

**NOMINATIONS OF DAVID F. HAMILTON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT; RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL OF OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE; AND R. GIL KERLIKOWSKE, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT**

WEDNESDAY, APRIL 1, 2009

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m., room S-127, The Capitol, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Schumer, Whitehouse, Klobuchar, Kaufman, and Specter.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. It's now 2:30. I apologize to everybody for squeezing over here, but we're in the annual budget marathon. We're about to have a series of statements and votes upstairs.

There are excellent nominees before us. David Hamilton, who is strongly supported by the two Senators from his home State, one of my best friends in the Senate and long-time friends because we go back a long time, the senior Republican of the Senate, Senator Lugar. Another distinguished Senator, Evan Bayh, from his State.

We have Ron Weich to be Assistant Attorney General for Legislative Affairs. Ron is well-known to all of us and is a good friend. I like the fact that he's also a former prosecutor.

I'm going to put in the record a letter from a former Chairman of this Committee, Senator Kennedy, on his behalf.

[The Letter from Senator Kennedy appears as a submission for the record.]

Senator Specter has agreed to add the nomination of R. Gil Kerlikowske. I'm not the first one to have trouble with that, Chief, who has 36 years of experience in law enforcement, including Chief of Police for the Seattle Police Department.

So with that, I'll put my full statement in the record.

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[The prepared statement of Chairman Leahy appears as a submission for the record.]

I see the distinguished Majority Leader, Senator Reid, is here and I will yield first to Senator Reid, and then we'll go by seniority with the Senators who are here, following our normal practice.

Senator Reid.

**PRESENTATION OF RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Mr. Chairman, thank you very much for allowing me to testify. This is a very important occasion for me. As we all know, as Members of the Senate, we have the opportunity to work with the best people in the world, such dedicated people who are not out to see how much money they can make, but see what differences they can make in our society. We're all grateful for every one of these fine people who work with us.

But there are a few, at least in my career, that stand out with their intellect, their dedication, and a work ethic that makes them indispensable. Ron Weich is one such person who has worked for me as part of my senior staff for 4 years. He's been by my side on every critical legal question I've had for these past 4 years.

I recommend to this Committee Ron Weich for the position of Assistant Attorney General of our country. I do it with some measure of regret and sadness of not having him in my office, but with the absolute confidence that he'll serve our country and Attorney General Holder with the utmost skill and dedication.

Ron, like his mom, who was one of the first women to graduate from Brooklyn Law School, began his career in the courtroom as a prosecutor. He attended Columbia University, Yale Law School. He tried cases involving violent crimes as Assistant District Attorney in Manhattan. There's no question that part of what makes Ron so effective is his real-world experience—not an academic, but real-world experience.

This experience gives him the perspective to understand how to do legal policy and will actually work in practice. While many of his colleagues were entering the private sector, Ron spent almost his entire career in public service. I believe we are a better country because of people like Ron Weich.

After his tenure in the District Attorney's Office, he served at the U.S. Sentencing Commission, and then for Senators Specter and Kennedy. Following his stint at a law firm, Ron returned to government service to work as my senior, and then chief, counsel, when I became the Democratic Leader in 2004.

Ron's work for Senators Kennedy and Specter are indicative of the character and strength that will serve him well as Assistant Attorney General. He's built a foundation of trust and friendship with key Members of Congress, both Democrats and Republicans. For example, Ron was once—during debate—and worked closely with members of the Gang of 14, which consisted of 7 Democrats, 7 Republicans, as they negotiated a solution to a potential constitutional crisis. He also played the lead role in laying out ethics and lobbying reform legislation passed last year. In his new role, Ron

will be responsive to requests from Democrats and Republicans. In the best tradition of Department of Justice, he will serve in a manner blind to partisanship, blind to politics, and—rule of law.

Ron's parents, Robert and Cecile, his wife Julie, and daughters Sophie and Sarah are here today. I'm grateful that they've shared Ron with us through the years. In his new role, Ron Weich will play an integral role, an integral part, rebuilding the Department of Justice to the once-again place where all are equal under the law, all are protected by the law, and no one is above the law.

Thank you very much, Mr. Chairman and members of the Committee.

Chairman LEAHY. Thank you. Thank you very much.

Senator REID. Thanks for allowing me to say a nice word about my friend, Ron.

Chairman LEAHY. Thank you. As I said, it's extraordinary that we're having it in here, but I recall, right after 9/11 we had one where one of President Bush's nominees—most of the hearing room was closed down, the House was closed down, and most people were leaving town. I convened a special hearing in here to accommodate President Bush and get his nominees through, and that's why we're doing it here, because of the vote.

Senator REID. Mr. Chairman, you being one of the longest-serving members of the Appropriations Committee, you've been here a few times anyway.

[Laughter.]

Chairman LEAHY. I have been here.

Senator REID. Could I be excused, Mr. Chairman?

Chairman LEAHY. Of course. Please.

[Laughter.]

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM  
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

The Republican members of this Committee will not be participating because there has been insufficient time to prepare for this hearing. I ask that the letter I've sent asking for a postponement be made a part of the record, together with a letter signed by all the Republicans sent to you yesterday.

Chairman LEAHY. Without objection, it'll be part of the record.

[The letters appear as a submission for the record.]

Chairman LEAHY. Also, the news article covering the first letter which appeared before I received the letter will also be made part of the record, and my response. I did not receive the letter, but yes it may be a part of the record. My response will be there, and the news articles detailing the letters before I received them will be made part of the record.

[The information appears as a submission for the record.]

Senator SPECTER. For all of those assembled, especially to the three nominees, I regret that there is a very strong conclusion that this position has to be taken. I personally find it very distasteful to raise these considerations in the Judiciary Committee, but I do so because of the conclusive nature of the record which shows that there has been grossly insufficient time to prepare.

And I'll be very specific about it. The nomination of Judge Hamilton—and before I go on, let me say that the academic and professional records of these nominees is exemplary. Mr. Weich, especially close to me since he served so ably on my staff and I've watched him perform for Senator Kennedy and for the Majority Leader. Judge Hamilton, whose record I've examined, who, parenthetically, was a student with my son at Haverford. Shane Specter speaks very highly of you. I met with the nominee for Drug Czar and found him, on a personal level, Chief Kerlikowske, to be very able. But the chronology of events here really speaks for itself.

Judge Hamilton's nomination was announced on March 17th. The Committee did not receive his questionnaire until March 18th. The questionnaire was not completed until March 24th. Judge Hamilton has been a District Judge for almost 15 years and, according to his calculation, has authored roughly 1,150 written opinions, over 9,500 pages, and has submitted approximately 2,000 pages of speeches, articles, and public policy papers.

The nominations of the other individuals were also submitted within approximately 2 weeks. In the past, President Bush's nominees were submitted with Senators having, on average, 166 days to prepare for a hearing and 117 days to prepare for President Clinton's Circuit nominees. So on the procedural aspect, there has been just totally insufficient time to review these matters.

I'm not going to make a show of these boxes, but if I were to stack up the papers, they would be about four feet high on the desk. But I'm not going to do that. There is a special concern about this time sequence in light of the fact that Judge Hamilton's nomination is the first, and we're going to have many, many more.

The Constitution, as we all know, calls on the Senate to confirm. Indispensable to the confirmation process is an opportunity to examine the record of the individual, and that means a hearing, and that means questions and answers, and that means an opportunity to prepare.

So on process, I think the record is conclusive that we haven't been given a reasonable amount of time. I regret that very much on the personal level with Senator Leahy. It is well known he and I have been working together since 1970 when we were District Attorneys and worked coordinately on this Committee, more than 90 percent of the time cooperatively.

Now, beyond the issue of procedure and process, there are also substantial questions to be asked. Staff has prepared summaries of some of the cases that Judge Hamilton has engaged in. These questions, I think, fairly—these cases fairly warrant an examination.

But let me make a point: I don't necessarily disagree with anything you've done, Judge Hamilton. And that is not to say that I agree with it.

[Laughter.]

But I am raising issues for inquiry just by doing just that. But I can tell you that there are members of this Committee on the Republican side who do disagree with some of what you said, but I do not state that in raising these cases. *Heinrichs v. Bosma*. The case involved the practice of the Indiana General Assembly opening each session with a prayer. Judge Hamilton said that was uncon-

stitutional; the Seventh Circuit reversed on the issue of—complex issue. A lot to be said on both sides.

*Women's Choice v. Newman.* The rulings which you had handed down delayed a decision in that case for some 7 years. Ultimately, the Seventh Circuit reversed. Chairman Leahy is reminding me that there's a 5-minute rule, so I'll be as brief as I can.

*Grossbond v. Indianapolis, Marion County Building Authority,* question of a Hanukkah menorah. The Seventh Circuit again reversed. Tough issues, First Amendment, require some examination.

*Go v. Prosecutor.* The issue involved registration as a sex and violent offender, also involving the consent of the search. Another complicated issue.

*United States v. Woolsey.* The statute required a life sentence. Life sentence was imposed, with the additional statement that you disagreed with it and hoped that it would be reversed by executive clemency. Okay. But it's worth some examination. *United States v. Reinhart.* You found a minimum mandatory sentence to be unjust, could not impose a just sentence in the case. *Bolls Commas.* Perhaps warranted, but certainly worthy of some inquiry.

Very briefly as to Chief Kerlikowske, issues have been raised as to the Chief—again, let me compliment him on the meeting that I had with him—as to his policies on marijuana. Here again, I'm not saying I disagree, just an issue, but there are others who want to talk about it. An issue about not taking action against some rioters, some disagreement by 88 percent of the police union members. I'm not saying I disagree with you, but there are issues to be examined.

Mr. Weich, some questions about his views on minimum sentences and the Unborn Victims of Violence Act. Here again, not making any comment one way or another, just that there are those who wish to be heard on that.

Chairman LEAHY. Well, we will hear first from Senator Lugar, and of course anybody can ask any question you want.

I would note, parenthetically, there's going to be almost 4 weeks before any of these nominations are even on the agenda, so there will be time for further meetings and for any follow-up questions during those 4 weeks.

Again, I thank people for coming down here, as they did when I accommodated President Bush right after 9/11 on nominees that he wanted to get through on very, very short notice.

Senator Lugar.

Senator SPECTER. Mr. Chairman, I hadn't quite finished.

Chairman LEAHY. I apologize. I'll let you go for your round of questions. I know you have more and I can't wait to hear it.

Senator SPECTER. Well, I would like to just say one more thing, because I intend to leave. That is that it is common practice to have informal sessions with nominees. I would hope to not have to put you through eight or nine of those individually. I would hope that you would be willing, perhaps even volunteer, perhaps even urge another hearing, but I don't have the gavel anymore.

Thank you.

Chairman LEAHY. Senator Lugar. I do have the gavel. Senator Lugar, please go ahead.

