Senator Grassley's Written Questions for Lanny A. Breuer, to be Assistant Attorney General for the Criminal Division, U.S. Department of Justice

MONEY LAUNDERING

In the 110th Congress, I introduced the Combating Money Laundering and Terrorist Financing Act, which I plan to reintroduce 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?

> **Yes. Strong anti-money laundering laws are critical to prevent terrorists, drug traffickers, and other organized criminal elements from raising and transferring funds with which they can sustain their organizations. It is also critical that the proceeds of crime are recovered for the benefit of victims and that criminals – of all kinds – are prevented from profiting from their crimes. If confirmed, I will work with you and other Members of Congress to strengthen money laundering and asset forfeiture laws to ensure the most effective program to recover proceeds of crime.**

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 work to update this MOU so that our nation's law enforcement agencies are actively working together?

> **Detecting illegal money laundering and recovering the proceeds of crime are ongoing challenges, especially as our country faces increasingly sophisticated terrorist networks, drug cartels, and other organized criminal enterprises with new technologies for transferring funds at their disposal. In order to effectively address these challenges, all relevant law enforcement agencies – at the federal, state, and local levels – must work closely together, and there must be open and robust communication between them. If confirmed, I will work to ensure that all the relevant agencies collaborate effectively to detect and prosecute illegal money laundering and to recover criminal assets. In addition, if confirmed, I will review relevant memoranda of understanding with this goal of collaboration and cooperation in mind, and will pursue any necessary changes.**

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 will ask the experienced prosecutors in the Criminal Division's Organized Crime and Racketeering Section, Asset Forfeiture and Money Laundering Section, and Fraud Section to review current methods employed by terrorists, drug traffickers, and money launderers to move, store, and hide criminal assets and the efforts now being used to address this criminal activity. Based on this review, and working with our law enforcement partners, we will pursue a strategy to investigate, detect, and dismantle criminal financing methods. In pursuing this strategy, we will look to work closely with other federal agencies responsible for investigating these illegal practices, including the Department of the Treasury, Department of Homeland Security, and others. In order to effectively address transnational flows of illegal proceeds of crime, I hope also to cultivate productive relationships with law enforcement agencies in countries around the world where criminal financing activity is particularly problematic. Finally, if emerging technologies or evolving tradecraft related to terrorist financing and money laundering require new legislation, I will hope to work closely on any such legislation with you and other members of Congress.

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?

Coordination and interagency cooperation is essential in addressing money laundering. As I indicted above, if confirmed, I will look to work closely with the Treasury Department and other relevant agencies to detect and prosecute money laundering and recover criminal proceeds. In doing so, I will first undertake a review within the Criminal Division of the current efforts to recover criminal assets. This will include a review of the structures currently in place to ensure cooperation among federal law enforcement agencies, and of the legal and enforcement tools currently in place to detect money laundering. This review will identify what, if anything, should be changed to ensure the best enforcement coordination and the most effective strategy to detect such illegal activity and recover illegal proceeds.

5. Do you believe that legislation is needed to address the growing problem of the use of Stored Value Instruments to transport illegal money laundering revenues out of the country? Why or why not?

I am concerned about any methods used to transport illegal money laundering revenues. I have not yet comprehensively evaluated the need for legislation to address this method of illegal money laundering. If confirmed, I will ask the Asset Forfeiture and Money Laundering Section to review the use of Stored Value Instruments to transport illegal money laundering revenues and to report back to me on whether it believes legislation is needed to address these instruments.

<u>CRIMINAL PROSECUTIONS FOR COUNTERFEITING AND THE SENTENCING COMMISSION</u>

Last year I wrote 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?

> **As you indicate, the Sentencing Commission has taken up this issue for the amendment year ending May 2009. Beyond making the issue a priority, my understanding is that the Commission has now published a proposed amendment to the federal sentencing guidelines to address the issue, will be taking testimony from the Secret Service this month, and will be voting on a proposed amendment next month.**
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> **As a general matter, all things being equal, I believe more sophisticated criminal activity should be subject to higher criminal penalties than less sophisticated criminal conduct. I also believe the sentencing guidelines should be straightforward and provide a simple, clear, and consistent set of rules for**

sentencing counterfeiting and all other offenses. If confirmed, I will review this issue and assess both what the Commission is now considering as well as whether additional reforms are needed.

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 confirmed, I will work with you, other members of Congress, and the U.S. Sentencing Commission to help ensure that our sentencing scheme appropriately accounts for more sophisticated criminal conduct in these counterfeiting crimes.

<u>MARIJUANA CRIMES</u>

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. 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?

I am concerned about reports that suggest marijuana cultivation and potency is increasing, including reports that drug cartels are now growing marijuana on public lands. We must not allow our federal lands to become safe havens for these criminal organizations. If confirmed, I will work with the Narcotics and Dangerous Drug Section, the Drug Enforcement Administration, and other relevant agencies to make disrupting and dismantling major drug trafficking organizations a top priority, and we will work with local, state, and other federal law enforcement agencies to investigate and prosecute these organizations.

To my knowledge, prosecuting simple possession of marijuana (those cases where there is no intent to distribute) is not a priority for the Department of Justice, given the large-scale, and often violent, drug-trafficking organizations and criminals on which the Department must focus its attention. In most cases, such prosecutions are appropriately left to state and local prosecutors.

2. Do you believe that additional federal resources are needed to stop the domestic production of marijuana?

I am not familiar with all the federal resources that are now deployed around the country to stop domestic production of marijuana. If confirmed, I will work with the Drug Enforcement Administration and other federal counter-narcotics agencies

to review the resources currently addressing this problem and to determine if additional resources are needed.

3. Do you believe that individuals who hide behind state laws allowing the use of medical marijuana should be prosecuted for federal violations of the Controlled Substances Act?

I firmly believe that violators of the law should be held to account, and, if confirmed, I will vigorously enforce federal law. As I indicated above, I do not believe federal law enforcement agencies now target those who possess marijuana for personal use. However, I am quite concerned that trafficking organizations may be camouflaging their operations behind medical marijuana operations. I am similarly concerned with online pharmacies that hide illegal trafficking operations behind the appearance of sanctioned prescription drug selling. If confirmed, I will make disrupting and dismantling major illegal trafficking operations a priority.