

**NOMINATION OF JUDGE MICHAEL MUKASEY
TO SERVE AS U.S. ATTORNEY GENERAL
QUESTION FOR THE RECORD
SUBMITTED BY SENATOR KYL**

In February of this year, the Senate Judiciary Committee reported S. 316, a bill that would amend the Clayton Act to create a *per se* antitrust violation in the circumstance in which the holder of a pharmaceutical patent settles a legal challenge brought by a generic drug manufacturer to the validity of that patent, and the terms of the settlement give to the challenger anything of value other than the right to bring a generic drug to market prior to the date of the expiration of the patent. It is my understanding that the Justice Department expressed skepticism of the economic theories underlying this bill in briefs filed in opposition to *certiorari* in the case of *F.T.C. v. Schering-Plough Corp.* At the time when S. 316 was reported out of the Judiciary Committee – *i.e.*, in February of this year, I asked the Justice Department to submit a statement of the antitrust division's views on the merits of this legislation. Despite periodic inquiries as to the status of such a letter, the letter has yet to be made available. S. 316 implicates complex legal issues beyond the expertise of the members of the Judiciary Committee. I am confident that the Congress would benefit from hearing the Justice Department's views on this matter. Once you are confirmed and installed as Attorney General, will you inquire as to the status of this matter and see to it that the Justice Department expresses its views on S. 316?