**PRESENTATION OF DAVID HAMILTON NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA**

Senator LUGAR. Thank you, Mr. Chairman, for this opportunity to join my friend and colleague, Evan Bayh from Indiana, in introducing Judge David Hamilton, whom the President has nominated to serve in the U.S. Court of Appeals for the Seventh Circuit.

Senator Bayh and I are proud that President Obama's first judicial nominee is from our State of Indiana and that he has chosen to elevate such an exceptionally talented jurist to the Federal appellate bench. I first had the pleasure of introducing David Hamilton to this Committee almost 15 years ago when he was nominated to the Federal District Court.

I said then that the high quality of his education, legal experience, and character well prepared him for this position and expressed my belief that his keen intellect and strong legal background will make him a great judge. This confidence in David Hamilton's character and abilities was shared by all who knew him, regardless of political affiliation, throughout Indiana's legal and civic communities.

Judge Hamilton's distinguished service on the U.S. District Court for the Southern District of Indiana, which he is now the Chief Judge, has more than vindicated that faith. I have known David Hamilton since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was a soloist in the choir. Knowing firsthand his family's character and commitment to service, it has been no surprise to me that David's wife has borne witness to the values learned in his youth.

He graduated with honors from Pennsylvania's Haverford College. While on a Fulbright scholarship to study in Germany at the University of Cologne, and earned his law degree at Yale. After clerking for Seventh Circuit Judge Richard Cudahy, David joined the Indianapolis office of Barnes & Thornberg, where he became a partner and acquired extensive litigation experience in the Indiana and Federal judicial systems.

When our colleague, Senator Bayh, was elected Governor of Indiana he asked David to serve as his chief legal counsel. Among other achievements, in that role David supervised the overhaul of State ethics rules and guidelines and coordinated judicial and prosecutorial appointments.

In the latter capacity, David worked closely with Judge John Tinder, then a Reagan appointee to the District bench, whom President Bush recently appointed to the Seventh Circuit with the unanimous support of this Committee and the full Senate.

When David was nominated to the District Court, Judge Tinder wrote to me that "David was meticulous in asking the difficult questions of, and about, judicial nominees," and that "his approach to these duties typifies the deliberate and sensitive way in which he approaches matters in his professional life." The same is true of David's approach to his judicial duties. Leading members of the Indiana Bar testified to his brilliance and, more importantly, his character, dedication, and fairness.

David Hamilton is the type of lawyer and the type of person one wants to see on the Federal bench. His colleagues on the Southern District of Indiana bench, a talented, exceptionally collegial group from both parties, unanimously endorsed these conclusions.

Allow me to close with a few further thoughts. Members may recall when I introduce now-Chief Justice Roberts to this Committee in 2005. My concern is that today's Federal judiciary is seen by many as a political branch, with the confirmation process often accompanied by the same over-simplification and the sources that are disturbing even in campaigns for offices that are, in fact, political.

This phenomenon is most pronounced at the Supreme Court level and traces to several causes that I'll not try to address today, but I mention it, however, to underscore my commitment to a different view of judicial nominations which I believe comports with the proper role of the judiciary in our constitutional framework. I do not view our Federal courts as the forum for resolving political disputes that the legislative and executive branches cannot, or do not, want to resolve.

Our founders warned, in words quoted in my statement at the time of Chief Justice Roberts' nomination, against allowing "the pestilential breadth of faction to poison the fountains of justice," which they knew would stifle the voice both of law and of equity.

This is why I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will vote on a particular issue of public moment or controversy, and instead try to evaluate judicial candidates on whether they have the requisite intellect, experience, character, and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws rather than working to impose their own policy views.

I support Judge Hamilton's nomination, and do so enthusiastically because he is superbly qualified under both sets of criteria.

Finally, permit me to thank my colleague from Indiana on the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees from our State of Indiana. The two most recent examples are a strong support for President Bush's nomination of Judge Tinder for the Seventh Circuit, and of Judge William Lawrence for the Southern District of Indiana.

I am confident that Senator Bayh and I will continue to approach nominations by President Obama in the spirit that brings us before you today, and I thank you very much.

Chairman LEAHY. Thank you very much.  
Senator Bayh.

**PRESENTATION OF DAVID HAMILTON NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. EVAN BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA**

Senator BAYH. Thank you, Chairman Leahy. I've had an opportunity—

Chairman LEAHY. Allow me to mention, all Senators, I know you've got a million other things. So if a Senator speaks and then

leaves—a Senator speaks first and then leaves, that doesn't mean they no longer support you.

[Laughter.]

Senator BAYH. I know my friend and colleague has a busy schedule, but Dick, before you have to go, I just want to thank and commend you for that very thoughtful and eloquent statement. I, too, want to thank you for the exemplary manner in which you handled judicial nominations under President Bush. The spirit of cooperation, comity, consultation is one that I fully intend to continue throughout our service together. So, I thank you. Thank you for all of that, and so much more.

And Mr. Chairman, I have had an opportunity before to tell you how much I appreciate being before your Committee once again. It's a Committee that my father had the privilege of serving on for 18 years.

Chairman LEAHY. And chaired.

Senator BAYH. Indeed. So there's always been a fond spot in the Bayh family heart for the Judiciary Committee.

I am pleased, Mr. Chairman, to be before you again and to have this opportunity to introduce an individual for whom I have the greatest respect and admiration, Judge David Hamilton.

Before I speak to Judge Hamilton's qualifications, I would like to comment briefly on the judicial nominations process generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. During the last Congress, I was proud to work with Senator Lugar to recommend John Tinner as a bipartisan, outstanding consensus nominee for the Seventh Circuit Court of Appeals.

Judge Tinner was nominated by President Bush and unanimously confirmed by the U.S. Senate by a vote of 93:0. It is my hope that Judge Tinner's confirmation would serve as an example of the benefits of nominating qualified, non-ideological jurists to the Federal bench.

In selecting Judge Hamilton as his first judicial nominee, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator Lugar to recommend Judge Hamilton to President Obama. I hope that going forward other Senators will adopt what we call "the Hoosier approach," working together to select consensus nominees.

On the merits, Judge Hamilton is an accomplished jurist who is well-qualified to be elevated to the Seventh Circuit Court of Appeals. He has served with distinction as a U.S. District Judge for almost 15 years, during which time he has presided over approximately 8,000 cases.

Since January of 2008, he has served as the Chief Judge of the Southern District of Indiana, where he's been widely praised for his effective leadership style. Throughout his career, Judge Hamilton has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully.

In recommending Judge Hamilton I have the benefit of being able to speak from personal experience, as I had the opportunity to work closely with him while I was Governor of our State. In his role as counsel to the Governor, Judge Hamilton helped me to craft

bipartisan solutions to some of the most pressing problems facing our State.

In particular, he helped to favorably resolve several major lawsuits that threatened our State budget and drafted a tough new ethics policy to ensure that our State government was operating openly and honestly. In addition to his insightful legal analysis, I could always count on David for his sound judgment and common-sense Hoosier values he learned growing up in Southern Indiana.

During his service in State government, Judge Hamilton also developed a deep appreciation for the separation of powers and the appropriate role of the different branches of government. If confirmed, Judge Hamilton will bring to the Seventh Circuit a unique understanding of the important role of the States in the Federal system and will be ever mindful of the appropriate role of the Federal judiciary. He understands that the appropriate role for a judge is to interpret our laws, not to write them.

On a personal note, I have known Judge Hamilton for over 20 years. I know him to be a devoted husband to his wife and a loving father to his two daughters. He is the nephew of former Congressman Lee Hamilton, and the embodiment of good judicial temperament, intellect, and even-handedness. I have high confidence that, if confirmed, Judge Hamilton will be a superb addition to the Seventh Circuit Court of Appeals and I am pleased to give him my highest recommendation.

Mr. Chairman and other members of the Committee, it is my distinct pleasure to present for your consideration Judge David Hamilton.

Chairman LEAHY. Well, thank you. Thank you very much.

We have Senator Murray. You're here to speak for the Chief, I understand.

Senator MURRAY. I am. And I can say his name.

[Laughter.]

Chairman LEAHY. I have a feeling that when I call up the nominations at the time of the mark-up, however I pronounce his name will be acceptable to the Chief.

[Laughter.]

Senator MURRAY. I am sure you are correct.

**PRESENTATION OF R. GIL KERLIKOWSKI, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PERSEDENT, BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON**

Senator MURRAY. Mr. Chairman, thank you very much. It really is my honor to be here, along with Senator Cantwell, to introduce to you Gil Kerlikowske, who's the Chief of the Seattle Police Department, at this very important hearing. I want to welcome Chief Kerlikowske and his wife, Anna, who is with him as well, and congratulate his entire family on this nomination for this very important office.

I also want to thank the Chief and his family for accepting this responsibility at, really, this important time in our Nation's history. So, thank you very much to both of you.

Mr. Chairman, we know that the next ONDCP Director is going to face a number of key challenges. He will play a key role in ad-

addressing the drug-related violence in Mexico along the Southwest border. We know from history that as the economy falls, crime rises and it is growing at the same time that law enforcement agencies across our country are facing painful cutbacks and greater strains on their personnel and resources.

Law enforcement from all different levels has to work smarter, forge new relationships, and leverage the resources that they do have. Mr. Chairman, Gil Kerlikowske is the right man to address these challenges. He brings a fresh, new perspective to the job as the Nation's Drug Czar. He is a cop's cop and his perspective was shaped controlling the streets in Florida, New York, and Washington State.

Along the way he has helped thousands of people touched by violence and drugs. He and the people he has led have been on the front lines of our Nation's war against illicit narcotics and in keeping our community safe. He'll bring that hands-on perspective to ONDCP.

Chief Kerlikowske understands the importance of partnership between ONDCP and our State and local law enforcement because he has been on the local level. As the head of the Major Cities Chiefs Organization, which represents the 63 largest police departments in the United States, he sees the current problems facing cities across the country.

I've seen his work firsthand as the Seattle Police Chief. This past December, under Chief Kerlikowske's leadership, the Seattle Police Department, in cooperation with county, State, and Federal law enforcement agencies was able to bust a drug ring that stretched from Mexico, to Idaho, to Seattle.

Chief Kerlikowske worked cooperatively to create a regional response to gang violence in Seattle and in King County. He built a coalition with the King County Sheriff's Office, other King County police chiefs, the Washington Department of Corrections, ATF, and other community leaders to tackle persistent gang violence in our neighborhoods. These multi-agency Federal local partnerships require cooperation and compromise.

They require a leader with Chief Kerlikowske's experience to bring them together. Local police chiefs and sheriffs have told me they are sorry to see him go, but the Nation is gaining a true innovator in Gil Kerlikowske. I know he's going to continue to work on these relationships with State and local law enforcement across the country, and this approach will make all of America's communities safer.

