

U.S. SENATE, COMMITTEE ON THE JUDICIARY

Executive Nominations Hearing

TUESDAY, JANUARY 22, 2007

**Responses to Questions for
the Record from SENATOR
CHARLES E. GRASSLEY**

for

**Kevin J. O'Connor, of Connecticut, to be Associate
Attorney General, U.S. Department of Justice**

1. What is your opinion of the federal False Claims Act?

I strongly support the federal False Claims Act. It is an extremely important and vital piece of legislation that allows the Department of Justice, on behalf of the American taxpayers, to uncover fraud and aggressively pursue those responsible.

2. As Assistant Attorney General for the Civil Division, will you vigorously enforce the False Claims Act?

Should I be confirmed as Associate Attorney General, I will vigorously enforce the False Claims Act.

3. Do you have any question as to the constitutionality of the FCA and the *qui tam* provisions?

I have no reason or basis to question the constitutionality of the False Claims Act or its *qui tam* provisions.

4. Will you oppose efforts by industry groups, including the health care industry, to weaken the False Claims Act and the *qui tam* provisions of the FCA?

Yes.

5. Will you pledge to ensure that the Civil Division has sufficient funding for the Commercial Litigation branch to vigorously enforce the FCA?

Yes.

6. Will you ensure that the budget of the Commercial Litigation branch is not reduced in a manner limiting enforcement of the FCA?

Yes.

7. I understand that the Department successfully resolves around 100 FCA cases a year. What, in your opinion, would be required in order for the Department to double the number of cases successfully resolved in a year?

Recently, the Department allocated additional attorney positions to U.S. Attorney's offices and the Civil Division to investigate and prosecute healthcare fraud. The District of Connecticut was fortunate to receive one of those positions and I expect that the additional position, when filled, will result in an increase in the number of False Claims Act cases pursued and resolved. I would expect a similar impact on the other offices that received these positions.

8. Do you believe U.S. Attorneys prosecute and resolve enough FCA cases?

I have no reason to believe that U.S. Attorneys do not prosecute and resolve enough False Claims Act cases. In Connecticut, where I have served as United States Attorney since 2002, we have aggressively pursued and resolved False Claims Act cases.

9. Are there any U.S. Attorneys that have not filed or resolved a FCA case in the last three fiscal years? If so, please provide a list of offices.

From what I understand, the Department does not have specific information concerning the number of FCA cases filed by U.S. Attorney's Offices over the past three fiscal years. However, the Department does generally track the number of civil fraud cases brought by the U.S. Attorney's Offices and those figures show that all but one U.S. Attorney's Office has filed at least one civil fraud case during this period of time.

10. What steps can be taken by the Department, and other government offices, to shorten the length of time FCA cases are placed under seal?

In many False Claims Act cases, for the Department to thoroughly investigate claims asserted by relators, and make an informed election decision, it takes longer than the sixty days provided under the False Claims Act. As a result, motions are filed to extend the sealing period so that the government can complete its initial investigation. In many of these cases, the government must, amongst other investigative steps, subpoena a large volume of documents and then review those documents. The timing of the government's election decision may also be affected by the existence of related criminal proceedings or qui tam actions, which may raise various procedural or jurisdictional issues. And, often the government attempts to resolve qui tam cases before intervention, because

defendants frequently have an incentive to settle while the case is under seal. While it is important that the government be given sufficient time to conduct a thorough investigation and resolve procedural issues, it must also endeavor to complete that investigation so that the case may be unsealed as promptly as possible. Should I be confirmed as Associate Attorney General, I will approach all of these cases with that standard in mind and, where possible, work to shorten the length of time False Claims Act cases are placed under seal.

11. What steps can be taken by the Department, and other government offices, to shorten the length of time it takes to successfully resolve FCA cases?

The Department's recent allocation of additional attorney positions to U.S. Attorney's offices and to the Civil Division to investigate and prosecute healthcare fraud should improve the efficiency by which such cases are pursued and resolved. Should I be confirmed as Associate Attorney General, I will work to ensure that the Department is investigating, litigating and resolving False Claims Act matters in the most efficient and effective manner possible.