce our laws.

Mr. Holder is a known quantity to some of us. Having served as the Deputy Attorney General from 1999-2001, he worked hard to assure that our concerns were answered and the partnerships we sought were established. We look forward to working with him again. He also served as United States Attorney for the District of Columbia. Although a Federal prosecutor serving by appointment of the President, this is a unique position in America because this United States Attorney is responsible for local prosecutions in the District.

We are also encouraged because Mr. Holder started his legal work as a career prosecutor in the Department of Justice's Public Integrity Section and was then appointed by the first President Bush to the District of Columbia Superior Court. Throughout his career, Mr. Holder has displayed the fairness and balance which is so important in a person who will wield such vast power and authority.

As our Nation's economy suffers, we are deeply concerned that, along with unemployment, crime will rise as well. We fully appreciate that funds are limited, but we know that Mr. Holder will work, as he did as Deputy Attorney General, to provide funding for state and local law enforcement so that we and our colleagues at the state and local level can be effective in our mission.

Therefore, we urge you to confirm the nomination of Eric H. Holder, Jr. for Attorney General.

Sincerely,

Tom Miller
Attorney General of Iowa

Jon Bruning
Attorney General of Nebraska

Patrick Lynch
Attorney General of Rhode Island

Terry Goddard
Attorney General of Arizona

Dustin B. McDaniel
Attorney General of Arkansas

Edmund G. Brown, Jr.
Attorney General of California

John W. Suthers
Attorney General of Colorado

Richard Blumenthal
Attorney General of Connecticut

Bill McCollum
Attorney General of Florida

Thurbert E. Baker
Attorney General of Georgia

Mark J. Bennett
Attorney General of Hawaii

Lawrence Wasden
Attorney General of Idaho

Lisa Madigan
Attorney General of Illinois

Stephen Carter
Attorney General of Indiana

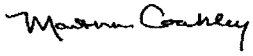
Steve Six
Attorney General of Kansas

Jack Conway
Attorney General of Kentucky

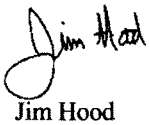
James D. "Buddy" Caldwell
Attorney General of Louisiana

Janet T. Mills
Attorney General of Maine

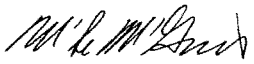
Douglas F. Gansler
Attorney General of Maryland



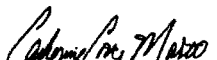
Martha Coakley
Attorney General of Massachusetts



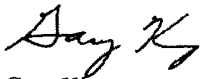
Jim Hood
Attorney General of Mississippi



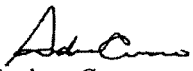
Mike McGrath
Attorney General of Montana



Catherine Cortez Masto
Attorney General of Nevada



Gary King
Attorney General of New Mexico

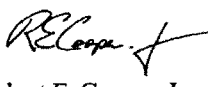


Andrew Cuomo
Attorney General of New York

Roy Cooper
Attorney General of North Carolina

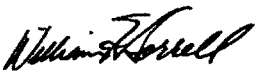
W. A. Drew Edmondson
Attorney General of Oklahoma

Larry Long
Attorney General of South Dakota

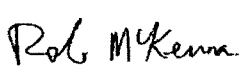


Robert E. Cooper, Jr.
Attorney General of Tennessee

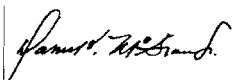
Mark Shurtleff
Attorney General of Utah



William H. Sorrell
Attorney General of Vermont



Rob McKenna
Attorney General of Washington



Darrell V. McGraw, Jr.
Attorney General of West Virginia

Bruce A. Salzburg
Attorney General of Wyoming

Cc: Members of the Senate Committee on the Judiciary

MOTOROLA

December 23, 2008

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275)

Subject: Endorsement of Attorney General Nominee Eric Holder

Dear Senators Leahy and Specter:

It is an honor to add my voice to those supporting the nomination of Eric Holder as you evaluate his qualifications to serve as the next Attorney General of the United States. I have been privileged to work for and along side of Eric for more than a decade, particularly through the Clinton and Bush Administrations. As the recently retired Administrator of the Drug Enforcement Administration after more than four years, and career federal prosecutor and Associate Deputy Attorney General in both the Clinton and Bush Administrations, I also know how Eric is viewed not just among the career lawyers in the Department but also among the members of law enforcement.

Eric is highly respected with a well founded reputation for unfailing ethics, decisive leadership, keen vision and a track record of holding himself and others in public service accountable to the people they serve rather than to those who appointed them. Law enforcement has viewed Eric as a collaborative, trusted partner over the years – with Eric's recent outreach from his position in private practice to bring all professional sports and players unions to the DEA table to jointly address efforts to eliminate illegal steroid use, and well before that while in public office as Eric personally led the charge against drugs, gun crime, money laundering and public corruption. Eric also took the hard steps of leading reluctant law enforcement into successful forfeiture reform with Congress.

Having witnessed Eric in action behind the scenes and on stage, I know he has the humble temperament, depth of experience, fearless political independence and maturity to be an extraordinary Attorney General. Our nation needs the confidence of an inspiring team builder like Eric, who surrounds himself with talent and comes to the position with the benefit of knowing well the inner workings of the entire Department from the ground up – at its best and worst.