Mr. Chairman, I want to add in ending here that he also understands that the drug war will not be won on the streets. For the past 9 years, he has been the national board chairman for the group, Fight Crime Invest in Kids. As this Committee knows, this is a group of police chiefs, sheriffs, prosecutors, and other law enforcement leaders who could easily be fighting only for more cops, more jails, and longer prison sentences, but instead, under the guidance of Gil Kerlikowske, they are working on prevention. They are fighting for early childhood intervention funding, after-school programs, and efforts to prevent child abuse as an effective way to fight crime. He knows that the best way to end the use of drugs and spread of crime is to prevent it.

He will bring this commonsense thinking to ONDCP. He has served the people of my State well and he's going to serve the people of the Nation well. I'm very proud to support his confirmation.

Chairman LEAHY. Thank you. Chief Kerlikowske's concepts were cheered in a hearing in Vermont recently, in St. Albans, Vermont.

Senator Cantwell, you are here also to speak for Chief Kerlikowske.

**PRESENTATION OF R. GIL KERLIKOWSKI, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, BY HON. MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

Chairman LEAHY. I just wanted to show you—

[Laughter.]

Senator CANTWELL. Thank you, Mr. Chairman and members of the Committee. Thank you for holding this important hearing today. I, too, am very pleased to be here, along with my colleague Senator Murray, to introduce Seattle Police Chief Gil Kerlikowske.

I urge my colleagues to swiftly confirm him for the next Director of National Drug Control Policy. I have known Gil for almost a decade, and in his 36 years in law enforcement he has demonstrated that to fight drugs, we must break down the walls between prevention, treatment, and enforcement.

One of the reasons why he was hired in Seattle was because of his expertise in community policing. During his time as Deputy Director of COPS, Gil launched a critical program, like the COPS Meth Initiative and the COPS in Schools programs, and the Tribal Resource Grant Program. As a member of the High-Intensity Drug Trafficking Area executive board, he was a vocal advocate for the resources needed to deal with the meth threat.

Thanks to the hard work of Gil in Washington State, Washington State had a sharp decrease in domestic meth production. In 2001, Washington State had more than 1,400 clandestine lab seizures; in 2008, that number plummeted to only 26.

As Chief of the Seattle Police Department for over 8 years, Gil has been a leader in transforming the way that we combat crime in the 21st century. In 2004, he established a partnership between the Seattle Police Department and Interpol to help combat local crime with international ties, such as human trafficking and drug smuggling operations. He will bring this kind of comprehensive approach to his work combatting drug crimes, working with Federal, State, local, and international partners.

Today we face an increasingly globalized threat from drug trafficking organizations that are going to take a new and collaborative and comprehensive approach. This is evident clearly in Mexico, as the stories are coming out daily. According to the U.S. Director of National Intelligence, Mexico is a conduit for cocaine bound for the United States and it is the chief foreign supplier of methamphetamine to the U.S. market.

Critical networks in Asia and Europe are supplying the Mexican drug cartels with pseudoephedrine and other precursor chemicals they need to mass-produce meth. Even as Federal, State, and local law enforcement shut down meth labs across my State and through

the country, meth and other illegal drugs continue to flow across the borders and be distributed by local street gangs. Gil Kerlikowske knows you need a comprehensive approach that must address both supply and demand.

The Obama administration is recognizing the need for decisive action, and just last week the Department of Homeland Security Secretary Napolitano announced that hundreds of Federal agents and high-tech surveillance equipment will be sent to the Southwest to stop the flow of drugs and guns. I know that Gil Kerlikowske will work closely with Secretary Napolitano, Secretary of State Clinton, and Attorney General Holder, as well as other local officials to meet these challenges head on.

The U.S. can make a huge difference, both at home and abroad, and I saw this firsthand when I traveled to Colombia in 2007 with many of my Senate colleagues to see the progress that has been made in fighting drug trafficking organizations with the assistance of the United States. Even though Colombia still faces serious challenges, the murder rate in Medellin is lower than Washington, DC today.

Our experience in Colombia has shown it is going to take a comprehensive strategy involving stakeholders at every level and participation around the world to end the flow of drugs that have caused such a devastating impact on our communities. I am confident that Gil Kerlikowske will bring the collaborative approach needed to succeed. He is the right man for this job to be the cop on this beat, and I urge my colleagues to quickly confirm him and send him to the floor.

I thank the Chair for this opportunity.

Chairman LEAHY. Thank you very much. We have a number of votes starting very soon and we'll probably be on the floor. But let me ask Judge Hamilton, Ron Weich, and Chief Kerlikowske to stand and raise their right hands.

[Whereupon, the witnesses were duly sworn.]

Chairman LEAHY. Gentlemen, this is different than we normally do. I'm going to ask all three of you to step forward and I'll let the staff change the—

As Mr. Weich can remember, we were crowding right in here to expedite some—the rest of the building was closed down. We had more bipartisanship I guess at that time because Republicans didn't object to hurrying. I guess it's only more recently. I'm sure it has nothing to do with the change in the presidency.

But Judge, you have members of your family here, do you not?

Judge HAMILTON. I do.

Chairman LEAHY. Could you introduce them so it will be, someday, in the Hamilton archives?

[Laughter.]

**STATEMENT OF DAVID HAMILTON, NOMINEE TO BE U.S.  
CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT**

Judge HAMILTON. Thank you very much, Mr. Chairman. It's a pleasure to be here. I'd also like to thank Senators Bayh and Lugar for their kind words of support and many years of friendship and support. I thank the President for his confidence in me.

With me today are many friends and family who have traveled here from Indiana: My wife, Inge van der Cruysse is here; my father, Dick Hamilton; my sister, Lisa Hamilton and brother, John Hamilton, are here. I wish that my daughters Janet and Debbie could be here, but work and studying in the Nation of Turkey has kept them away. And I wish my late mother, Anna Lee Hamilton—

Also with me are my aunt, Nancy Hamilton; my cousin, Sarah Schmidt; representatives from my wife's late husband's family who have adopted me as an extra in-law, Pat and Russ van Antwerpen and Kristin Gort; and also my long-term assistant, Jenny McGinnis; and my recently retired courtroom deputy, Chuck Bruess, are here. There are also many other friends and former or current law clerks and staff members who have made the trip. I'm grateful for all of them for having come here.

Chairman LEAHY. Judge, while we're here, I hope you have a chance of going to see the cherry blossoms, which has nothing to do with your—yesterday my wife and I were there right after 6 in the morning when the sun came up, there weren't that many people around, and just walked around there for an hour before I came up here. It is a lovely and unique time of the year. It's almost a cliché when people talk about cherry blossom time, but it is a very, very nice and very good time.

Judge, I've tried a lot of cases, as have many others on this Committee. I've also argued a lot of appellate cases, as have many others on this Committee. We have different judges. It's something you don't really—you can't write on a judge's handbook about how they should react, but I remember those judges who treated everybody who came before them with courtesy, treated everybody the same. When you walked in, you did not think, this is predetermined because of who I am, because of my background and my political party, or anything else. Can you assure us that you will be that type of judge?

Judge HAMILTON. I can. And I hope that the record that I've built up over the last 14-plus years as a District Judge reinforces that confidence.

Chairman LEAHY. Do you also understand the sense of having to recuse one's self depending upon a case? Can you give us some ideas of some of the things that might cause you specifically to recuse yourself from a case?

Judge HAMILTON. Well, recusing is governed by Section 455 of the Judicial Code, a statute I'm familiar with, along with the Codes of Conduct for the Federal Courts. We go through elaborate processes for disclosure of any financial interests we might have and parties that might come before us, and any kind of financial interest requires recusal. We have automatic procedures in place in our court, and I think in most other Federal courts, to prevent a judge from being assigned to a party—to a case in which a party would require that judge's recusal. So we try to minimize that as much as possible.

There are—there have been situations earlier in my career where I had to recuse in a number of cases because of pending litigation or ongoing legal relationships that stemmed from my work in private practice and with State government. When I became a District

Judge I had proposed a method for dealing with that to the Judicial Conference Committee on Codes of Conduct. They endorsed the approach that I took, I followed it, and now recusals are pretty few and far between.

Chairman LEAHY. It's been a few years since you were in private practice.

Judge HAMILTON. Yes, sir.

Chairman LEAHY. But you could have one if you had—

Judge HAMILTON. There are family relationships.

Chairman LEAHY [continued]. Party to—financial.

Judge HAMILTON. My wife is a—my wife practices law, my brother-in-law practices law in the Federal courts within the Seventh Circuit, and obviously I would be recused from any case in which they were involved.

Chairman LEAHY. How many members are in the Seventh Circuit?

Judge HAMILTON. There are 11 active judge seats.

Chairman LEAHY. So it's not as though the court comes to a screeching halt if you recuse yourself.

Judge HAMILTON. No.

Chairman LEAHY. And would it be safe to say it's easy to err on the side of caution in those kind of things?

Judge HAMILTON. It is. I believe the Seventh Circuit also has a similar program in the Clerk's Office where specific parties or lawyers can be identified so a case involving those parties' lawyers will never be assigned to the judge in the first place.

Chairman LEAHY. Unlike the District Court where you're bound by the stare decisis not only of the Circuit, but in the U.S. Supreme Court you only have the Supreme Court for stare decisis. But also, of course, a Circuit Court can reverse their own decisions.

Would you agree with me that for a Circuit Court to change their own precedent would require a pretty significant situation or a pretty significant shift in the law throughout the country?

Judge HAMILTON. It would have to be pretty rare. I agree with that, Mr. Chairman. I can think of a couple of examples recently in which the Seventh Circuit has done so, where the Seventh Circuit had decided a particular issue under a relatively new statute and no other circuits followed it. The Seventh Circuit, upon—when asked to reconsider those questions, has gone back and decided, all right, we'll come in line with everyone else.

Chairman LEAHY. But depending upon what the circumstances were, it would reflect—

Judge HAMILTON. Exactly.

Chairman LEAHY [continued]. This happening in the rest of the country.

Judge HAMILTON. That, or an intervening Supreme Court decision.

Chairman LEAHY. And of course if there is a Supreme Court decision on—it's very easy

Judge HAMILTON. It is.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR.

Senator KLOBUCHAR. Thank you very much.

Welcome to all three of you. I can pronounce your name, Chief, having known you for a while. But Judge Hamilton—

Chairman LEAHY. That's going to be the new test.

[Laughter.]

Senator KLOBUCHAR. Those "K" names that are long are always difficult.

[Laughter.]

Thank you very much. I was just reading up—as I was listening to our colleague, to Senator Specter—just about, in fact, some of the background. When someone did look at your whole record as opposed to picking out a few cases that they may have disagreed with, I'm sure all of us would disagree with individual cases that a judge—decisions a judge made here and there.

But as Senator Specter pointed out, you presided over the closing of approximately 8,000 cases, which I think, at the very least, shows you're quite efficient. Of that number, you've presided over approximately 3,000 cases that went to verdict or judgment based on trial and/or decision you made, with roughly 1,150 written opinions. The American Bar Association, which did an exhaustive examination of your credentials, your record, and your temperament, concluded that you deserve the highest rating of Well Qualified.

