

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR CHUCK GRASSLEY
TO THOMAS PERRELLI, TO BE ASSOCIATE ATTORNEY GENERAL FOR
THE U.S. DEPARTMENT OF JUSTICE**

DEFENDING/FOLLOWING ACTS OF CONGRESS

Many times an Administration will not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, you will be called on to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views.

1. If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a matter?

Yes. If confirmed, my decisions as Associate Attorney General will be governed by my best legal judgments, not my personal or philosophical views.

OBSCENITY PROSECUTIONS

1. I think everyone would agree that protecting children and families from obscenity is a worthwhile objective. Do you concur that the Justice Department must continue to aggressively pursue criminal and civil litigation against those who violate federal obscenity laws? Why or why not?

Although the Justice Department's criminal prosecutions for obscenity fall outside the purview of the Associate Attorney General, if confirmed I would ensure that the Department vigorously defends the federal statutes, such as the Child Online Protection Act of 1998, the Communications Decency Act of 1996, and the PROTECT Act of 2003, that are important to those efforts in all cases where reasonable arguments can be made in support of those statutes. I would vigorously defend those statutes not only because they are the laws of the United States, but because it is important that the Department have all the tools it needs to protect children and their families from obscenity.

2. Will you commit to seeing that obscenity prosecutions remain a top priority at the Justice Department?

Although the Justice Department's criminal prosecutions for obscenity fall outside of the purview of the Associate Attorney General, I would support the Attorney General's efforts to make protecting children and their families a high priority.

3. Do you believe that the Justice Department has adequate tools to effectively combat obscenity and child exploitation? Do you believe that further legislation is necessary to protect our children?

If confirmed as Associate Attorney General, I will consult with Department officials under my supervision to determine whether they have the tools they need to enforce the laws. If further civil legislation is needed, I will work with the Committee to resolve any issues.

SUPREME COURT DECISION IN *HELLER*

This past year, the U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision.

1. What is your personal opinion of the rights afforded by the Second Amendment?

I believe that the rights afforded by the Second Amendment are laid out in *District of Columbia v. Heller*, 554 U.S. ____ (2008), which recognizes an individual right to bear arms and imposes limitations on the regulation of firearms.

2. What is your personal opinion of the *Heller* case?

The *Heller* decision is the law of the land.

3. If you are confirmed, will you commit to protect an individual's right to possess a firearm? If so, how?

If I am confirmed as Associate Attorney General, I will commit to defending and enforcing the laws of the United States as they have been interpreted by the courts, including by the Supreme Court in *Heller*.

BANKRUPTCY

Comprehensive bankruptcy reform was enacted a few years back, and because of it, I believe that the bankruptcy system has been made much better and fairer. Nevertheless, critics of this legislation want to weaken the statute.

1. Will you commit to actively support enforcement of the bankruptcy reform law, and make enforcement of the bankruptcy laws a priority for the U.S. Trustee's Office?

Yes.

2. Will you support and encourage greater enforcement actions by the U.S. Trustee's Office to prevent abusive or fraudulent bankruptcy filings? How?

Yes. If confirmed as Associate Attorney General, I will work with the U.S. Trustee's Office to determine how best to prevent abusive or fraudulent bankruptcy filings.

3. Will you assist in efforts to fight attempts to undermine the bankruptcy reform law?

Yes.

4. There was a great deal of controversy about whether the Bush Administration sought to remove U.S. Attorneys and hire Justice Department personnel for political and ideological reasons. I'm concerned that a similar issue could arise under the new Administration with respect to the U.S. Trustee's Office, which governs the Justice Department's statutory responsibility for implementing our bankruptcy laws. It is my understanding that the Executive Office of the U.S. Trustee in Washington, DC is filled with non-political career attorneys, and it is currently headed up by a non-political career attorney, Clifford White. As the Associate Attorney General with direct supervision over the U.S. trustees, will you commit to keeping politics out of the U.S. Trustee Program?

As Associate Attorney General I would be committed to ensuring that politics play no role in the hiring, promotion, or firing of any career civil servant, as well as to ensuring that politics never be permitted to interfere in the Department's work.

ANTITRUST

As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector.

I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

1. I would like to get a commitment from you that the Antitrust Division will pay heightened attention to agribusiness transactions. Can you assure me that agriculture antitrust issues will be a priority for DOJ if you are confirmed?

If confirmed as Associate Attorney General, I will work to make enforcement of federal antitrust laws as they apply to the agricultural sector a priority. The Antitrust Division plays an important role in ensuring a competitive marketplace, and the laws must be enforced whenever the facts so warrant. Agriculture is an important industry, both for consumers and producers, and it is important to insure that the antitrust laws are fulfilling their purposes in that field.