Respectfully submitted,

MOTOROLA, INC.

Karen P Tandy
Senior Vice President,
Public Affairs & Communications

PEPSICO

700 Anderson Hill Road Purchase, New York 10577
Tel. (914) 253-3633 Fax (914) 253-3051

LARRY D. THOMPSON
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS
GENERAL COUNSEL AND SECRETARY

January 6, 2009

Honorable Arlen Specter
United States Senate
711 - Hart Senate Office Building
2nd & C Streets, NE
Washington, DC 20510

Dear Senator Specter:

I write to strongly endorse the nomination of Eric Holder for Attorney General of the United States. By now, the long and impressive list of Eric's qualifications and experiences is known to everyone. What I would now like to do is to point out just two aspects of Eric's background that have not received much public attention. I believe these two truly unique aspects of his background will allow Eric to bring a fresh and balanced perspective to the Department of Justice that will greatly improve our country's legal system.

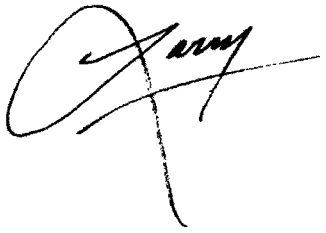
I have long believed that we desperately need legal reform to restore common sense to a justice system that has gone haywire and produces decisions that are many times nonsensical and generally stifle good-faith decision making. This is why I am a big fan of Philip Howard, author of the recent book, Life Without Lawyers, and founder of the organization, Common Good. I am excited that our Attorney General nominee is a Trustee of Common Good. The type of bi-partisan legal reform supported by Common Good is much needed. Our present system produces anomalies that punish legitimate businesses, support failing schools and allow violent criminals to terrorize citizens, especially poor people, on the streets and in their homes.

Second, in 1988 Eric Holder was nominated by President Reagan to serve as a Judge on the District of Columbia Superior Court. Eric's record as a judge is splendid. He was practical, creative and tough in dealing with the gritty issues faced by citizens in an urban environment. He helped improve the quality of life in the District by helping to make it a safer place.

Eric will be a great Attorney General. He will be principled and pragmatic. He understands the need for legal reform and will support it. He will be a friend of business and ordinary citizens alike. And, perhaps most importantly for me, he will be fair, but tough, as the nation's chief law enforcement officer.

Thank you for your consideration and best personal regards.

Sincerely,



Statement for the Record

Of

Frances Fragos Townsend,
Former Homeland Security and Counterterrorism Advisor to President George W. Bush

Committee on the Judiciary

U.S. Senate

For the meeting

Executive Nomination of Eric H. Holder, Jr.

January 16, 2009

Chairman Leahy, Ranking Member Specter, Members of the Committee, thank you for the opportunity to appear before you today. I am Frances Fragos Townsend. From 2004 until 2008, I was Homeland Security and Counterterrorism Advisor to President George W. Bush, for whom I chaired the Homeland Security Council and previously served as Deputy Assistant to the President and Deputy National Security Advisor for Combating Terrorism. It is an honor and privilege to appear before the committee today as you consider the nomination of Eric Holder for Attorney General.

My twenty three years of public service includes thirteen years at the Department of Justice. As a career prosecutor there, I had the privilege of working with Mr. Holder during his tenure as a U.S. Attorney and as Deputy Attorney General. Specifically, I was a direct report of Mr. Holder's when I headed the Office of Intelligence Policy and Review, which is now the Department of Justice's National Security Division.

Mr. Holder's career service both as a Superior Court Judge and as a career prosecutor in the Public Integrity Section of the Criminal Division rightly earned him the respect and affection of career prosecutors not only here in Washington, but also in U.S. Attorneys' offices around the nation. Not surprisingly, given his experience, I found Mr. Holder to be open-minded, fair and respectful of the views and opinions of the career lawyers.

Mr. Holder was never reluctant to hear discussion between career and appointed staff if there was disagreement among them. He decided those issues in accordance with the facts and his best judgment, giving serious consideration and respect to the advice of career lawyers. In his interactions with the Office of Intelligence Policy and Review, he took his national security responsibilities seriously, and he always made himself available whenever he was needed. He carefully reviewed the detailed documents prepared for submission to the Foreign Intelligence Surveillance Court when his approval was required and unfailingly deliberated on the questions and facts before signing such submissions.

I wish to be clear: I am not here because I believe that, if confirmed as Attorney General, Mr. Holder will decide legal issues the same way that I would. On the contrary; I expect that will often not be the case.

I am here because I believe Eric is a competent, capable and fair-minded lawyer who will not hesitate to uphold and defend the laws and the Constitution of the United States. Eric is an honest, decent man of the highest ethical standards, who both understands and appreciates the strong and proud traditions of the Department of Justice and will protect and honor them.

The Attorney General position must be filled quickly. We remain a nation at war and a nation that faces the continuous threat of a terrorist attack, and we cannot afford for the Attorney General position to sit vacant or for there to be a needlessly protracted period where leadership of the Department is in question.