It's my understanding, in response to some of the issues raised with a case here or there, to get that rating the ABA must find the nominee to be at the top of the legal profession, have outstanding legal ability, breadth of experience, and the highest reputation for integrity, and demonstrate the capacity for sound judicial temperament.

So when the group that has done this exhaustive examination of your record gave you the highest rating unanimously, I just question—well, everyone has a right to question a judge's decisions here and there, and I'm glad that our colleagues appear to want to talk to you about these individually. I just think that that means a lot to me to read something like that.

But I just had one or two questions. One, was I know Chief Justice Roberts, at his confirmation hearing, talked about how he would like to see the Supreme Court make decisions and strive for consensus in decisions. Do you think that the U.S. Court of Appeals should be striving for consensus as well? You've gone from a District Court now to more of group decisionmaking.

Judge HAMILTON. I think that's one of the major changes that I contemplate for moving from the District Court to the Circuit Court, if the Senate was to confirm my nomination.

I'm used to making decisions on my own, with help from staff and able law clerks, and so on, but they have to be my decisions. At the same time, I have worked in a very collegial court in the Southern District of Indiana, with friends and colleagues. We don't select our colleagues; other people do that on the court.

Senator KLOBUCHAR. I know what that's like.

[Laughter.]

Chairman LEAHY. Very good.

[Laughter.]

Senator KLOBUCHAR. Continue on.

Judge HAMILTON. We don't always agree on everything but we work together well, we exchange our views, we make our decisions,

and we move on. I know the members who are now on the Seventh Circuit and I would expect to be able to work with all of them on a similar kind of basis. I hope that I'll be able to.

Senator KLOBUCHAR. Very good. And I want to allow my colleagues here to ask a question or two.

One other question. You have been on the Federal bench for about 14 years, and as Chief Judge of the Southern District of Indiana since 2008, what are the challenges that you see for the Federal bench? I'm new on the Judiciary Committee and I'm looking forward to working with all of our judges on what are the challenges you see ahead.

Judge HAMILTON. Given my role, I should say first of all you should listen to whatever the Judicial Conference says—those are my bosses—on those sorts of issues. But from my perspective I would say to be cautious about the expansion of Federal jurisdiction, both criminal and civil.

We have plenty of work to do. I hope that Congress will maintain the distinct characteristics of Federal jurisdiction so that Federal courts can continue to play the special role that they do in our society. I hope that the Congress will continue to provide the adequate resources to the Judiciary as a whole. I know that's other committees besides this one's business, but that's going to be important.

I have to also, I think, say something about dealing with long-term criminal justice issues and working to develop effective punishment for the serious crimes that will protect the public, prevent further crime, and also manage that very difficult problem at reasonable public expense. Those would be my highlights, but as I say, I'd better defer to my bosses on any such administrative matters, the Judicial Conference.

Senator KLOBUCHAR. Thank you very much.

Judge HAMILTON. Thank you, Senator Klobuchar.

Chairman LEAHY. Senator Kaufman, before we go to you, I know the votes are just about to start. I wonder if I could ask both of the nominees, for the record, to introduce their families. It's somewhat close in here and some may have to leave.

Mr. Weich, you want to introduce your family for the Weich archives?

[Laughter.]

**STATEMENT OF RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE**

Mr. WEICH. I'm joined today by my wife, Joan Stewart. Behind her are my two brothers—since I was 6 years old. They are both real troupers today, but I'm going to say if they want to leave—

[Laughter.]

And I'm also joined by my parents, Robert and Cecilia Weich, who are from the Eastern Shore of Maryland, and originally from New York. I'm also joined by some of my colleagues, friends, and former colleagues and I appreciate all of them being here.

Chairman LEAHY. And we'll add all of their names to the record. You have two lovely daughters. If you want to take off, your dad's going to be Okay.

[Laughter.]

**STATEMENT OF R. GIL KERLIKOWSKE, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT**

Chief KERLIKOWSKE. Mr. Chairman, I'm joined by my partner, my wife, Anna Laslow, who is behind me. I am also joined by a number of friends and colleagues from my time as a Visiting Fellow at the Justice Department under Attorney General Edwin Meece, former Director of the National Institute of Justice, James K. Stewart, and a number of—just a number of friends from many years in law enforcement. So, thank you for that opportunity to introduce them.

Chairman LEAHY. Thank you.  
Senator Kaufman.

Senator KAUFMAN. Yes. Judge, I am very impressed with your credentials and your experience and I think we're a really fortunate country. The country is fortunate to have you willing to take on this additional responsibility.

For 14 years you've been on the District Court. How is that experience, do you think, going to affect your role when you're going to be judging appeals from your present colleagues?

Judge HAMILTON. I think that my work on the District judge—as a District judge has given me greater hands-on insight to what goes on in District Courts, to the kinds of decisions that have to be left to the sound discretion of the District judge who's managing a docket, managing a trial, as well as to those legal issues that the Court of Appeals has to decide uniformly for the entire Circuit.

I hope it has helped me prepare to know how to read a transcript, the proverbial “cold transcript” that an appellate court must review, and to know the different kinds of tones and scenes that the same whole transcript can actually describe. I certainly have seen my cases go up on appeal. Sometimes they don't always look the same on appeal as they look to me at the District Court level, and I hope I can appreciate that difference with my colleagues whom I respect so much on the District Courts within the Seventh Circuit.

Senator KAUFMAN. You know, I'm impressed by the breadth of the support that you've received across the whole political spectrum. Can you talk a little about the relationship between your kind of personal opinions, political opinions as opposed to your opinions as a judge? I know you've had a lot of experience with that. Could you talk about that?

Judge HAMILTON. As a judge, you put your personal opinions aside. They really don't have any place in making those decisions. The decisions that I have to make are based upon the Constitution and the laws of the United States. They're based upon the interpretations of those provisions and statutes by the Supreme Court of the United States and the Seventh Circuit, taking advice also from other circuits, other Federal judges and State courts dealing with the same issues. But it's not a—the Federal judiciary is not a place for anyone to exercise their personal opinions.

Senator KAUFMAN. Thank you. I think you've made pretty clear where you stand on that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Mr. Weich, we have—in the 1990s, Congress and the administration the State and local law enforcement as never before. We had the COPS program, the Byrne Justice Assistance Grants program. The Chief is well aware of those. Now we find kind of a double-whammy. The economic crisis of this country cuts back funding at the same time the economic crisis sees crime rising.

We had a Judiciary Committee hearing earlier this year and we had police chiefs and policy experts who made clear that if we continue to dismantle help for local law enforcement, it's going to be a catastrophic problem.

Will you work with the Congress to help us increase Federal funding for—not only for Federal law enforcement, but for local law enforcement?

Mr. WEICH. Yes, Mr. Chairman, I will. As you may know, at the outset I'm a former local prosecutor myself. I worked in the Manhattan District Attorney's Office at the beginning of my legal career. I understand, I think, the needs of State and local law enforcement. My work with the Congress and the Senate, for three different members, has really impressed upon me how strongly Senators feel about needing to assist local law enforcement in their States. So as the Assistant Attorney General for Legislative Affairs, if confirmed, I would certainly work to impress upon decision-makers, even the administration, of the need for that kind of support.

Chairman LEAHY. And also for the community-based efforts that oftentimes are helping the Department of Justice. As the Chief has said, and others, it's not just law enforcement that can stop it, especially in the area of youngsters, drugs, and so on. But the whole community has to be involved. Now, in the past, since this Department has been helpful in those areas—less so recently—will you work with us to bring it back to where DOJ and our national programs can help with community policing and community crime prevention?

Mr. WEICH. I certainly will. There's a whole set of grant programs within the Office of Justice Programs, in our COPS office, as you say, that are, I think, really starved for support. The stimulus bill includes new resources in those areas, but there's more that needs to be done. I know Attorney General Holder and the President, President Obama, are very committed to those programs. In the role that I will play, I would make sure that those decisionmakers are aware of how strongly Congress feels about this.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Mr. Weich, congratulations.

Mr. WEICH. Thank you, Senator.

Senator KLOBUCHAR. The Chairman touched on this a bit, and I know you know in Minnesota we had a big problem with our U.S. Attorney's Office in terms of a political appointment that got fixed, actually, by Attorney General Mukasey when he came in. But could you talk a little bit about the morale issue within the Department? I mean, that won't be a primary responsibility. I asked this of Attorney General Holder and others, but what do you think needs to be done after this era that we lived through with the Department of Justice to improve the morale?

Mr. WEICH. Well, Senator Klobuchar, I'm not in the Department yet and—so I can't speak firsthand about the state of morale. I do know—I was in the building, in the Department of Justice, when Attorney General Holder was sworn in the day after his confirmation. Senator Leahy was there. And it was a very exciting moment.

I have the impression that the career employees at Department of Justice were very excited to see him arrive. The career employees are really the backbone of the Department, so everything that the new Attorney General and his team can do to strengthen morale within the building, and if confirmed to join the Department of Justice team, I will do what I can to make sure that those employees and officials know how much they're appreciated and how important their work is.

Senator KLOBUCHAR. It's real interesting, because clearly part of the problem was the injection of politics into the Justice Department that made for some of the problems. Your role is going to be as legislative liaison. I know in your prepared remarks you talked about, that we need to have a healthy relationship between the Justice Department and this Committee, and how that is crucial to Federal law enforcement.

Do you want to talk a little bit about what you meant by a "healthy relationship"?

Mr. WEICH. Sure. I thought a lot about it in my—in my time working for three different Senators, Senator Specter, Senator Kennedy, and now Senator Reid, and I have the perspective of working both on the committee and for the Democratic Leader. Obviously the Constitution creates sort of an inherent tension among the branches. That's what checks and balances is all about.

But I think it's so important for leaders of the three branches to be able to speak to each other constructively, openly, with trust and respect, and I think I could facilitate that, if confirmed as the Assistant Attorney General, to at least improve and strengthen the relationship between the legislative branch and the Justice Department. If that kind of communication goes on, then I think the branches can work as partners to address the problems that the American people want to address.

Senator KLOBUCHAR. Thank you.

Chairman LEAHY. Senator Whitehouse just came in. Also, a vote has started.

Senator WHITEHOUSE. Well, it just started at 3:27.

Chairman LEAHY. I'm going to go vote. Please continue and I'll be right back.

Senator KLOBUCHAR. This is my party now.

[Laughter.]

Unfortunately, half the people didn't come, but that's Okay.

[Laughter.]

Senator WHITEHOUSE. Thank you. I just have two questions. The first is for Judge Hamilton. Welcome, Your Honor.

Judge HAMILTON. Thank you, Senator.

Senator WHITEHOUSE. As I understand it, you were appointed to the U.S. District Court in 1994?