2. Senator Kohl and I have introduced S. 364, the Agriculture Competition Enhancement Act. This legislation, among other things, would require the Justice Department to issue agriculture merger guidelines. Can I get your commitment that the Justice Department will work with us on moving this bill forward?

I look forward, should I be confirmed, to working with the Committee on these issues.

CONGRESSIONAL OVERSIGHT

1. If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?

I commit to working with the Committee, should I be confirmed as Associate Attorney General, to ensure that its requests for information receive timely responses.

2. Will you work to ensure that responses are not held up due to lengthy “clearance” processes at subordinate agencies such as the FBI?

Although supervision of the FBI is generally outside the purview of the Associate Attorney General, I believe it is important that responses be provided timely. If I am confirmed, I will encourage subordinate agencies within the purview of my office to respond to the Committee’s requests in a timely manner.

OLC OPINION ON RANKING MEMBER ACCESS TO DOCUMENTS AND INFORMATION

On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Opinion titled “Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members,” concludes that the Privacy Act “prohibits the disclosure of Privacy Act-protected information to the ranking minority member” of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this

conclusion despite the fact that the Privacy Act allows disclosures, “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.” Nowhere in the statute does it define “committee” to mean only the Chairman and not the Ranking Member. Despite the plain language and the court interpretations to the contrary, this Opinion is used as a shield to prevent disclosure of information to Ranking Members.

1. Do you support the position taken by DOJ in this OLC Opinion?

I have not studied the Privacy Act or the OLC Opinion in question in sufficient detail to respond substantively to questions about these matters. That said, I believe it is important to cooperate with the Committee’s efforts to fulfill its legitimate oversight functions.

2. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

There are circumstances in which the executive branch is not in a position to disclose certain information, such as when disclosure would violate a statute or impair the executive branch’s ability to fulfill its responsibilities, which include (but are not limited to) national security, law enforcement, or litigation interests.

Subject to such limitations, I believe that the Department should cooperate with the Committee to ensure that the legislature can exercise its legitimate oversight functions.

3. In your opinion, couldn’t the wording of the Privacy Act that allows disclosure “to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof” be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

I have not studied this provision of the Privacy Act in sufficient detail to respond appropriately to the question of statutory interpretation that this question presents. That said, I recognize the importance of executive branch cooperation in facilitating the Committee’s legitimate oversight functions.

4. Will you pledge to work with Ranking Minority Members of Committees on any oversight request, regardless of the OLC Letter Opinion?

Although I have not studied the OLC Opinion in sufficient detail to comment substantively on its requirements, I recognize the important interests of individual members in oversight matters.

FALSE CLAIMS ACT

1. If you are confirmed, will you vigorously enforce the False Claims Act?

Yes. The Government has recovered over \$22 billion through False Claims Act cases since 1986, and I will support the Attorney General's efforts to make sure that the Department vigorously enforces the False Claims Act.

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

Yes.

3. Do you have any question as to the constitutionality of the False Claims Act and its *qui tam* provisions?

No.

4. Do you anticipate any decrease in the budget for the Justice Department's Commercial Litigation section which is responsible for false claims prosecutions? In previous years, the Justice Department has specifically requested litigation support funds, including funding for accounting experts, for pending false claims cases. Are you committed to securing the funding necessary to successfully litigate False Claims Act cases?

The False Claims Act is a critical tool in protecting the Government and taxpayers against the misuse of taxpayer funds by private sector recipients. If confirmed, I will make every effort to ensure that the Department devotes sufficient resources to enforcing the FCA.

5. Will you support efforts to utilize the False Claims Act to recover government money lost to fraud or abuse of government bailout funds, including but not limited to funds expended under the Troubled Asset Relief Program and other direct infusions of Government money used to prop up the balance sheets of various financial institutions across the country? Why or why not?

Yes. The False Claims Act should be used to address misuse of taxpayer funds whenever warranted by the evidence and the law.

6. Recently, a lawsuit was filed alleging that the seal provision of the False Claims Act, codified at 31 U.S.C § 3730(b)(2), is unconstitutional. That provision requires that False Claims Act cases by *qui tam* relators be filed in camera and remain under seal for at least 60 days, and not be served upon the defendant until the court orders. This provision was designed to give the Government ample time

to investigate an allegation before making the case public, while protecting evidence and the whistleblowers from undue harm or influence. The other benefit of the seal provision is that it allows frivolous complaints to remain under seal without causing harm to a defendant. In the past, I've been a critic of prolonged extensions of the seal. I believe the Justice Department should use the seal judiciously and not abuse its discretion. I also believe some transparency on the part of the Department would go a long way to dispelling questions about the seal. That said, I think the seal does a lot of good, especially in protecting whistleblowers against retaliation. Do you believe the seal provision of the False Claims Act is unconstitutional? Why or why not?