For all these reasons, I humbly and respectfully recommend that the Committee move expeditiously to confirm Mr. Eric H. Holder, Jr. for Attorney General. Thank you again for your time and consideration of Mr. Holder's nomination, and I will be happy to answer any questions you may have at this time.

JESSE C. TRENTADUE
[redacted]

December 19, 2008

Via Facsimile, E-mail and United States Mail

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Mr. Eric Holder
Nominee for Attorney General

Dear Chairman Leahy:

You need to know that Eric Holder, now nominated to become Attorney General, played a key role in covering up the torture-murder of my brother, Kenneth Michael Trentadue. You also need to know that Mr. Holder did this while serving as Deputy Attorney General and Acting Attorney General from 1997-2001.

This is not just my shocking opinion. It is also the opinion of many Americans. More importantly, it is supported by the Justice Department's records and actions that came to light as a result of my family's efforts to obtain a certain measure of justice for my brother's murder.

Kenneth was killed in Oklahoma City in August of 1995. My family has spent over 13 years investigating my brother's gruesome murder, including bringing a wrongful death lawsuit in federal court in 1997. In that case, the Justice Department hid and destroyed evidence that would have exposed my brother's murders, and we believe that Mr. Holder was directly involved in those acts of obstruction of justice.[1]

To this day, however, despite the efforts of my family, numerous journalists, and Congress, the Justice Department has been able to hide this terrible story – and its culpability in

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[1] Despite the destruction of evidence, the court awarded my family a $1 million judgment. We have used that money to offer a $250,000 reward for the people who killed Kenney. That offer is posted at: www.kmtreward.com . This site also contains the irrefutable evidence that my brother was murdered, which evidence was kept from us by the Justice Department.

the death of my brother Kenneth. More importantly, then Deputy Attorney General Eric Holder was assigned to be the point man in blocking my family's efforts to bring my brother Kenneth Trentadue's murderers to justice. Now, incredibly, President-elect Barack Obama has nominated Eric Holder to be the new Attorney General.

The paper trail on Mr. Holder's actions is scant. However, e-mails and handwritten notes by those working under Mr. Holder in the Justice Department have surfaced. These documents paint a clear picture of a wide-ranging and cynical scheme, run directly by Mr. Holder, to quash my family's efforts to have my brother's murder investigated, and to deflect congressional oversight and media attention from the shocking circumstances of his death.[2]

According to these documents, a significant part of this plan involved Mr. Holder convincing Congress not to inquire into my brother's murder. The plan called for Mr. Holder to meet with Senator Hatch on October 9, 1997, just prior to the Justice Department's issuance of a *Press Release* announcing that the federal grand jury supposedly "investigating" my brother's murder had failed to charge anyone with this crime.[3]

The stated purpose of this meeting between Mr. Holder and Senator Hatch was to defuse Judiciary Committee oversight and media inquiry into the circumstances of my brother's death. In fact, one e-mail states that **"we ain't looking for press on this. Hill takes priority."**

But that meeting apparently did not go as planned by Mr. Holder, because the next day, October 10, 1997, Senator Hatch gave an exclusive interview to Fox News in which he spoke out against the results of the grand jury and the Justice Department's handling of the case:

> **I met with the Deputy Attorney General just last night on this. . . . All of this is very, very upsetting to a lot of people, including myself. Now, we haven't had a hearing on this lately because of the ongoing federal investigation. But now that the federal people have completed their analysis of this and their investigation, I think we will hold a hearing between now and the end of the year and just see what we can do to get to the bottom of this. . . .There**

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[2] Those e-mails and handwritten notes were produced by the Justice Department in my family's civil suit. They are attached as the *"Trentadue Mission,"* which is the name given to the operation by Mr. Holder and his team.

[3] What that Justice Department *Press Release* did no say, however, was that the grand jury had secretly concluded in August 1997, and that Mr. Holder had immediately thereafter put in place a **"roll out plan"** to control Congress and the media once the grand jury results became public. Mr. Holder's team reported to him that the **"Trentadue mission"** was **"like coordinating the invasion of Normandy."** Those e-mails also refer to **"meeting with the deputy to discuss trentadue-does"** and **"trentadon't."**

> **is a lot wrong with this case and I hope somebody will get to the bottom of it. But apparently the federal government hasn't been able to do so....Yep, it has the aroma of coverup.... And like I say, it does look bad. Somebody has not told the truth here and some-body is, in my opinion, covering up.** [4]

Now, these are not my words or spin on what the Senator said. These are direct quotes from the then Chairman of the Senate Judiciary Committee.

Senator Hatch was obviously unpersuaded by Mr. Holder's entreaties not to inquire into the circumstances of my brother's death and/or how that crime was investigated by the FBI. I say this not only because of the Senator's comments in the FOX News interview but also because later that same day, October 10, 1997, Senator Hatch issued a *Press Release* announcing his intention to schedule a hearing before the end of the year to **"examine the facts surrounding the death of Mr. Trentadue and the Department's handling of the matter to date."**

That Judiciary Committee hearing never happened. It did not take place because following Senator Hatch's public announcement, at the apparent urging of Mr. Holder, a delegation from the FBI approached Oklahoma Senator Don Nickles to ask for his assurances that there would be no Senate oversight.