Judge HAMILTON. Yes.

Senator WHITEHOUSE. You went through a full FBI field background check at the time?

Judge HAMILTON. I did.

Senator WHITEHOUSE. You were confirmed by the Senate?

Judge HAMILTON. Yes.

Senator WHITEHOUSE. Everybody had adequate time, if they wished, to review your past until 1994 at that point?

Judge HAMILTON. I suppose so.

Senator WHITEHOUSE. One would suppose so, wouldn't one? For 14 years you've led a relatively public life as a member of the U.S. District Court and as the Chief Judge of that court. Is that correct?

Judge HAMILTON. I say the work I've done is public, my life is private, some would say monastic. But, yes.

Senator WHITEHOUSE. Given the fact that you've been cleared once already, the fact that your work is a matter of public record, the fact that you're in a very public position as the Chief Judge of the U.S. District Court in your district, can you hazard a guess as to what of concern might not be available to our friends on the other side that has caused them to fail to appear for this hearing?

Judge HAMILTON. Senator—

Senator WHITEHOUSE. You're a pretty open boOkay. All you have to do is read it, right?

Judge HAMILTON. Senator, I'm glad to be here and my record is open. I appreciate the opportunity to appear before the Committee.

Senator WHITEHOUSE. I appreciate it. Thank you very much, Your Honor.

I will—Chief Kerlikowske, we've spoken before on this subject so I won't make you go through this again. But I would like, with the Chairman's permission and with unanimous consent, to make a request for the record that you respond on the issue of the Drug Enforcement Administration interference with e-prescribing and with the reforms that the President has promised in the area of electronic health records by virtue of insisting on a paper system being maintained by doctors for controlled pharmaceuticals, even if they have gone to an electronic prescribing system, which is obviously much more efficient for other pharmaceuticals.

I'd like to express for the record, as a former Attorney General and as a former U.S. Attorney, my very strong belief that an electronic system would actually be a very positive development for law enforcement and a very useful tool for law enforcement in looking at drug diversion offenses, and the DEA would actually be far stronger and more effective in dealing with the increasing issue of drug diversion if they would get out of the way and allow us to move to electronic prescribing and allow reasonable regulations to go forward that would support that transition. If you would take that question for the record, I'd appreciate it. If you have any comment you'd like to make now, I'd be glad to hear it, but I'll put the question for the record.

Chief KERLIKOWSKE. Senator, I just would like to tell you that I very much appreciate you and your staff explaining the details of that issue and, if I am confirmed, it will be one of the issues that I will certainly get very much more involved with and work more closely. An improved health care system is something close to everyone's heart, and an improved law enforcement system is also. So, you can rest assured that I will do that.

Senator WHITEHOUSE. I appreciate it. I thought in the last administration that we had to introduce the head of the Drug Enforcement Administration to the head of the Department of Health and Human Services and remind them that they worked for the same President and wondered why they weren't going in the same direction. It wasn't very successful, but it provided for an excellent hearing in the committee that I was then chairing.

[Laughter.]

Thank you very much. I thank the Chair. I will excuse myself to vote.

Senator KLOBUCHAR. Senator Kaufman.

Senator KAUFMAN. Yes.

Mr. Weich, I can't think of anybody coming to your position with better experience for what you're going to be doing.

Mr. WEICH. Thank you, Senator.

Senator KAUFMAN. You're one of the few I've ever seen that has bipartisan experience in the Senate, which is kind of unusual. So I think—plus your knowledge and experience you had.

Can you just talk for a few minutes about kind of how you see your role in terms of dealing with the Congress for the Justice Department? And by the way, the final thing I want to say is how fortunate the Attorney General is in having you nominated to help him with his job.

Can you talk a little bit about your role in kind of dealing between the Congress and the Justice Department?

Mr. WEICH. Well, thank you, Senator Kaufman. I do see the role of the Assistant Attorney General for Legislative Affairs as being kind of a translator, if you will, between the branches. And it's a two-way street. That is to say, I think the Assistant Attorney General has to represent the interests of the Department before Congress and explain in advance legislative initiatives and other policies, but at the same time I see the role as communicating to the Justice Department the views of the Congress. These worlds are sometimes too separate, and the more that I can do to bridge the gap and make sure that both—leaders in both branches understand what the other branch is thinking, I think the better the product will be, both legislation and the policies of the Department.

Senator KAUFMAN. Chief Kerlikowske, I mean, again, this is a great panel. I think everyone here is extremely well-qualified for what they're doing and I think we're really fortunate you're willing to come here and take on what is without a doubt one of the widest ranging jobs in the U.S. Government.

Can you kind of talk—all these different things that you're doing, kind of what your priorities are in your new position?

Chief KERLIKOWSKE. Thank you, Senator. I don't think many people outside government and out in the field—and I've spent my whole life out in State and local law enforcement—understand the wide array of responsibilities that the Director's position holds and the amount of authority that it holds over—over the budget, that setting a national drug strategy for the President of the United States is by far the most important task of the role.

But then when I look at the other priorities, clearly breaking down the silos and—I think instead of the—Senator Murray mentioned that, this isn't an either/or; it isn't about treatment or about

law enforcement, it isn't about source country eradication or about rehabilitation and recovery. Particularly in these incredibly difficult economic times, having people work together—and I always listen to them very carefully, and was listening carefully when Senator Whitehouse mentioned about everybody fully together in the same direction.

I think my background and experience in that area can help to break down some of these things so that we don't try and either arrest our way out of a problem or we don't realize that the criminal justice system is, in fact, a significant player in bringing people back into recovery and back into mainstream—

Senator KAUFMAN. Thank you. Again, I'm going to go vote—willing to take on these responsibilities. Thank you.

Judge HAMILTON. Thank you, Senator Kaufman.

Senator KLOBUCHAR. Chief, when we visited in my office we talked about drug courts and about how we both had experience with drug courts. I had the experience of a drug court, but its jurisdiction, I thought, was too broad in that it included gun cases and all kinds of things. The joke with the cops was, if you had a gun with you, you'd better hope you have drugs because then you could go to the drug court. And we changed that, actually, and as a result there was more support with law enforcement. Yet, it still took care of so many of our low-level drug offenses. Could you talk about your view of drug courts and how that would fit in nationally with what you want to do with your job?

Chief KERLIKOWSKA. I can, Senator. Clearly the drug court movement in this country—and I was fortunate to have been involved with Attorney General Reno when she persevered when moving that forward—first drug courts in the country, and I've been very fortunate to have officers assigned full-time to the drug court in Seattle.

Having gone to drug court graduations in several cities, I can't think of a more worthwhile experience, not just for a police chief or a sheriff, but also for a citizen to see people under the auspices of the right judges who are making sure that these people not only pay their debt back to society, but when they return back into society they return as productive, taxpaying citizens. I'm a big fan.

Senator KLOBUCHAR. Okay. Very good. Well, thank you.

I have to go vote, so I'll turn this back to Chairman Leahy.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR. I had memorized all your key cases, Judge Hamilton, last night for my moment when Chairman Leahy was going to leave, but there was no one to tango with.

[Laughter.]

Chairman LEAHY. I haven't memorized anything.

Senator SCHUMER.

Senator SCHUMER. Mr. Chairman, you don't have to memorize anything, you're the Chairman.

[Laughter.]

Chairman LEAHY. Very recent rumors—

Senator SCHUMER. Anyway, first, I want to thank you for holding this hearing, Mr. Chairman.

First, about Ron Weich, I've worked with him very closely over the last several years, so has my staff, and I think we all can say

without reservation he's the right person for the position of Assistant Attorney General for the Office of Legislative Affairs. I say with pride, he's a son of the Bronx, a product of the New York City—in Brooklyn, being from the Bronx is almost as good.

[Laughter.]

He's a product of the New York City public school system.

Word of his nomination made it back home. There's a glowing letter of recommendation in his record from a legendary District Attorney of Manhattan, Bob Morgenthau, another special narcotics—from the Special Narcotics Office for New York, Bridgett Brennon, and they have seen, as I think we all have, Mr. Weich's professionalism, legal skill, and commitment to justice.

Judge Hamilton, your record on the bench speaks for itself. I look forward to seeing you continue that success on the Seventh Circuit. And to Chief Kerlikowske, who I have also known for many years, particularly in your past life as Commissioner of the Police Department of Buffalo.

Judging from your experience, it's clear to me that you're the right person to lead ONDCP now. We've worked closely together. In fact, some of the ideas that I brought down here legislatively were ideas that Chief Kerlikowske had been formulating and working out in Buffalo, did a fabulous job. He knows—Gil Kerlikowske knows, Chief Kerlikowske knows that drug problems aren't limited to New York City, Chicago, or Los Angeles. They're real, they're close to home, and they're everywhere.

So with the Chairman's permission, I'd just like to ask you a couple of questions which we had talked about, Chief, that are of great concern to me.

First, about cartels and gangs in Buffalo. A recent Justice Department report found that "Mexican drug trafficking organizations maintain drug distribution networks or supply drugs to distributors in at least 230 cities."

Now, two of those cities listed were Albany, New York and Buffalo, New York. The DOJ explicitly, specifically identified the Gulf Coast cartel, one of Mexico's most notorious cartels, as having connections in Buffalo, and there's the related problem of violent street gangs making their way into the area. Just a few weeks ago, we saw a takedown of 28 members of the Bloods street gang in Niagara County, a county right to the north of Erie County, in which Buffalo is.

All of this leads to the question of whether there are enough resources to tackle the problem. So my first question to you is, can you commit to dedicating specific attention and resources to drug trafficking—to fighting drug trafficking organizations in places like Buffalo and Albany, and then what specific actions might you take?

Chief KERLIKOWSKE. Thank you, Senator, very much. The experience in Buffalo was one that was particularly close to my heart. The first year I was there, we had the highest number of homicides ever in the history of the city, a very troubling time. Then to be able to leave 5 years later with a 38 percent reduction in crime, all that the men and women of that department did, I was impressed.

I can commit to you in a number of ways that I will work very hard to make sure that the appropriate resources, if I am con-

firmed to this position, will be put onto the front lines as there are not only a number of HIDTAs in northwest, but having experienced how important HIDTAs are at bringing State, local, and Federal law enforcement together with Federal prosecutors. Those are particularly important issues to me. Also making sure that we all understand that we can't sever out particular things, a drug trafficking organization versus a violent crime organization. They are so interconnected, that we need to keep those things in mind.

The last thing I would mention to you, Senator, is that when I talk to all of my colleagues, whether it's the chief in Minneapolis or at the farthest northern parts of our country, we know that the Southwest border doesn't stop at Texas or Arizona.

Senator SCHUMER. Right. Good.

So you will commit to helping bring the resources needed to deal with these problems in Buffalo and Albany in particular?

Mr. WEICH. If I'm confirmed, I'll do everything possible to do that, Senator.

Senator SCHUMER. Right. Okay.

