

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE,
FOR KEVIN JAMES O'CONNOR,
NOMINEE FOR ASSOCIATE ATTORNEY GENERAL OF THE UNITED STATES**

- 1.** You argued that a permanent ban on speech was permissible under the First Amendment in a case involving Connecticut librarians who received national security letters and were subject to a gag order. Your view was rejected by two Federal Judges. Judge Janet Hall, on the U.S. District Court for the District of Connecticut, wrote that the effect of your argument led to “a real and present loss of [] First Amendment right to speech that cannot be remedied.” On appeal, the case was dismissed on a legal technicality. However, Circuit Judge Richard Cardamone, a Ronald Reagan appointee on the Second Circuit, wrote in a concurrence that “[w]hile everyone recognizes national security concerns are implicated when the Government investigates terrorism within our borders, such concerns should be leavened with common sense so as not forever to trump the rights of the citizenry under the Constitution.” Do you now agree with, and accept as binding law, the reasoning of both Judge Hall and Judge Cardamone?

I accept and respect Judge Hall’s ruling on the constitutionality of the non-disclosure provision then in effect as well as the views of Judge Cardamone. I also accept as valid and binding the current statutory non-disclosure provision that was passed by Congress in 2006, after Judge Hall’s decision. With respect to my arguments in the district court, it should be noted that the statutory non-disclosure provision challenged in the above-referenced case was enacted by Congress in 1986. As United States Attorney, it was therefore my ethical and professional obligation to provide a defense to the government defendants as well as to defend the constitutionality of an act of Congress that had been in existence for almost twenty years.

- 2.** The excessive secrecy behind this Administration’s use of national security letters has undermined our ability to conduct oversight on government abuses and bad policy. According to press reports, absent the “gag orders” inherent in National Security Letters, some recipients would have spoken out on perceived government abuses and shed light on FBI’s systematic abuses of NSLs by participating. Indeed, a March 2007 report from the Inspector General confirmed that even though the Patriot Act required the FBI to fully inform Congress about all requests issued under the statute, the FBI significantly underreported the number of National Security Letter requests in 2003, 2004, and 2005. In the wake of these revelations, do you believe that the secrecy surrounding the government’s use of the national security letters power was unwarranted and interfered with oversight.

I am only generally familiar with the 2007 Inspector General Report and do not know why the FBI may have under reported the number of National Security Letter requests in prior years. I do recognize that the current statutory scheme under which National Security Letters are issued by the FBI recognizes the need for confidentiality in such investigations. At the same time, in large part due to amendments passed by Congress in 2006, the law now recognizes that the constitutional rights of recipients may be implicated and provides a process by which recipients can seek to protect those rights.

- 3.** In a September 2003 editorial, in the *Hartford Courant*, you wrote that “even the [Patriot] act’s strongest critics must concede that there has not been the flood of abuses predicted.” Yet, according to news reports and briefings provided by the FBI, the FBI has been conducting an internal audit of its use of National Security Letters that has confirmed the findings of the March 2007 Inspector General report that there was “widespread and serious misuse of the FBI’s national security letter authorities.” Given the findings from the FBI and the inspector general, is it still your view that there has not been abuse of the National Security Letter authority?

I wrote the above editorial in 2003, almost four years before the Inspector General found “widespread and serious misuse” by the FBI related to their authority to issue National Security Letters. At the time I wrote the editorial, I was unaware of those issues. Based on the Inspector General’s findings, if I were writing the editorial today, I would not make the same categorical statement about the absence of abuses.

- 4.** You served as Chief of Staff to former-Attorney General Gonzales at the time this Committee investigated the controversial mass firings U.S. Attorneys for partisan political reasons. At your hearing, you testified that you were involved in former-Attorney General Gonzales’s testimony before this Committee as his Chief of Staff.

- a.** What was your role in shaping the Department’s response to Congressional inquiries about the firing of U.S. Attorneys, including in the Attorney General’s testimony?

In April 2007, Chuck Rosenberg, the acting Chief of Staff to the Attorney General, asked me to assist in the Attorney General’s preparation for his upcoming Senate Judiciary Committee oversight hearing. At that time, I was serving as an Associate Deputy Attorney General responsible for violent crime initiatives, a position I assumed in January 2007. Prior to Mr. Rosenberg’s request, I was not involved in shaping the Department’s response to Congressional inquiries about the firing of United States Attorneys.

Pursuant to Mr. Rosenberg's request, I did assist in preparing the Attorney General for the April 2007 Senate Judiciary Committee oversight hearing. After I agreed to serve as Chief of Staff in late April 2007, I assisted in preparations for the Attorney General's May 2007 House Judiciary Committee oversight hearing and his July 2007 Senate Judiciary Committee oversight hearing. I also reviewed the Attorney General's written introductory statements that were submitted to the committees. I did not participate in preparing other witnesses who testified before or were interviewed by Congress in connection with the firing of the United States Attorneys.

Congress's numerous written requests for information concerning the firing of the United States Attorneys were handled, as a general matter, by the Office of Legislative Affairs and the Office of Legal Counsel.

b. Please describe your understanding of the Attorney General's role in deciding which U.S. Attorneys would be fired?

Prior to the request from Chuck Rosenberg to assist in the Attorney General's preparation for his April 2007 Senate Judiciary Committee oversight hearing, I had no understanding of what role the Attorney General played in the decision to ask for the resignations of the United States Attorneys. My present understanding of the Attorney General's role is based on his description of the process and the various public testimony and reports on the matter. My recollection is that what the Attorney General told me and others in prep sessions about his role is consistent with his congressional testimony. It should be noted, however, that because of the joint investigation into this matter being conducted by the Office of Inspector General and the Office of Professional Responsibility, I have not undertaken any independent review or analysis of this matter.