There were two such secret meetings between Senator Nickles and FBI representatives, the first on December 4, 1997, and the second on January 23, 1998. We found out about these meetings as a result of documents produced in my family's lawsuit against the Justice Department. Those documents reveal that both meetings had been approved by FBI Headquarters and the Justice Department.

The first meeting lasted one hour and 45 minutes. Senator Nickles was not even a member of the Judiciary Committee. Yet, he is reported to have promised the FBI delegation **"that it would be his decision whether a Senate inquiry into this matter would be conducted . . . [and] he was not inclined to initiate such a review."**[5]

The foregoing record is troubling and raises many questions about the mind set and actions of the Justice Department when Mr. Holder was Deputy Attorney General and Acting Attorney General, including the maturity of those at the helm. Obviously, therefore, you and the

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[4] We have what is believed to be the only surviving copy of that videotaped interview, which has apparently never been aired.

[5] The official FBI reports of those two visits to Senator Nickles are attached as "*Senator Nickles Documents*."

other members of the Judiciary Committee should inquire into these matters during Mr. Holder's upcoming confirmation hearing.

No one could be less suitable to uphold the principles of justice in America than Eric Holder. And I would like the opportunity to appear before the Judiciary Committee to testify to that fact.

Jesse C. Trentadue

JCT/da
cc: Judiciary Committee Members
Media

Judiciary Letter.wpd

THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
URL: www.usmayors.org

December 22, 2008

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

On behalf of The United States Conference of Mayors, I am writing to urge approval and confirmation of Eric Holder as Attorney General.

While serving as Deputy Attorney General in the Clinton Administration, Mr. Holder was actively involved with the nation's mayors and police chiefs in helping reduce crime in cities. His leadership on priority programs including the COPS program, the Byrne program, the Local Law Enforcement Block Grant, the Violence Against Women Act, and the Brady Law made a dramatic difference in cities and states across the nation. Mr. Holder was an active participant in the national meetings of The U.S. Conference of Mayors, and always reached out to engage with mayors directly on the problems facing their cities.

It is our strong belief that under Mr. Holder's leadership as Attorney General of the United States, we will be able to restore the local-federal partnership that previously existed and address the problems of youth violence, gangs, illegal guns, and growing murder and crime rates in too many cities. And, we believe that Mr. Holder will help us better integrate the activities of the Department of Justice and the Department of Homeland Security in supporting our nation's first responders in the ongoing fight against terrorism.

Thank you for your continued leadership, and we stand ready to work with you and the Obama Administration in the coming years to make America safer and more secure.

Sincerely,

Tom Cochran

Tom Cochran
CEO and Executive Director

GUN OWNERS OF AMERICA

Testimony of John Velleco

Director of Federal Affairs, Gun Owners of America

Before the Committee on the Judiciary, United States Senate

January 16, 2009

Good morning Chairman Leahy, Ranking Member Specter, and members of the Committee.

For nearly 35 years, Gun Owners of America has been dedicated to lobbying in favor of the Second Amendment right to keep and bear arms. On behalf of approximately 300,000 members across the country, I want to thank you for the opportunity to testify today on this important matter.

Gun Owners of America believes that it would be a mistake for this body to confirm a nominee for U.S. Attorney General who would not have the trust and confidence of a significant number of Americans, particularly sportsmen and gun owners.

Eric Holder's record on gun rights issues is not obscure or insignificant. Both in his capacity as Deputy Attorney General from 1997-2001 and as an attorney in private practice, Mr. Holder has taken positions on gun rights that are outside the mainstream of American thought and jurisprudence and, we would argue, at variance with some of the views articulated by President-elect Obama during the campaign.

While serving as Deputy Attorney General, Eric Holder was active on several gun rights issues. In 1999, Mr. Holder supported legislation that would have limited handgun purchases to one per month, instituted a 3-day waiting period for handgun purchases, made it illegal for adults under the age of 21 to possess a handgun, subjected licensed gun dealers to a host of new laws and gun show promoters to regulations so severe that gun shows would effectively have been banned.

In a statement prior to an expected vote on the bill, Mr. Holder urged the Congress not to cave in to "the special interests that value the cold hard steel of guns more than the lives

8001 Forbes Place • Suite 102 • Springfield, VA 22151 • 703-321-8585 • FAX 703-321-8408 • GOA Web Site: http://www.gunowners.org

The academic world also is increasingly supportive of the individual rights interpretation of the Second Amendment. Sanford Levinson and Akhil Reed Amar (Yale), William Van Alstyne (Duke) and Laurence Tribe (Harvard) are just a few notable examples of scholars who believe that the Second Amendment protects an individual right. These views, of course, are in accord with what the Supreme Court eventually ruled in Heller.

Eric Holder apparently disagrees with the incoming president and the Supreme Court on a core Constitutional issue. Gun Owners of America believes that Mr. Holder should not, therefore, be entrusted with the responsibility of enforcing and prosecuting federal laws that regulate the possession, sale, and use of firearms.

Thank you for the opportunity to testify on this important matter.