The next one is a little bit related. We talked about this at our meeting, too. We're having an explosion of hydroponic marijuana coming down across New York's northern border from Canada. I don't know if this is affecting your State as well, Mr. Chairman; it may well.

Chairman LEAHY. Yes.

Senator SCHUMER. Last November and December, we saw two major drug busts in border counties. They involved 20 suspects, millions of dollars of drugs, all smuggled through the northern border.

So my question to you is, why wouldn't expanding the HIDTA designation to New York's four northern counties—as you know, we worked, when you were a police chief, on bringing HIDTA to upstate New York, which we did and it's been a great success. But it's in counties like Erie and Albany County, but it isn't in the four northern border counties. Wouldn't expanding HIDTA be a good response, not only for New York but for the whole country, since this is a gateway by which marijuana is smuggled in, and particularly the fact we've had problems at the Indian reservation there?

Chief KERLIKOWSKE. Senator, I think we've seen great success with HIDTAs. If I'm confirmed in this role, I can tell you that I will look very carefully to make sure that, as the definition of the HIDTAs are, for those High-Intensity Drug Trafficking Areas, that those finite resources in that collaboration are put into the places in which we're seeing the most transshipment of drugs, the most dangerous drug trafficking organizations, and I will certainly commit now to that.

Senator SCHUMER. Taking a real careful look?

Chief KERLIKOWSKE. Yes, sir.

Senator SCHUMER. Okay. I think when you look at it, you're going to find that they belong in HIDTA.

One other thing about this issue, and then I have one more question. We're always worried, Senator Leahy, myself, others who are on the northern border, that the southern border gets all the attention and we don't have enough resources. Will you make sure that

no resources are diverted from the needed northern border activities to go to other parts of the country?

Chief KERLIKOWSKE. Senator, one of the most important things I'll be doing is—if I am confirmed in this role, will be to work very quickly with all of those other Federal counterparts: Border Patrol, Customs & Border folks, et cetera.

Senator SCHUMER. Right.

Chief KERLIKOWSKE. To make sure that I'm doing my job, my role as convener, as a collaborator, and making sure that the President's policy is carried out. And clearly, I know from my experience in Seattle and my experience in Buffalo, that transshipment across the Canadian border of drugs, and of course the smuggling of other things, are very important issues not only to the Federal law enforcement colleagues, but certainly to the effect that they have on our communities. So, yes.

Senator SCHUMER. Good. Thank you.

And one final one. This is about another crime problem we have in upstate New York. This is meth, crystal meth, in the southern tier. The number of meth labs in New York has been decreasing. That's good. We've had great help from law enforcement. We've all focused on this. There's still a problem of meth use. This is a different problem than manufacturing or trafficking, but use in New York's southern tier. And you know, once these people become addicted to meth it's really hard to break.

Will you focus on both existing programs and new programs as Drug Czar to help us cut down on meth use in the less densely populated areas of the country, like New York's southern tier?

Chief KERLIKOWSKE. Senator, I think there's a general feeling among many in law enforcement that the Federal Government was slow off the mark to recognize the problem of meth, and even though it still ranks on a national scale at a fairly low level, we know that in particular pockets of this country it has been an absolutely devastating drug.

If I'm confirmed, I'd like to see an ONDCP that's more flexible, that's able to move much more quickly on emerging drug threats, and that the important part of people that have become addicted, particularly, as you mentioned, the difficulty of getting someone off the addiction of methamphetamine, that the treatment issues and the rehabilitation issues are given as much of a priority as the enforcement issues.

Senator SCHUMER. Mr. Chairman, thank you. And I thank all three of our nominees here and I think they're a great group.

Chairman LEAHY. Thank you.

Judge HAMILTON. Thank you.

Mr. WEICH. Thank you.

Chief KERLIKOWSKE. Thank you.

Chairman LEAHY. Judge Hamilton, I know when Senator Specter was here he mentioned some of your cases. He did say he didn't necessarily disagree. But one was *Dole v. Prosecutor, Marion County and Henrichs v. Bozeman*, and *Women's Clinic v. Neiman*. Do you have any of the cases that have been mentioned here that you want to say anything about?

Judge HAMILTON. Thank you, Mr. Chairman. I appreciate the opportunity to address those concerns. The cases are all very familiar,

too. I could probably talk about them a long time, but I'll try to be relatively brief.

First, let me say with respect to the case of *Dole v. Prosecutor*, I believe that there may be some misimpressions about that decision. Indiana has a statute that requires sex and violent offenders to register periodically with law enforcement where they live, and work, and go to school.

In 2008, the Indiana legislature tightened some of those requirements. It added, for example, requirements that sex and violent offenders register with the State e-mail addresses and user names that they use in chat rooms. There has been no controversy about those provisions or the original sex offender registration provisions at all. None of those provisions were part of that case.

The one provision that was at issue in that case was a new requirement requiring sex offenders and violent offenders who had already completed all aspects of their criminal justice sentences, not only their prison sentences but also court supervision in the form of probation, parole, or supervised release, to consent to search of their computers and homes at any time without a warrant, without any individualized suspicion.

In a fairly lengthy opinion I explained why I thought, as applied to those offenders who had already completed their full sentences and who were no longer under supervision, a requirement that they be vulnerable to searches of their homes and computers at any time, without a warrant, is contrary to the Fourth Amendment. There was no appeal, I should add, from that decision. The State of Indiana has accepted that decision. There was no appeal.

If I could speak briefly about the case of *Bozeman v. Henrichs*, I did not hold that legislative prayer was unconstitutional. What I held was that, on the facts presented to me, systematically and pervasively, sectarian prayers from the official podium of the House of Representatives did violate the establishment clause. What I did, was apply the principles that the Supreme Court had embraced in a case called *March v. Chambers*, the Supreme Court's venture into the issue of legislative prayer.

My decision on the merits was consistent with other appellate courts, both in the Federal and State court systems that have dealt with similar practices of persistently sectarian prayer in an official forum. I certainly hope that the decision is not interpreted at all as limiting anyone's free exercise of religion, nor is favoring any one religion over another. The whole idea of the establishment clause is that government stays neutral in matters of religion.

As Senator Specter pointed out, the decision was reversed ultimately on appeal on the issue of standing. The case came before me with several taxpayers objecting to the use of their tax money to support this practice. I applied the laws of taxpayer standing under the establishment clause as it existed at the time under then-controlling precedents the Supreme Court had—

Chairman LEAHY. This was before *Hine v. Freedom*.

Judge HAMILTON. Precisely. When the case first went to the Seventh Circuit, the Seventh Circuit, in an opinion written by Judge Ripple, whose retirement created the opening here, Judge Ripple and the panel wrote an opinion, saying, in essence, that I had de-

cided the standing issue and the merits issues correctly and they left my injunction in place pending the appeal.

While that appeal was pending, the Supreme Court decided the issue of *Hine v. Freedom From Religion Foundation*, which reshaped in ways that I think still remain to be worked out, the doctrine of taxpayer standing under the establishment clause, and that panel divided 2:1 on how to apply Hine standing issue there.

Chairman LEAHY. And you did not have Hine as stare decisis in any form at the time you made your decision?

Judge HAMILTON. I did not. I applied the controlling precedents in place at the time. With respect to the Newman decision, what I was doing was applying the principles adopted by the plurality opinion, the controlling plurality opinion in *Casey v. Southeastern Pennsylvania*. And I think it was clear that the Casey opinion left open the potential for a challenge to waiting period and informed consent laws after there was some experience with those laws.

So there was an invitation, in essence, to parties who opposed such laws to develop that evidence and bring it before an appropriate court. I wound up being the court where that evidence was presented. I examined it carefully. I heard mention of the fact that the case took some time to decide. I would add that the case was brought in 1995.

I issued a preliminary injunction against enforcement of the statute in the fall of 1995. The State did not appeal that decision. Instead, the case was diverted to the State courts to resolve some issues of State law. When it came back to Federal court, I modified the preliminary injunction accordingly. There was, again, no appeal in the preliminary injunction. My recollection is that then the parties engaged in a fairly elaborate and lengthy process of discovery that involved complex statistical evidence.

Professors from several universities were brought in to examine the statistics. My recollection is that I scheduled the trial when the parties told me they were ready, after they had ample opportunity to study the experience in other States of similar laws. I held the trial, accepted additional evidence that the parties wanted to submit afterwards, as well as elaborate briefs, and decided, I think, with appropriate speed—

Chairman LEAHY. That was the parties on both sides? That was the parties on both sides?

Judge HAMILTON. It was. That's my recollection, Senator.

Chairman LEAHY. Well, do you have any other—

Senator SCHUMER. Yes. I just—no, I just wanted to make a comment, Mr. Chairman. I regret that our colleagues are not participating here. It doesn't bode well for moving and filling vacancies on the bench. You—when they were in the majority, Mr. Chairman, you led us. And we asked a lot of questions, we opposed certain nominees, but we never boycotted.

A first nominee who is supported by the Republican Senator from his home State, who is known from—you know, in jurisprudence as a moderate, supported by a member of the Federalist Society, I just find it—I just have to say it's just regrettable and I want to apologize to you, Judge Hamilton. The questions that you should be asked by some who might—maybe they don't have any difficult questions to ask you, or they think they can't get you on asking

questions so they don't come. But I just find this—let's put it like this. I think they're off to a bad start.

Chairman LEAHY. Well, you know, I won't question anybody's motives. I am—statistics. I would note that when the Democrats were in charge we moved more of President Bush's nominees, faster, than when the Republicans were in charge, to try and demonstrate that we wouldn't be partisan. I hope they're not going to be partisan on this.

We're not going to hold this hearing—it's going to be slightly over 3 weeks before we have a mark-up on this, so it'll be the first Thursday when we come back. I'll keep the record open until the end of this week. Any one of you can add to it, but you have to sit here. Certainly anybody can ask any questions. I've been here longer—in the Senate longer than any member of this Committee. We've had several long—ones but I've never known a time, whether somebody was for or against, that needed more than 3 weeks to get the answers to my questions.

We'll stand in recess. I congratulate you all, and I thank you all for being willing to answer your Nation's call in this way. Each one of you has answered the—call before and I appreciate you doing it again.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[The Questionnaire and questions and answers and submissions for the record follow.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
  
David Frank Hamilton
2. **Position:** State the position for which you have been nominated.  
  
United States Circuit Judge for the Seventh Circuit
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
  
Office: United States District Court for the Southern District of Indiana  
46 East Ohio Street  
330 Birch Bayh United States Courthouse  
Indianapolis, Indiana 46204  
  
Residence: XXXXXXXXXX
4. **Birthplace:** State year and place of birth.  
  