5. I am concerned about reports that the enforcement record of the Environment and Natural Resources Division has shown signs of a decline in certain types of cases. A May 23, 2007, report by the Environmental Integrity Project (EIP) found that the Justice Department's environmental civil suits have declined by 70 percent. Another report, conducted by the Transactional Records Access Clearinghouse at Syracuse University, found that between 2001 and 2004 criminal prosecutions of environmental violations declined by 28 percent.

a. If confirmed as Associate Attorney General, you will oversee the Environment and Natural Resources Division. Given that Division's recent record of enforcement, will you commit to restoring the integrity of that Division and reversing its trend of declining enforcement actions?

b. During your tenure as U.S. Attorney for the District of Connecticut, your office garnered a reputation for being "active" and "tough" in prosecuting

environmental crimes. If confirmed as Associate Attorney General, what would be your vision and plan of action to repair the integrity and enforcement record of the Environment and Natural Resources Division?

I am unfamiliar with the EIP report or whether civil suits have declined as the report claims. Nevertheless, as United States Attorney for Connecticut, I have been fortunate to lead an office that has been very aggressive in the enforcement of our environmental laws. I personally handled the investigation, prosecution and conviction of the Operations Manager of the Fisher's Island Ferry District for violations of the Clean Water Act arising from the ferry's dumping of its waste directly into Long Island Sound. The office has successfully prosecuted many other environmental crimes cases, including two prosecutions that resulted in guilty pleas and the assessment of two of the largest criminal penalties in New England history. Most recently, working with attorneys from the Environment and Natural Resources Division, we obtained a conviction after a jury trial against Ionia Management for violations of the Act to Prevent Pollution from Ships and obstruction of justice. At sentencing, the court imposed a large fine on the company and barred its ships from entering U.S. ports until they are fitted with new equipment to monitor overboard discharges.

Should I be confirmed, I will lead by example and continue, alongside the many outstanding attorneys in the Environment and Natural Resources Division, to aggressively investigate and enforce violations of our environmental laws.

- 6.** At your confirmation hearing, you were asked questions about your commitment for ensuring that the Civil Rights Division is apolitical and protects the right to vote. That Division also needs a restoration in morale and of its historical priorities. In the last seven years, the Justice Department appears to have moved away from its historic positions in civil rights cases ranging from employment discrimination to racial integration in schools. During the hearing, you testified that you would ensure that the Civil Rights Division gets talked about in press "because of its work, not because of its management," but what is your vision for the role of the Justice Department with regard to civil rights enforcement? How do you plan to address the well-documented problems with low morale in the Division?

The Department of Justice and the Civil Rights Division have a long and proud history and commitment to enforcing our nation's civil rights laws. I strongly support the mission of the Civil Rights Division and, if confirmed, will work to ensure that it has the tools and resources necessary to fulfill its important mission.

In Connecticut, we have embraced that mission. In the past five years alone, we have prosecuted and convicted the sitting mayor of one of the state's largest cities, two police officers and a private citizen for violating the civil rights of African Americans. Should I be confirmed, I will bring that same level of commitment to the national level and ensure that the Department lives up to its proud history of aggressively enforcing our civil rights laws.

To the extent that there are morale or management issues in the Civil Rights Division, should I be confirmed I will work closely with the head of the Division to immediately address and resolve such problems so that they will not and cannot in any way impact or affect the very important work of the attorneys in that division.

7. Last year, thousands of Americans marched to protest unjust racially charged incidents in Jena, Louisiana. In October 2007, the local Federal prosecutor testified that the noose-hanging incident at the local high school was a hate crime. Yet, even after the peaceful protests in Jena occurred last year, Americans witnessed almost a dozen more reports of nooses in Illinois, Maryland, New York, North Carolina, South Carolina, and Pennsylvania. If confirmed, you would oversee the Civil Rights Division. What do you believe is the proper role of the Justice Department with respect to preventing and responding to hate crimes in order to ensure that heinous noose incidents, like the ones we witnessed in Jena and across the country, do not reoccur in the future?

The Department of Justice must play an active role in responding to any hate crimes. The Civil Rights Division, through its newly launched racial threats initiative, has prioritized such matters and views every noose incident as a potential hate crime to be investigated thoroughly.

In Connecticut, we have, unfortunately, experienced instances of nooses being displayed and we are actively investigating each such instance. I participated in a press conference with the FBI and the Connecticut chapter of the NAACP at which all of us stated that the display of nooses would be investigated as potential hate crimes and that those responsible would be prosecuted. Since the press conference, there has been only one reported instance of a noose and the person responsible has been charged. Should I be confirmed, I would bring this same level of engagement and awareness to the Department and continue to proactively and aggressively respond to such crimes.

8. Despite the Department's intense focus on criminally charging individuals for "voter fraud," scant evidence of actual voter fraud had been found. Yet, you testified at your confirmation hearing that the Department has an "interest" in ensuring that "people who shouldn't vote don't dilute the votes of those who should."

a. If confirmed, would you investigate and report to Congress on why the Department prioritized the prosecution of voter fraud when there is scant evidence that this crime is being committed?

b. Would you commit to investigating and reporting to Congress what impact the Department's focus and devotion of resources on prosecuting voter fraud has had on the Department's other efforts to enforce the Nation's civil rights laws, including voting rights laws?

Should I be confirmed, I will aggressively enforce all laws designed to protect the right to vote and the integrity of the voting process. It should be noted, however, that most voter fraud prosecutions are handled by the Criminal Division and the United States Attorney's offices, components of the Department of Justice over which, as Associate Attorney General, I would not have responsibility.