January 12, 2009

U.S. Senate Judiciary Committee
Senator Arlen Specter
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

I am respectfully writing upon your request to reiterate some findings regarding Marc Rich that appeared in an investigative article called "The Rich Boys". The article, written by me, appeared in *BusinessWeek* Magazine on July 18, 2005. Broadly, it is about Marc Rich and how he spawned an interconnected group of independent commodities traders over several decades. All of the traders either trained under Marc Rich or have or had close business ties to him—ergo "The Rich Boys". At the time of the article, this network of independent traders, primarily based outside of the United States, allegedly conducted a considerable amount of oil trading with so-called "rogue nations."

The committee has specifically asked about Marc Rich, inquiring whether he continued illicit activity after he was pardoned by President Bill Clinton in January 2001. The *BusinessWeek* article alleges that Marc Rich (a.k.a. "Marc Rich & Co Holding") did continue to engage in unlawful trading, specifically in conjunction with the United Nation's Oil-for-Food Program. This trading, according to documents we obtained, commenced approximately one month after his pardon.

It is important to back up and review the basic circumstances under which Rich may have engaged in illicit deals. In December 1996 the U.N. began implementing its Oil-for-Food Program with Iraq. Under the sanctions agreement, proceeds of oil exported from Iraq (ostensibly purchased by U.N. approved crude buyers) was to go to pay for food and other humanitarian needs for the Iraqi people. However, due to bribes to U.N. overseers and lax oversight, Saddam Hussein (along with Iraq's State Oil Marketing Organization) corruptly awarded oil sales contracts to various (political) supporters. The sales contracts gave these people the right to purchase Iraqi oil at cut-rate or below-market prices. In return, Hussein demanded substantial surcharges (i.e. kickbacks). The supporters would typically sell the contracts to professional oil dealers who generally paid all or part of the kickbacks back to the Iraqi regime, often into secret bank accounts. A large portion of the kickbacks was allegedly used to fund Hussein's weapons arsenal which, in turn, funded the Iraqi insurgents after the U.S. and allies invaded Iraq in March 2003.

Regarding Marc Rich's actions specifically during this time, our investigative reporting revealed:

1. Marc Rich and Co. Holdings was on the U.N.'s list of approved crude buyers (i.e. those who were approved to purchase Iraqi oil in conjunction with the Oil-for-Food Program), though Rich responded to questions by the House International Relations Committee in March 2005 that "nothing ever came of it". Later, a firm spokesman reiterated: "Marc Rich Holdings rejects all the allegations relating to its involvement in the U.N.'s Oil-for-Food program in Iraq."

2. Despite this, we found that Rich's company's name appeared in a number of shipping records compiled by the Middle East Economic Survey (*MEES)*. These show that beginning in February 2001, Rich purchased Iraqi oil from four separate front companies: Onako Oil Co., a subsidiary of Alfa Group, one of Russia's largest conglomerates; an Egyptian company called International Company for Petroleum & Industrial Services (or INCOME); and a Swiss company, Zerich S.A., with strong ties to North Korea's Kim Jong Il; as well as an outfit called EOTC, which appeared to be a shell company. Alfa and INCOME denied paying illegal surcharges.

3. If these shipping records are correct, and we found no reason to doubt them, this would mean that Rich was purchasing Iraqi oil approximately one month after his pardon via various middlemen. In addition, the CIA, the Senate, and others have concluded that from September 2000 until September 2002, buyers in the U.N.'s Oil-for-Food Program had to pay illegal surcharges to the Iraqi regime, though we found no documents showing Rich specifically made such payments.

4. The entity INCOME, in particular, is of interest. Two of Rich's key Middle East connections were the Bakhtiar brothers, Esfandiar and Bahman. The Bakhtiars—whose father, investigators believe, headed the Shah of Iran's secret police—fled to Iraq after the Shah's ouster. The Bakhtiar brothers were like "adopted sons" to Saddam Hussein, according to Jules Kroll, the private investigator. The Bakhtiars entered the oil business and helped Rich forge links with Saddam Hussein. Over two decades, Rich allegedly traded through two companies linked with or owned by the Bakhtiars: Jaraco S.A. and Dynatrade S.A. (At the time of the *BusinessWeek* article, and possibly now, both INCOME and Dynatrade were owned by International Group for Investments (IGI) in Cairo, Egypt). IGI's vice president, Hesham Sheta, told *BusinessWeek* in 2005, "[One of the] Bakhtiars still acts as a consultant" to IGI, which in turn owns (or owned) INCOME. Sheta in fact confirmed in the article that "Marc Rich has been INCOME's 'agent' [oil trader] since 1990" and that Rich bought Iraqi crude from INCOME in 2001. As stated previously, Sheta denied that INCOME paid any illegal surcharges for the oil.

In conclusion, there are several issues:

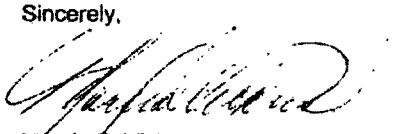
First, it appears that Rich did indeed purchase oil in conjunction with the U.N.'s Oil-for-Food Program, despite his firm denial to the U.S. Congress in 2005.