1957; Bloomington, Indiana
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
1980 – 1983; Yale Law School, New Haven, Connecticut; J.D. 1983  
  
1979 – 1980; University of Tuebingen, Tuebingen, Germany  
Fulbright Scholarship – no degree  
  
1975 – 1979; Haverford College, Haverford, Pennsylvania; B.A. 1979
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Full-time Positions

October 28, 1994 to present  
United States District Court for the Southern District of Indiana  
46 East Ohio Street  
330 Birch Bayh United States Courthouse  
Indianapolis, Indiana 46204  
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Partner

January 1989 to July 1991  
Office of the Governor of the State of Indiana  
206 State House  
Indianapolis, Indiana 46204  
Counsel to the Governor

October 1984 to January 1989  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Associate

September 1983 to September 1984  
United States Court of Appeals for the Seventh Circuit  
219 South Dearborn Street  
Chicago, Illinois 60604  
Law clerk to Judge Richard D. Cudahy

Summer 1983  
Kirkland & Ellis  
200 East Randolph  
Chicago, Illinois 60601  
Law clerk

Summer 1982  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Law clerk

Summer 1982  
Latham & Watkins  
(now located at 555 Eleventh Street, NW, Suite 1000)  
Washington, D.C.  
Law clerk

Summer 1981 (and part-time during 1981-82 academic year)  
Jacobs, Grudberg & Belt  
350 Orange Street  
New Haven, Connecticut 06511  
Law clerk

May -June 1979  
Association of Community Organizations for Reform Now  
Philadelphia, Pennsylvania  
Fundraiser

Part-time Positions and Activities

2008 and 2009: Judge on selection panel for Hon. Richard D. Cudahy Prize, an annual writing competition on administrative law underwritten by donations from Judge Cudahy's former law clerks and staff, and sponsored by the American Constitution Society, 1333 H Street NW, 11th Floor, Washington, DC 20005

2006 to present: Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

Spring 2004: Adjunct Professor of Law, Indiana University School of Law (course on federal jurisdiction), 211 South Indiana Avenue, Bloomington, Indiana 47405

1999 to 2007: Member, Board of Visitors, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

1993 to 2008: Director of William E. Schmidt Foundation (charitable foundation established by and named for my mother's brother)

1991 to 1994: Partner, BT Building Company, a partnership that owned and operated the building where Barnes & Thornburg has its Indianapolis office

Spring 1988: Adjunct Professor of Law, Indiana University School of Law (course on antitrust law), 211 South Indiana Avenue, Bloomington, Indiana 47405

1987 to 1988: Vice president for litigation and board member, Indiana Civil Liberties Union, Indianapolis, Indiana

1985 to 1986: Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

Fall 1982: Teaching assistant, Professor Peter Schuck, Yale Law School, 127 Wall Street, New Haven, Connecticut

Spring 1981: Research assistant, Assistant Dean Edward Dauer, Yale Law School, 127 Wall Street, New Haven, Connecticut

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I did not register for selective service; there was no registration requirement in effect for men my age.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

2007 – Distinguished Barrister Award, Indiana Lawyer newspaper

2007 – Lawdragon 500 Leading Judges in America

Approximately 1998 – North Central High School, Alumni Hall of Fame

Approximately 1996 – 40 Under 40, Indianapolis Business Journal

1991 – Sagamore of the Wabash (award by Governor of Indiana)

1979-80 – Fulbright Scholar, for study of theology at University of Tuebingen, Germany

1979 – Phi Beta Kappa, B.A. magna cum laude, with departmental honors (philosophy) and high honors (religion) at Haverford College

1975 – Magill-Rhoads Scholar, Haverford College

1973 – Eagle Scout

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

2007 to present: Member, Judicial Conference Committee on Space and Facilities

2000 to 2006: Member, Judicial Conference Committee on Criminal Law. Chair of Sentencing Subcommittee, approx. 2005-06

1998 to present: Founding member, Sagamore American Inn of Court. President, 2001-03; Program Chair, 1998-2001.

1985 to present: Member, Seventh Circuit Bar Association

1985 to 1994: Member, Indiana State Bar Association

1985 to 1986: Member, Indianapolis Bar Association

1985 to 1994: Member, American Bar Association

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Indiana October 23, 1984  
There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Indiana Supreme Court; October 23, 1984

United States District Court for the Southern District of Indiana; October 23, 1984

United States Court of Appeals for the Seventh Circuit; February 26, 1985

Supreme Court of the United States; November 2, 1992

There have been no lapses in admission to any court.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

2006 to present – Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, Bloomington, Indiana

2004 to present – Lifetime Fitness (health club)

1999 to 2007 – Member, Board of Visitors, Indiana University School of Law, Bloomington, Indiana

1998 to present – Member, Lawyers Club of Indianapolis

1993 to 2008 – Director, William E. Schmidt Foundation

1995 to present – Member, Federal Judges Association

1987 to 1988 – Vice president for litigation and board member, Indiana Civil Liberties Union

1985 to 1986 – Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

1984 to 2004 – Indianapolis Athletic Club, Indianapolis, Indiana (club closed and dissolved in 2004)

1973 to present – North United Methodist Church, Indianapolis, Indiana

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Indianapolis Lawyers Club is a social club of lawyers and judge that holds quarterly dinner meetings. I have been a member since 1998. The club membership was all male until sometime in the late 1980s, but women have been members, officers, and presidents before and throughout the time I have been a member. The other organizations also do not discriminate on any of the stated criteria.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

The Importance and Overuse of Policy and Custom Claims: A View from One Trench, 48 DePaul L. Rev. 723 (1999).

Dedication of Birch Bayh United States Courthouse, 37 Indiana L. Rev. 613 (2003). (remarks on Senator Birch Bayh's Senate career).

Naturalization Remarks – Excerpts from my remarks at a naturalization ceremony shortly after the terrorist attacks of September 11, 2001, published in the Indianapolis Star on November 4, 2001.

Letter to United States Sentencing Commission, September 4, 2007, urging the Commission to make retroactive its 2007 amendments to the Sentencing Guidelines adjusting the base offense level for crack cocaine offenses.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Letter from Judicial Conference concerning HR 1528, June 2005, to House Judiciary Committee

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

February 2, 2009 – Testimony before the Civil Rules Advisory Committee meeting in San Francisco regarding proposed amendments to Rule 56 of the Federal Rules of Civil Procedure.

In February 2006, Judge Paul Cassell, then Chair of the Judicial Conference Committee on Criminal Law, presented testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding legislative responses to the Supreme Court's decision in *United States v. Booker* holding the Sentencing Guidelines as advisory rather than mandatory. I was then a member of the committee and approved of the testimony before it was given.

August 19, 2003 – As a member of the Criminal Law Committee, I testified before the United States Sentencing Commission regarding the implementation of the PROTECT Act of 2003, particularly with respect to departures under the then-mandatory Sentencing Guidelines.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Jan. 16, 2009 - Remarks at investiture ceremony for U.S. Magistrate Judge Debra M. Lynch.

Jan. 13, 2009 - The Federalist Society – Indianapolis chapter: “Textualism – Not Always the Last Word”; remarks on statutory interpretation as part of panel discussion.

Jan. 10, 2009 - Remarks at ceremonial oath of office for U.S. Representative Baron Hill, U.S. Courthouse in New Albany, Indiana. (No notes – welcomed visitors to courthouse and commented on peaceful transitions of power after elections in the United States.)

Dec. 12, 2008 - Federal Bar Association continuing legal education conference, Indianapolis, Indiana.

Nov. 21, 2008 - Groundbreaking for new U.S. Courthouse in Terre Haute, Indiana.

Nov. 13, 2008 - Indiana University Law School – Bloomington, course on Constitutional Design, remarks on judicial independence.

Oct. 15, 2008 - Panelist in Zionsville Public Library forum discussing Jeffrey Toobin's book *The Nine*, as part of annual "One Town, One Book" program for Zionsville, Indiana.

Sept. 12, 2008 - Remarks at investiture ceremony for U.S. District Judge William T. Lawrence.

May 19, 2008 - Seventh Circuit Conference, Chicago, Illinois – panel discussion on jury comprehension, education, and persuasion. No notes available; as a panel member, I responded to remarks of jury experts on their research findings.

May 1, 2008 - Law Day event for Indianapolis high school students.

March 19, 2008 - Zionsville High School Economics Club. Spoke regarding the constitutional drafting process for the Burmese opposition.

March 18, 2008 - Indianapolis Bar Association bar leader program.

March 6, 2008 - Remarks to legal writing classes at Suffolk University Law School, Boston, on legal writing.

Dec. 13, 2007 - CLE Presentation on federal practice – Marion County Bar Association, Indianapolis.

Nov. 20, 2007 - Indianapolis chapter of the American Constitution Society speech regarding the constitutional drafting process for the Burmese opposition.

Oct. 22, 2007 - Speaker at Red Mass Dinner of the St. Thomas More Society, Indianapolis, Indiana.

July 16-20, 2007 - Presentations on the Rule of Law, judicial independence, and courts in federal nations in constitutional design for State Constitutional Drafting Committees working under auspices of the Ethnic Nationalities Council (Burmese democratic opposition in exile) in Chiang Mai, Thailand, as part of work with Center for Constitutional Democracy in Plural Societies.

April 10, 2007 - Introduction for Hon. Lee H. Hamilton at Rotary Club meeting, Indianapolis, Indiana.

March 20, 2007 - Indianapolis Bar Association bar leader series.

Jan. 6, 2007 - Remarks at ceremonial oath for U.S. Representative Baron Hill, New Albany, Indiana.

Dec. 7, 2006 - Federal Bar Association seminar on federal practice, Indianapolis. No notes available; spoke to federal practitioners on court rules, updates, practices.

Nov. 10, 2006 - Presentation on judicial independence and parallel court structures in federal systems to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Nov. 1, 2006 - Presentation on Rule of Law and judicial independence in constitutional design, to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Oct. 25, 2006 - Federal Judicial Center workshop, panel on sentencing, Lake Geneva, Wisconsin.

Oct. 22 & 29, 2006 - North United Methodist Church, Indianapolis; Sunday School classes on "Thomas and 'Q': Early Collections of Sayings."

July 24, 2006 - National Sentencing Institute, Washington, D.C. – chair, introducing speakers and programs.

June 23, 2006 - Memorial Ceremony for Judge S. Hugh Dillin of the Southern District of Indiana.

June 2, 2006 - Federal Sentencing Guideline Seminar, Miami Beach, program on sentencing in firearm cases. No notes available.

May 16, 2006 - Indianapolis Bar Association bar leader program. No notes, but remarks very similar to remarks on March 18, 2008 and March 20, 2007.

March 5 & 12, 2006 - North United Methodist Church, Indianapolis. Sunday School presentation on "Church-State Relationships: Applying Eighteenth Century Principles in the Twenty-first Century."

Sept. 29, 2005 - Federal Judicial Center, Chicago. First and Seventh Circuit workshop: panel on sentencing issues. No notes available; this was an educational meeting for Circuit and District Judges from the two circuits.