As Associate Attorney General, I would defend the False Claims Act and Section 3730(b)(2)'s seal requirement against any such constitutional challenge, including the challenge raised in *ACLU v. Mukasey* (E.D. Va. filed Jan. 15, 2009), so long as there are reasonable arguments in its defense. The seal requirement serves very important governmental interests, and it does so without unduly restricting the free flow of information.

7. Will you work cooperatively with me—and other members of this Committee—to ensure that legislation I introduced restoring the original intent of the False Claims Act is reviewed by the Department in a timely manner with constructive input?

Yes.

WHISTLEBLOWERS

1. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?

If confirmed as Associate Attorney General, I will make every effort to respond in a timely manner, consistent with law and Department policy, to Committee requests regarding actions taken against individuals who retaliate against whistle blowers.

2. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be it from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

As Associate Attorney General, I would not have direct responsibility over the FBI, but I believe that unlawful retaliation against any Department employee should not be tolerated. I will fully cooperate with other officials in the Department to determine whether current protections are adequate, both

with respect to FBI employees and others in the Department, or whether other protections are necessary.

3. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

If confirmed as Associate Attorney General, I will remind my subordinate leadership that unlawful retaliation against legitimate whistleblowers will not be tolerated and will be subject to appropriate disciplinary measures. I will take any such violations, as well as any allegations of such violations, very seriously.

DOJ OAAM AUDIT OF JUVENILE JUSTICE GRANTS

Last year, the Judiciary Committee started reviewing legislation to reauthorize the Juvenile Justice Delinquency Prevention Act. As part of that discussion, I reviewed some of the past audits the Inspector General conducted of Juvenile Justice grant expenditures and I was quite shocked at the findings. These reports showed a series of problems with grant expenditures by OJJDP grantees. I believe a top to bottom review of OJJDP grant funding is necessary to ensure that taxpayer dollars are being spent appropriately.

I was encouraged to learn that the Office of Audit, Assessment, and Management at the Office of Justice Programs has planned a two-part assessment of OJJDP grants. This review is similar to an amendment I proposed in Committee. This assessment is planned to begin in the first quarter of this year and will review the effectiveness of OJJDP as well as general compliance of grantees receiving awards. I believe this assessment will be an important tool to assist Congress as we review the grant management of OJJDP.

1. Will you commit to ensuring that this audit is completed as envisioned and is not impeded by the change in administration?

Yes.

2. Will you make a commitment to consider all the recommendations that are made by OAAM, including any necessary reforms to OJJDP?

Yes. I look forward to the OAAM's recommendations and am committed to ensuring that OJJDP grants are spent effectively for the purposes they were intended.

BYRNE/JAG GRANTS

The Byrne/JAG program has been successful because it provides vital resources of both equipment and staff to state and local law enforcement when they assist in the prosecution of federal crimes, such as drug crimes. In my home state of Iowa, the

Byrne/JAG funding is used to form multi-jurisdiction drug task forces. In Border States, Byrne/JAG funding is used to help shore up border security. It is this use of funds for truly federal purposes that makes the Byrne/JAG grants a worthwhile endeavor.

However, while the Byrne/JAG program has truly helped state and local law enforcement fight violent crimes that have a federal nexus, there are a number of other grant programs at DOJ that lack a similar corresponding federal nexus. I am concerned that as budgets tighten and deficit spending increases, funding must be given to programs that are truly federal in character and are not just spending money on purely state matters.

1. Will you ensure that the Byrne/JAG program remains the cornerstone of federal financial assistance to state and local law enforcement agencies?

Yes. In overseeing the Office of Justice Programs, I would be committed to ensuring that the Byrne/JAG program is reinvigorated. As it has in the past, Byrne/JAG should play a paramount role in providing federal assistance to state and local law enforcement.

2. Will you review the various grant programs at DOJ to ensure federal dollars are spent on matters that are truly federal in nature and not merely slush funds for state expenditures?

Yes. Federal grants should be used for the purposes for which they are intended, not for unrelated state purposes. The funds that Congress allocated to the Byrne/JAG program in the American Recovery and Reinvestment Act of 2009 will be of important assistance in fulfilling the program's purposes, and I am committed to ensuring that the funds are spent appropriately.