Second, Rich was already on the U.N 's "approved" list of crude purchasers for the Oil-for-Food program. If he could legitimately obtain Iraqi oil at transparent market prices why would he allegedly go through middlemen (all. by the way, sympathetic to the Iraqi regime) to purchase it? By doing so, one could allege that Rich did have a hand—whether directly or indirectly—in paying illegal surcharges in order to obtain Iraqi crude at below-market rates.

Finally. this 2005 *BusinessWeek* article required many months of intense, often tedious, investigative work. It required speaking repeatedly with a number of sources including oil market experts; independent and government investigators from the U.S. and other countries; independent oil traders who had worked with Rich or possessed direct knowledge of his business and others. It also required poring over numerous documents from a wide array of sources including the shipping industry, private investigator reports (from Kroll and others), government and oil market entities and the U.N. This is only to say that the reporting was conducted as scrupulously as possible. In fact, the oil trading information, in particular, in the article was based only on documents we were able to physically obtain. Additionally, when dealing with investigators, oil experts and others, information was used only when it came from two or more unrelated sources.

Thank you for allowing me to address the Committee with this letter.

Sincerely,



Marcia E. Vickers
Contributing Editor, *Fortune* Magazine
40 East 89th Street
New York, NY 10128

Kenneth L. Wainstein

January 26, 2009

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

I submit this letter in connection with the Judiciary Committee's consideration of the nomination of Eric Holder for Attorney General of the United States. I appreciate the care that you and your colleagues are giving to this nomination, as it reflects your recognition of the critical role that the Attorney General plays in the functioning of the Department of Justice and its efforts to provide security and justice for the American people. I am confident that at the end of this process you will conclude that Eric Holder is an excellent choice to lead the Department of Justice in these challenging times.

I submit this letter at this point in the confirmation process, as I was in government service until six days ago when I left my position as Assistant to the President for Homeland Security and Counterterrorism (Homeland Security Advisor for President Bush). Prior to that appointment, I spent my entire career in the Department of Justice, where I had the privilege of working for or with Eric in a number of capacities. I was an Assistant U.S. Attorney in the District of Columbia when he served as our United States Attorney and then as Deputy Attorney General. I worked with him on a number of matters when he was in private practice representing clients with matters before the Department of Justice. He was the first person whose counsel I sought in 2004 when I was appointed United States Attorney for the District of Columbia, and I have gone to him for advice at numerous points throughout my government career.

Over the 16 years of our friendship, Eric has consistently demonstrated the personal qualities that will equip him to serve with distinction as Attorney General of the United States. I would like to focus on several of those qualities in this letter.

First, Eric is a man of action who is willing to do the hard work of forcing institutional change. We saw that quality when he came to the U.S. Attorney's Office and instituted Community Prosecution, a ground-breaking program that prioritized responsiveness to the needs of the community and allocated prosecutorial resources by geographical district of the city. The Community Prosecution program was a great success in improving the Office's service to the residents of the District of Columbia, and

it reflects the kind of creativity and initiative that the Department of Justice needs in its leader.

I know Eric Holder to be a man of true integrity who has demonstrated fidelity to the highest ethical standards throughout his career. As U.S. Attorney, he regularly preached the imperative for fair play and ensured that his Assistant U.S. Attorneys received regular training on their ethical responsibilities. As a defense attorney, his strong reputation for effective advocacy has been based in large part on the credibility and trust he has earned among federal prosecutors and regulators.

Eric has proven himself a strong proponent of law and order who will take aggressive action to protect our citizens. When the drug wars were killing D.C. residents by the hundreds in the early 1990's, he pushed the Office to prosecute and secure strong sentences against those who distributed drugs or committed gun crimes. When a number of us wanted to use the federal racketeering laws in a novel way to prosecute and dismantle violent neighborhood-based gangs, Eric strongly supported our proposed indictments when they were reviewed by officials in Main Justice. And, whenever crime directly affected the Office – as it did when one of my witnesses was stabbed by the defendant against whom she was testifying – Eric was the first to stand by our side and to offer comfort and assistance.

Finally, Eric has consistently shown me that he is more concerned with justice than with politics. His decision making and discussions about cases were always focused on the facts, the law, and the applicable Departmental policies and practices; he based his personnel and promotion decisions on merit; and he earned a well-deserved reputation for working closely and effectively with members of both parties – as he did when he served as Acting Attorney General at the start of the George W. Bush Administration. It is therefore no surprise that his nomination is receiving such broad bi-partisan support among former Department of Justice officials.

In sum, Eric Holder has clearly demonstrated that he has the qualities and the character that make him worthy to assume the responsibilities of Attorney General of the United States. I have the utmost respect for him as a man, as a leader and as a committed public servant, and I am honored to register my support for his nomination.

Please do not hesitate to contact me if I can provide further information that might be helpful to the Committee during the confirmation process.

Sincerely,

Kenneth L. Wainstein

cc: Members of the Senate Committee
on the Judiciary

January 9, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman and Senator Specter:

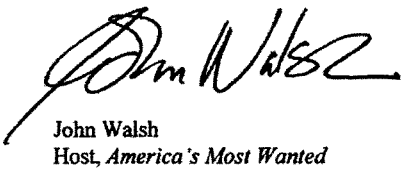
I am writing to you in support of Eric Holder's nomination to be Attorney General of the United States. I can think of no other Attorney General nominee whose professional record on behalf our nation's child victims exceeded that of Mr. Holder.

