

November 19, 2013

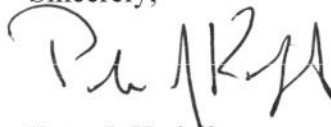
The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on October 30, 2013. I enclose my responses to additional Questions for the Record that I received from Ranking Member Grassley.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter J. Kadzik', with a stylized, cursive script.

Peter J. Kadzik

Enclosure

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Answering subpart questions

1. In your first set of Questions for the Record, you declined to answer the vast majority of the individual questions. In your future responses to Questions for the Record or questions in letters from Members of the Committee, will you pledge to provide individual answers to each individual question? If not, please explain why not.

I certainly intended to answer all questions in my first set of responses; however, because many questions concerned the same topic or events, I provided a narrative response because I thought that doing so would be more comprehensive and efficient. I believe that the Department's Office of Legislative Affairs should facilitate communication and information flow between the Department and Congress, and if confirmed, I will provide as much information as possible in responses to Congress, consistent with the Department's national security, law enforcement and other confidentiality interests, and will endeavor to provide individual responses.

Cooperation with the House Committee

2. In your response to my Questions for the Record, you state that you "returned to Washington from a business trip to California to *cooperate fully*, appear before the House Committee, and answer all questions posed by its Members." What do you mean by claiming that you cooperated fully? Do you mean to imply that your decision to return to Washington D.C. and testify was voluntary, rather than legally compelled by the subpoena?

By "cooperate fully," I meant that before I left for my business trip to California, I informed the House Committee on Government Reform of my scheduling conflict and offered to meet upon my return. As soon as I learned of the subpoena, I immediately returned to Washington to testify before the Committee on March 1, 2001, and provided all information sought by the Committee. As noted in my first set of responses, in my testimony, I laid out the chronology with regard to my appearance before the House Committee in the March 2001 hearing, and no Member asked me questions regarding that chronology. Chairman Burton thanked me for my appearance and testimony, and excused me early to return to California. On February 27, 2001, before I had left for California, I advised the Committee of my business commitments in California and expressed my desire to cooperate fully, writing, "I intend to fully cooperate with the Committee's efforts. I will return to Washington next week [following business commitments in California] and am willing to meet with you or your staff at a mutually convenient time."

3. Do you acknowledge that if you had refused to return to Washington D.C. to testify, that the Committee could have legitimately held you in contempt?

As soon as I was aware of the Committee's subpoena, I immediately returned to Washington to testify before the House Committee on Government Reform and did indeed testify on March 1, 2001. Because it had always been my intention to cooperate fully with the Committee, no further proceedings were necessary.

4. If your intent was to "cooperate fully" with the Committee's investigation, then why did you force the Committee to resort to compulsory process by refusing to appear voluntarily?

I intended to cooperate fully with the Committee and did not know that the Committee intended to issue a subpoena. On February 26, 2001, I received a letter from the House Committee requesting my appearance on March 1, 2001. On February 27, 2001, I responded, explaining that I had prior business commitments in California that week and reiterated my willingness to appear voluntarily before the Committee: "I intend to fully cooperate with the Committee's efforts. I will return to Washington next week [following business commitments in California] and am willing to meet with you or your staff at a mutually convenient time." When I had not received a response from the Committee before my scheduled flight to California on the morning of February 28, 2001, I proceeded with that flight.

As I explained previously, at no time prior to boarding that flight, did I have notice of the Committee's intent to issue a subpoena. As soon as I received notice that my appearance would be mandatory, I returned to Washington immediately and testified before the House Committee. As noted previously, I laid out the chronology with regard to the circumstances leading to my appearance before the House Committee in my sworn testimony at the March 2001 hearing and did not receive questions regarding that chronology.

Awareness of Committee's intent to issue subpoena

5. Regarding your efforts to verify your claim that no one at your firm was aware of the Committee's intent to require your testimony by subpoena, your response to my Questions for the Record states, "Furthermore, at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's *attempt to serve* the subpoena prior to my boarding the noted flight to California (February 28, 2001)." Did you have any knowledge that anyone at the firm had notice of the Committee's intent to issue a subpoena?

No, I did not know that anyone at the firm had notice of the Committee's intent to issue a subpoena.

6. According to the contemporaneous Committee staff notes, two of the three attorneys at your firm who were aware of the Committee's intent to subpoena you also indicated prior to your boarding the plane for California that they were not "authorized to accept service" of the subpoena informally on your behalf. Did you have any communications with anyone about whether you would cooperate with informal service of a subpoena by authorizing its acceptance on your behalf? If so, please describe those communications in detail.

I did not know that the Committee intended to issue a subpoena to me and had not had discussions with my colleagues regarding service of a subpoena.

7. In your answers to Questions for the Record, you indicated that, "at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's attempt to serve the subpoena prior to my boarding the noted flight to California February 28, 2001)." Do you mean to indicate that your colleagues failed to inform you that they had refused to accept informal service of the subpoena on your behalf?

I wish that I could be more helpful on this matter, but there appear to be differing recollections among attorneys at Dickstein Shapiro and Committee staffers regarding conversations that may have occurred more than 12 years ago, and in which I did not participate. Because I was not involved in these conversations, I cannot shed light on whose recollection is more accurate, but I can explain the facts surrounding my departure for California. At no time prior to boarding my scheduled flight to California on February 28, 2001, was I advised of the Committee's intention to issue a subpoena, and as soon as I learned that the Committee expected my testimony on March 1, 2001, I immediately returned and testified fully.

8. One of the questions you failed to answer in your responses to Questions for the Record was: "Did you check the accuracy of your letter with your colleagues at the firm before sending it? If not, then why did you make a claim beyond the extent of your personal knowledge without having any basis for knowing whether it was true?" Please answer this question and indicate specifically whether or not you ever shared a draft of your letter or the final version with your colleagues at the firm.

Yes, I shared a draft with my colleagues.

9. When you read the response from the Committee dated March 15, 2002 expressing concern about the claim in your letter that no one at the Committee informed anyone at your firm of the subpoena, did you have any concern that your representation might not have been true? If not, please explain why not.

When I read the Committee's draft report, I was concerned because it seemed to suggest that I knew of the Committee's intent to issue a subpoena before I left for California, which I did not. As I have explained, at no time prior to boarding my

scheduled flight to California on February 28, 2001, did Committee staff or anyone at Dickstein Shapiro advise me of the Committee's intent to issue a subpoena, nor did I have knowledge that anyone at the firm had notice of any attempt by the Committee to serve the subpoena prior my boarding the noted flight.

10. The final version of the report described the exchange of letters between you and the Committee and concluded with regard to your claim that no one at your firm was aware of the subpoena, "It is troubling that Peter Kadzik would make a false assertion that is so easily disproved." What steps, if any, did you take to ascertain whether or not your claim might have been inaccurate, and if so, correct the record? If none, then please explain why not.

I do not believe that I made any false assertion. Please note the extensive written record regarding this matter, which includes sworn testimony (2001 and 2013), letters (2001 and 2002), and responses to your previous Questions for the Record (2013).

11. Do you agree to testify voluntarily before this Committee without insisting on compulsory process?

Yes, if I am fortunate enough to be confirmed, I will testify voluntarily, consistent with Department guidance.

12. If a disagreement arose between you and this Committee about whether and when you would agree to testify, and if this Committee indicated an intent to require your attendance through compulsory process, would you agree to accept informal service of process on your behalf by your colleagues at the Office of Legislative Affairs? Or would you insist on in person service of compulsory process?

I do not expect there to be any disagreement, but it is my understanding that the Department has accepted informal service through staff in the Office of Legislative Affairs (OLA) in the past and I would expect that practice to continue.

Marc Rich representation

You did not answer the following questions. Please answer each one individually, numbering your responses accordingly:

13. I understand that you billed billionaire tax fugitive Marc Rich for approximately 12 hours of work performed in 1999 and 2000 as part of your representation of him in his pardon application process. How much were you paid for these 12 hours of service?

As stated in my first set of responses, I received no additional compensation beyond my allocated share as a firm partner for work on the Rich matter. I believe the firm billed for legal services and received compensation for services rendered; however, I

did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for this work.