His legal qualifications are well known. As a young prosecutor, Mr. Holder zealously applied the law on behalf of the public and quickly rose to the top of his profession at the Department of Justice. He was soon appointed a D.C. Superior Court Judge, where he served with distinction and integrity and earned a reputation for being tough on crime. After 5 years on the bench, he was appointed the United States Attorney for the District of Columbia, perhaps the Nation's busiest USA's office in terms of violent crime cases. As U.S. Attorney he proved himself to be an able and aggressive prosecutor. From 1997 to 2001 Eric served as Deputy Attorney General with complete integrity, independence, and courage.

It was during his years as Deputy Attorney General when Mr. Holder's commitment to helping our nation's most innocent victims of crime became apparent. For example, Mr. Holder was an early advocate for the development of our nation's CyberTipline – the Internet's 911 system for the reporting of suspected online child pornography. In 1998, Mr. Holder personally drove the implementation of the CyberTipline – federal law enforcement's preferred tool for finding child pornography. He cut through the bureaucracy, worked with private and public sector stakeholders, and helped build a system that is currently being administered by the National Center for Missing and Exploited Children. Thanks to his role as the Department of Justice's principal champion for the CyberTipline, thousands of children have been rescued from abuse and tens of thousands of our nation's most vile perpetrators have been identified and prosecuted.

It is for these reasons that I am pleased to support the nomination of Eric Holder to be our Nation's next Attorney General. I hope you will take expeditious action to favorably report his nomination to the Senate. Please contact me with any questions at (301) 563-6300.

Respectfully,



John Walsh
Host, *America's Most Wanted*

THE WASHINGTON BAR ASSOCIATION

P.O. BOX 56551 • WASHINGTON, D.C. 20040 • (202) 289-4247 • (202) 723-8175 (fax)

Dedicated to the principle "*Equal Justice Under Law*"

January 14, 2009

Chairman Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the officers and members of the Washington Bar Association in support of the nomination of Eric Holder to the position of Attorney General of the United States.[1] His educational and professional credentials, coupled with his temperament and demeanor, as well as his contributions to the community, make him more than uniquely qualified for the position.

The Washington Bar Association ("WBA"), founded in 1925, is one of the oldest voluntary bar association in this country. Its membership consists primarily of lawyers of American-American descent. Our organization is dedicated to the principle of ***Equal Justice Under Law*** and serves as an advocate for African-American lawyers and causes of interest to the African-American community. It is one of the largest affiliates of the National Bar Association. Over the years, our members have contributed significantly to the legal fabric and fiber of the nation as a whole and to the Washington, D.C. community in particular. Additionally, past and present members of the WBA have enhanced the ethnic and racial diversification of the judiciary, academia, law firms, corporate organizations and government agencies.

Having spent the majority of his professional life in the District of Columbia, Mr. Holder is no stranger to the membership of the Washington Bar Association. We are very familiar with him and applaud his public service, noting in particular that he has held the positions of trial attorney in the Public Integrity Section of the Department of Justice, United States

[1] No member of the Washington Bar Association who is a judicial officer participated in a discussion or in the preparation of this endorsement.

Attorney for the District of Columbia, Associate Judge on the Superior Court of the District of Columbia and Deputy Attorney General in a prior administration. The professional accomplishments listed in response to the Judiciary Committee's questionnaire for Mr. Holder are considerable. Equally impressive is his list of the committees and task forces of professional associations on which he has served and his membership in community-based organizations that seek to improve the lives of everyday people. The wide array of the organizations that have honored him with awards and citations over the years makes it clear that the Washington Bar Association's support of Mr. Holder for the position of Attorney General goes beyond the mere endorsement of just another Washington lawyer. Our endorsement is deeply rooted in the belief that he has more than amply demonstrated his commitment to the people of this nation. A number of our members have had the opportunity to work with him professionally and some have served on boards and committees with him.

Mr. Holder's nomination has garnered a great deal of press attention because of its historical significance. The Washington Bar Association believes that Mr. Holder is eminently qualified to serve as Attorney General of the United States by virtue of his education, experience, and demonstrated ability to uphold and enforce the laws of this nation. It is hard to imagine that a more qualified individual could have been nominated for this position. Under the circumstances, we urge your committee to vote favorably on Mr. Holder's nomination.

Sincerely,

Ronald C. Jessamy
President

American Probation and Parole Association

APPA HEADQUARTERS
c/o The Council of State Governments
P.O. Box 11910
Lexington, KY 40578-1910
(859) 244-8203 • FAX (859) 244-8001
E-mail address: appa@csg.org

November 26, 2008

Honorable Barack Obama
President-elect, United States of America
c/o David Ogden
Presidential Transition Team
Washington, DC 20270

Dear President-Elect Obama:

I want to express my support for your selection of Eric Holder as the U.S. Attorney General designee.