14. Were you paid on any other occasions by Marc Rich, Pincus Green, or any entities associated with either of them?

I never received any personal compensation from these individuals or any entities associated with them. As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich or Mr. Green. I believe the firm billed for legal services and received compensation for services rendered; however, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for work related to Mr. Rich or Mr. Green.

15. You testified at the House hearing that you were consulted in the late 1980s by other lawyers for Marc Rich in the early years after he fled to Switzerland for advice on how to approach the Southern District of New York about a possible settlement. Were you compensated for your advice?

As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich. In fact, I do not recall whether I recorded any time for the noted consultations. I also have no knowledge of whether the firm billed for such time, if any, or received compensation for services rendered. If the firm did bill for such time, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to any such legal bills or the amount or timing of compensation received by the firm for this work.

16. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity? If not, why not?

My recollection of these events is that Mr. Rich's attorneys sought his return to the United States; therefore, such advice on my part was not called for.

17. You also testified at the House hearing that you were consulted again in 1999 about another effort to settle the case while Rich was still a fugitive. You testified that your advice was, "that I thought that approaching the Justice Department, rather than the U.S. Attorney's Office would be more fruitful." Were you compensated for your advice on this occasion?

As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich. I do not recall whether I recorded any time for these consultations. I believe the firm billed for legal services and received compensation

for services rendered; however, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for this work.

18. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity on this occasion? If not, why not?

My recollection of these events is that Mr. Rich's attorneys sought his return to the United States; therefore, such advice on my part was not called for.

19. Why did you think the Justice Department would be more likely to negotiate with a billionaire tax fugitive than the U.S. Attorney's Office would?

I did not believe that the Department would be more likely to negotiate; I simply suggested an alternative approach.

20. In your response you stated that, "My colleagues also consulted me to gain insight into the status of Mr. Rich's pardon application at the White House." What insight did you have into the process that your colleagues did not have?

My colleagues simply sought to learn the status of Mr. Rich's pardon application and therefore, I made an inquiry to that effect.

Discrepancies in testimonies of Kadzik and Podesta at the 2001 hearing

21. You did not specifically answer the following question. Please provide an answer to it. Do you believe that the primary reason that you were hired was your previous relationship with Mr. Podesta and thus your ability to access the President's Chief of Staff and obtain information about the state of internal deliberations about the pardon?

Please note that I was not hired by Mr. Rich. As stated in my first set of responses, my firm represented Mr. Rich over the course of many years, primarily through services provided by Messrs. Leonard Garment, Michael Green, and Lewis Libby. During this decades-long representation, these members of the firm consulted me occasionally on various matters. In this case, they asked me to inquire about the status of the pardon application and therefore, I made an inquiry to that effect.

22. In retrospect, do you have any concern about the potential appearance that you were paid primarily because of who you knew at the White House? If not, please explain why not.

No; as explained previously, I was not hired by or paid individually by Mr. Rich. My firm represented Mr. Rich over the course of many years, primarily through services provided by Messrs. Leonard Garment, Michael Green, and Lewis Libby. During this decades-long representation, these members of the firm consulted me occasionally on various matters. In this case, they asked me to inquire about the status of the pardon application and therefore, I made an inquiry to that effect.

23. The normal method for obtaining information about the procedural status of a pardon is to ask the Pardon Attorney at the Department of Justice. Why did you believe it was necessary and appropriate to contact the White House Chief of Staff for a mere procedural inquiry rather than the Pardon Attorney?

We understood that the application was under consideration at the White House. My colleagues asked me to inquire about the status of Mr. Rich's pardon application and therefore, I made an inquiry to that effect.

Privacy Act

You did not provide a specific answer to the following three questions. Please answer each one individually.

24. Since the OLC opinion was written after the Second Circuit decision, shouldn't the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

As you know, I did not write or review the OLC opinion at the time it was written, nor was I at the Department at the time it was written. I do not know whether OLC considered the case to be relevant legal precedent.

25. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a committee*, that it qualifies for the Congressional exemption? Why or why not?

It is my understanding that when the Department discloses information to a Committee of Congress under the relevant Privacy Act exemption, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

26. Given the above, do you agree that a request is not even necessary—the Department can volunteer Privacy Act information, so long as the recipient of the volunteered information is a committee? Why or why not?