The American Probation and Parole Association (APPA) is an international membership group that represents over 35,000 probation, parole and community corrections professionals involved in the criminal and juvenile justice systems. We provide training, technical assistance, research and information clearinghouse services to our members and constituents. In providing these services to our constituents we are cognizant of the vital role played by victims of crime in our criminal and juvenile justice systems. Our attention to the needs of crime victims is at the forefront of our efforts towards justice system improvements in both the policy and practice arenas. Our work in the areas of victim impact statements, restitution collection, recognizing and responding to elder abuse, effective supervision of domestic violence perpetrators, use of electronic supervision tools, the role of victims in re-entry and victim sensitive policies and practices are well known to the field. We recognize that to effectively respond to crime and to keep our communities safe that the needs of crime victims must be met.

As the recipient of the first U.S. Congressional Crime Victims' Rights Caucus *Allied Professional Award*, I am elated that a man of Mr. Holder's long-standing reputation of advocating and implementing victim related services is being considered for the post of U.S. Attorney General. It is our sincere hope that Mr. Holder will be confirmed and that the APPA will be able to be trusted partners for him to call on.

Sincerely,

Carl Wicklund
Executive Director

SUITE 1100
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2505

January 14, 2009

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: **Nomination of Eric Holder**

Dear Senator Leahy and Senator Specter:

We write to urge your affirmative vote in favor of the nomination of Eric Holder to serve as the Attorney General of the United States.

We have known Eric for more than 30 years. We have worked together on a number of projects to encourage young African American attorneys to be engaged in the work of the D.C. Bar and pro bono organizations in Washington. Moreover, during his service as U.S. Attorney for the District of Columbia and also as a judge on the DC Superior Court Eric served with distinction and great integrity.

Given the extraordinary breadth of his legal service in the public and private sectors and his firm grasp of the responsibilities that the office of the Attorney General carries, we believe that he would make an exemplary Attorney General. Eric is a man of wisdom, passion and commitment to the law, his country, and his community. His previous appointments to the local and Federal bench reflect his broad knowledge of the law and its impact on individuals as well as governments and corporations.

We are proud to call him a friend and legal colleague. We believe that he would serve our country well as the Attorney General .His outstanding track record in the public and private sectors supports your Committee's confirmation of his nomination at the earliest possible date.

With best personal regards,

Wesley S. Williams, Jr.

Karen Hastie Williams

CENTER FOR NEIGHBORHOOD ENTERPRISE

~ Serving Since 1981 ~

Chairman Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write in support of the nomination of Eric Holder to be U.S. Attorney General. As founder and president of the Center for Neighborhood Enterprise, I speak for hundreds of neighborhood-based organizations throughout the country that are working to stop the high rates of violence and criminal activity in their communities. The grassroots leaders in the CNE network know Mr. Holder to be a tough prosecutor who has also demonstrated that he is a strong supporter of the neighborhood activists working to reduce crime and violence. He is viewed as a leader who understands the limitations of law enforcement and sees the need to involve the residents of the communities suffering the problems in creating solutions.

In a 2000 speech, Holder told the story of Darryl Hall, the 12-year-old who died in 1997 as a result of an ongoing feud between two rival youth crews in Washington, DC's Benning Terrace public housing community, then a major source of homicides and violent crime. He recounted that when he had been appointed U.S. Attorney several years before that, he had wanted to look at Benning Terrace and the U.S. Marshals Service would not let him get out of the car because it was so dangerous. He went on to describe how a grassroots organization, the Alliance of Concerned Men and the Center for Neighborhood Enterprise negotiated a truce between the crews and how David Gilmore, then U.S. Housing Receiver, offered jobs and training to the gang members who put down their weapons. Holder was among the first high-ranking officials to come to Benning Terrace to celebrate the peace and congratulate the young people who had elected to change their lives.

Many times in the future he referred to the Benning Terrace experience and what it signified. As Deputy Attorney General and afterward as a private citizen, he worked to support neighborhood-based efforts. Those of us at the grassroots level think Eric Holder "gets it," and we urge you to confirm his appointment. It portends well for the creation of solutions--from the community up. Should you want to hear firsthand from those of us working "in the trenches," I and others would welcome the opportunity to testify on behalf of Eric Holder.

Sincerely,

Robert L. Woodson, Sr.
President
Center for Neighborhood Enterprise

1625 K STREET, NW, SUITE 1200, WASHINGTON, D.C. 20006
PH: (202) 518-6500 TOLL FREE: 1 (866) 518-1283 FAX: (202) 588-0 01/09/2009 4:39PM RO

THE YOUNG LAWYERS SECTION *of the*
THE BAR ASSOCIATION *of the*
DISTRICT OF COLUMBIA

December 18, 2008

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

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Eric H. Holder Jr. to be Attorney General of the United States

Dear Mr. Chairman and Ranking Member Specter:

The Young Lawyers Section of the Bar Association of the District of Columbia ("BADC YLS") supports the nomination of Eric H. Holder Jr. to the office of Attorney General of the United States.

In response to the President-elect's nomination of Mr. Holder to be Attorney General, the BADC YLS Board reviewed information regarding Mr. Holder's qualifications and experience. As a result of that investigation, the Board determined that Mr. Holder is well qualified to serve as Attorney General.

Sincerely,

David E. Hawkins
Chair

cc: BADC YLS Board of Directors

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www.badc.org