It is my understanding that the Department's long-standing practice is not to disclose information covered by the Privacy Act except in response to requests from Committee Chairmen.

27. The OLC memo states: "[A] disclosure of Privacy Act information *solely* to a ranking minority member is not a disclosure to the committee, and the congressional-disclosure

exception is therefore unavailable.” However, do you agree that so long as the disclosure is made to the committee through both the chairman and ranking member, that disclosure is authorized by the Privacy Act? Why or why not?

It is my understanding that when the Department discloses information to a Committee of Congress under the relevant Privacy Act exemption, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

28. Is it my experience that the Department’s policy and practice is to transmit reports, correspondence, and other communications, including those that contain Privacy Act information, *to a committee* by sending them separately to both the chairman and the ranking member, as opposed to sending them only to the chair. Is that consistent with your understanding?

It is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

29. The OLC memo asserts, without any citation to legal authority, “As a general matter, ranking minority members are not authorized to . . . *act as the official recipient of information* for a committee[.]” What is the basis for this assertion?

While I am not in a position to elaborate on the OLC opinion, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

30. The court in *Devine* wrote: “It is undisputed that the IG addressed and sent his letter regarding the OIG investigation and the MSPB’s decision to Congressman Gallegly in his official capacity as a member of the Subcommittee, not as an individual member of Congress.” Representative Gallegly was neither the chair nor the ranking member of the Committee or the Subcommittee, merely a member. How do you square this language from the court’s opinion with the assertion that members of a committee other than a chairman are not authorized by the statute to receive Privacy Act information?

The court in *Devine* indicated that the disclosure was made “to Congressmen Smith and Gallegly, in their capacities as, respectively, Chairman and Member of the Subcommittee.” 202 F.3d at 549. As described above, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

31. How is the Department’s own policy and practice of transmitting information to both the chairman and separately to the ranking member as a mode of disclosing it to a committee

consistent with the OLC's assertion that ranking members are not authorized to receive information disclosed to a committee?

I do not believe that OLC has asserted that Ranking Members are not authorized to receive information disclosed to a Committee. It is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

32. The next line of the OLC memo says, "We understand that the ranking minority member has not received such an authorization from the Finance Committee." What is the legal authority to support the assertion that a ranking member must have authorization from a chairman in order to merely receive information disclosed to a committee?

I do not understand the OLC memo to require Ranking Members to have authorization from a Chairman to receive information disclosed to a Committee in response to a Chairman's request. As described above, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

33. If confirmed, under your leadership would the Department disclose Privacy Act information to *only* the chairman of a committee if the chairman of the committee requested that information and withheld authorization from the ranking member to receive that information? Or would you insist on providing the information to both the majority and the minority on the committee even in the absence of the chairman's authorization for the minority to receive it? Please explain why or why not.

If fortunate enough to be confirmed, I would seek to ensure that the Department continues its practice of disclosing information to Committees of Congress by providing copies of that information to the Chairman and Ranking Member of the Committee.

34. On October 28, 2013, the Department disclosed Privacy Act information involving ATF Special Agent John Dodson to the staff of the Ranking Member of House Oversight and Government Reform Committee. Did the Chairman of that Committee provide authorization to the Ranking Member to receive it? If not, then why did the Department make that disclosure in the absence of the Chairman's authorization for that Ranking Member to receive it?

It is my understanding that the House Oversight Committee—through Chairman Issa—had requested the information related to Mr. Dodson. Accordingly, the Department disclosed information to the House Oversight Committee by providing that information to the Chairman and Ranking Member of the Committee.

35. You did not specifically answer the following question. Please provide a response.
Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under 26 U.S.C. § 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of a requestor, as asserted in the OLC opinion?

The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress. The OLC opinion explains the Department's position that a Ranking Member or individual member of the Committee other than the Chairman cannot exercise the power of the Committee.

36. In your previous responses, you assert that, "The Department's position is well grounded in the December 5, 2001, OLC opinion, which cites to a Congressional Research Service (CRS) report that also supports the Department's position." However, the CRS memo cited in the OLC opinion merely describes the uncontroversial fact that minority members may not exercise on their own the power of the Committee to compel the production of documents or testimony. The quoted portion from CRS in the OLC opinion further states: "Individual members may seek the voluntary cooperation of agency officials or private persons." Nothing in text of the Privacy Act, the Department's policy, or the Department's practice suggests that compulsory process is required in order to authorize disclosures of Privacy Act information to Congressional committees. A reply to chairman's request is also a voluntary cooperation of an agency. So how does the CRS report support the Department's position?

The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress. The OLC opinion explains the Department's position that a Ranking Member or individual member of the Committee other than the Chairman cannot exercise the power of the Committee, and the CRS report supports this position. I do not understand the analysis to turn on whether there has been compulsory process.

Questions arising from matters before your time at the Department

37. You have repeatedly stated that since you were not employed by the Department in October 2012, you have no information responsive to questions regarding whether ATF's briefing on William McMahon's outside employment complied with the Privacy Act. However, you were able to represent that the third party meeting policy has "long been communicated to Congressional staff," even though those alleged representations also pre-date your time at the Department. Have you sought information about the circumstances of the McMahon briefing in order to answer my questions as you similarly sought information about the third party meeting policy in order to answer my questions? If not, will you do so and provide the answers to the questions regarding the circumstances of the McMahon briefing?

While I have sought to provide information in response to your questions about Department policies, your question here seeks details about decisions in a particular matter (rather than a longstanding Department policy) that were made before I joined the Department. I have asked my staff to inquire further into the circumstances of ATF's briefing on William McMahon's outside employment and to follow up with staff.

38. Given that I already asked in a letter about the McMahon briefing, why didn't you seek to become familiar with the circumstances under which it occurred before responding to my letter or to Questions for the Record?

I have asked my staff to inquire further into the circumstances of ATF's briefing on William McMahon's outside employment and to follow up with staff.

ATF Briefing Documents

39. I have now twice made a document request that you have ignored. The initial request in my October 28, 2013 letter stated: "Prior to your confirmation hearing, I would appreciate a written explanation for these events, to include **copies of all records relating to communications to and from your office related to this briefing.**" In your hearing, you stated: "I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents." I clarified in Questions for the Record that I was not just seeking documents with respect to Privacy Act advice, but wanted **all records related to this briefing**, to include any e-mails related to the scheduling of the briefing or any other issues surrounding the briefing. I reiterated the request in Questions for the Record. In response, you simply wrote: "[T]here are no documents setting forth an instruction to exclude your staff." My request extends beyond merely documents setting forth an instruction to exclude my staff. My request was for all documents related to the briefing. Will you provide the documents? If not, please explain why not.

The Department does not disclose documents related to the scheduling and planning of briefings except in the most extraordinary of circumstances. I understand that facts and circumstances of the underlying matter—Mr. Dodson's request to engage in outside employment—have been relayed to your staff and that ATF has been providing the House Committee on Oversight and Government Reform with the documents it requested concerning Mr. Dodson's application for outside employment.

Third Party Meeting Policy

You did not specifically answer any of the three following questions. Please answer each one individually.

40. Please explain the background and history that led to the development of the third party meeting policy. Please include a description of when and why this policy arose.

I understand that the third party meeting policy arose over time when it became clear that there is a risk of real or perceived political pressure if the Department agrees to take meetings with a Member of Congress and a third party in whose matters the Member has an interest. This policy applies to situations in which the third party has a matter in litigation with the Department, or simply when the third party has an interest in the Department making a certain policy decision. This policy has been upheld and applied consistently throughout Administrations.

41. Please provide any legal precedent that requires the third party meeting policy. If there is no relevant legal precedent, please indicate that there is none.

It is my understanding that the third party meeting policy is based upon separation of powers considerations.

42. Is the issue on which I requested to meet with the DEA Administrator and the Comptroller General in current litigation? If not, how can you cite this as a reason for denying the meeting with GAO and DEA? *Why* did you cite this as a reason in your confirmation hearing?

I did not intend my answer to encompass only litigation matters, and as my previous responses to your Questions for the Record indicate, the policy extends beyond matters in litigation to matters of policy.