July 30, 2005 - American Constitution Society national convention, Washington, D.C. – panel discussion on sentencing issues after United States v. Booker.

July 11, 2005 - National Sentencing Institute to respond to United States v. Booker, Washington, D.C.

May 27, 2005 - National Sentencing Guidelines Seminar – presentation on sentencing after United States v. Booker, San Francisco.

May 23, 2005 - Seventh Circuit Conference – introduction of Hon. Lee H. Hamilton as the principal speaker of the annual conference in Indianapolis, Indiana.

May 23, 2005 - Seventh Circuit Conference – presentation regarding early effects of United States v. Booker on sentencing practices, Indianapolis, Indiana.

May 20, 2005 - Indiana Bar Admission Ceremony, Indianapolis, Indiana.

Dec. 3, 2004 - Indianapolis Kiwanis Club re: federal courts.

Oct. 8, 2004 - Top Ten Tips for Federal Practice – continuing legal education talk in Indianapolis.

October 2004 - Speaker at Indiana University Law School – Indianapolis, course on judicial processes. (no notes; text of questions available)

July 21, 2004 - Remarks on investiture of new regional director of NLRB, Indianapolis, Indiana.

May 7, 2004 - Six Hot Topics in Federal Jurisdiction – continuing legal education presentation in Indianapolis, Indiana.

April 14, 2004 - Presentation of American Inn of Court professionalism award to Hon. Jon D. Krahulik, former Justice of the Indiana Supreme Court.

Dec. 19, 2003 - Federal Bar Association continuing legal education talk in Indianapolis – Practical Tips from the Bench. No notes available – this is an annual event in which judges rotate presentations on updates for court rules and practices.

Dec. 12, 2003 - Federal Community Defenders, Indianapolis – Federal Criminal Practice Seminar for federal criminal defense attorneys – remarks on sentencing policies and procedures.

Oct. 28, 2003 - Multi-District Litigation Transferee Judges Conference -- Multiple State-wide Class Actions, remarks, Palm Beach, Florida.

Oct. 24, 2003 - Dedication of the Indianapolis Courthouse as the Birch Bayh United States Courthouse -- reviewing Sen. Birch Bayh's Senate career.

Nov. 2002 - Indiana University School of Law, Bloomington, American Constitution Society chapter, remarks on federal sentencing law and practices -- "Two Cheers for the Sentencing Guidelines" No notes available. I spoke to students and explained how guidelines work in a bank robbery, for example, then discussed advantages and disadvantages of mandatory guideline system.

Dec. 20, 2001 - CLE presentation: Trial and Civil Procedure Update, Indianapolis, Indiana

May 21, 2001 - Seventh Circuit Conference -- panel discussion on the use of summary judgment after *Reeves v. Sanderson Plumbing* at annual conference in Indianapolis.

July 27, 2000 - Indianapolis Bar Association speech. Topic unknown. No notes available.

July 8, 1999 - Sidebar for Young Lawyers section of a bar association Topic unknown. No notes available.

Dec. 3, 1998 - Indiana Lawyer program on EEO litigation, Indianapolis.

Oct. 28, 1998 - Panelist at Indiana University Law School, Bloomington, to discuss Prof. William Popkin's book on statutory interpretation.

Sept. 24, 1998 - CLE Presentation on federal practice, Indianapolis.

March 13, 1998 - DePaul University Law School, Chicago, Illinois: Symposium on Section 1983 Municipal Liability in Civil Rights Litigation. Formal paper published at 48 DePaul L. Rev. 723 (1999).

Jan. 21, 1998 - Floyd County Bar Association, remarks in New Albany, Indiana

Dec. 19, 1997 - Indiana State Bar Assoc. Young Lawyers Division -- Roundtable -- remarks on civility, Indianapolis.

Oct. 17, 1997 - Federal Criminal Defense Seminar, Indianapolis. No notes available; spoke to annual seminar for federal criminal defense attorneys sponsored by Federal Community Defender of Indiana.

June 13, 1997 - ICLEF program on employment discrimination, Indianapolis.

June 6, 1997 - Indiana Bar Admission remarks, Indianapolis.

May 9, 1997 - Indiana Civil Liberties Union – CLE lunch presentation regarding 42 U.S.C. § 1983, in Indianapolis. No notes available.

Dec. 16, 1996 - Zionsville High School – speak to government classes about role of federal courts. No notes available.

Oct. 18, 1996 - ICLEF seminar on employment litigation, Anderson, Indiana.

Oct. 4, 1996 - Speech to patent lawyers in Indianapolis on Markman decision in patent law.

Sept. 12, 1996 - Federal Bar Association federal practice seminar, Indianapolis.

April 8, 1996 - CLE presentation – Recent Seventh Circuit Developments in Civil Procedure and Evidence, Indianapolis.

Dec. 22, 1995 - Remarks upon swearing in of class of new Indiana State Police Troopers, Indianapolis.

Nov. 16, 1995 - CLE Presentation on Professionalism and Civility, Indianapolis.

Aug. 22, 1995 - Zionsville Lions Club, on federal courts.

June 9, 1995 - Indiana Bar Admission remarks, Indianapolis.

April 13, 1995 - CLE Presentation – Class Actions: A Judicial Perspective, in Indianapolis.

Naturalization Ceremonies: Over the past fourteen years, I have presided over approximately 20 to 25 naturalization ceremonies. At each ceremony, I have given a speech that has evolved slowly over those years. Available texts are collected together.

Seventh Circuit Conference: Each year at the Seventh Circuit Bar Association and Judicial Conference, my colleagues in the Southern and Northern Districts of Indiana and I participate in a panel discussion with attorneys who practice in our courts to discuss a variety of procedural and court administration issues. I do not have notes of these discussions.

There have been a number of other occasions at which I have spoken briefly, such as investitures of new judicial officers in the district and court visits by new lawyers and school groups, but I have not been able to locate notes from those events.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Fox 59 News – March 3, 2008 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. No copies available.

Indiana Lawyer – December 2007 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. Article appeared in December 26, 2007 edition.

Indiana Lawyer – January 2008 regarding new role as chief judge. I do not recall any specific article appearing from that interview.

NUVO – March 8, 2006 issue.

UPN Focus – television interview with Judge John Daniel Tinder hosted by Milt Thompson. No copy available.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On October 11, 1994, I was appointed United States District Judge for the Southern District of Indiana by President Clinton, following confirmation by the United States Senate on October 7, 1994. I entered duty in that office on October 28, 1994.

I have served as Chief Judge, United States District Court for the Southern District of Indiana, since January 1, 2008.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 3000.

As a judge, I have presided over the closing of approximately 8,000 cases. Of that number, approximately 3,000 went to judgment based on a trial and/or decision I made, with roughly 1,150 written opinions available in electronic data bases. Approximately 150 to 200 have gone to verdict or decision after a trial.

- i. Of these, approximately what percent were:

jury trials? 60%; bench trials 40%

civil proceedings? 60%; criminal proceedings? 40%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached lists of citations from Westlaw. (Two lists cover two date ranges because of the large number.) In addition to the cases on the lists, see *Sefick v. United States*, 1999 WL 778588 (N.D. Ill. 1999), in which I sat by designation in the Northern District of Illinois.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Watkins v. Anderson*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). Granted writ of habeas corpus. Watkins was wrongly convicted of the rape and murder of a young girl. After the trial, early DNA tests showed it was nearly impossible for Watkins to have committed the crimes, but state courts rejected the conclusions from those tests. In the federal habeas proceedings, Watkins showed (a) that the DNA test results undermined the conviction and (b) that the prosecution had violated his constitutional rights under *Brady v. Maryland* by failing to disclose the statement of an eyewitness who described the girl's abduction by a man who did not fit Watkins' description and at a time when time-clock records showed that Watkins was at work. Watkins therefore met the stringent standards for habeas relief under the Anti-terrorism and Effective Death Penalty Act of 1996. The state filed an appeal but dismissed the appeal after a newer, more sophisticated DNA test confirmed the results I had relied upon. The State of Indiana did not attempt to re-try Watkins.

Counsel for petitioner Watkins were Joseph Cleary, Hammerle & Cleary, Indianapolis, Indiana, tel. 317-630-0137, and William E. Marsh, Federal Community Defender, Indianapolis, tel. 317-383-3520. Counsel for respondent were Michael A. Hurst and Thomas D. Perkins, Deputy Attorneys General. Mr. Hurst of Indianapolis is now at 317-598-8685. Mr. Perkins is still with the Office of the Indiana Attorney General and can be reached at 317-232-6201.

2. *Nelson v. IPALCO Enterprises, Inc.*, 480 F. Supp. 2d 1061 (S.D. Ind. 2007). This was a class action under the Employee Retirement Income Security Act (ERISA) involving employee investments in the employer's stock as an investment option in a retirement savings plan. IPALCO owned the electric power company in Indianapolis. IPALCO was acquired by AES Corporation in 2001 in a stock-for-stock exchange. Several months after the closing of the acquisition, AES stock lost 90 percent of its value, with devastating effects on the retirement accounts of many IPALCO employees who had invested in company stock. The plaintiff class argued that the plan fiduciaries (1) should have removed company stock as an

investment option, (2) wrongfully promoted investment in company stock while they were selling their own company stock, and (3) wrongfully allowed the employer-match part of the plan assets to be converted into AES stock. Plaintiffs sought damages in excess of \$100 million. I denied a motion to dismiss, 2003 WL 402253 (S.D. Ind. Feb. 13, 2003), certified a plaintiff class, 2003 WL 23101792 (S.D. Ind. Sept. 30, 2003), and denied cross-motions for summary judgment on the major issues, 2005 WL 1924332 (S.D. Ind. Aug. 11, 2005). After a bench trial, I found for defendants in the cited opinion. The Seventh Circuit affirmed. *Nelson v. Hodowal*, 512 F.3d 347 (7th Cir. 2008). The case was important not only because of the number of plaintiffs and the financial stakes but also because of the possible tension between company executives' fiduciary duties to employees under ERISA and their duties to all shareholders under federal securities laws.

Plaintiffs' counsel were Nicholas Styant-Browne, Steve Berman, and Andrew Volk of Hagens Berman Sobol Shapiro, Seattle, Washington, tel. 206-623-7292; and John R. Price, Indianapolis, Indiana, tel. 317-844-8822. Defense counsel were Dane Butswinkas and R. Hackney Wiegmann of Williams & Connolly, Washington, DC, tel. 202-434-5000; and James H. Ham III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300.

3. In re AT&T Fiber Optic Cable Litigation, MDL No. 1313. The Judicial Panel on Multi-District Litigation assigned this multi-district litigation to me to manage the pretrial aspects of similar cases around the country. In this litigation, twenty-first century technology met nineteenth century law. Plaintiffs were thousands of owners of property adjoining railroad rights of way where AT&T had laid fiber optic telecommunications cables in the 1980s and 1990s. Plaintiffs alleged that laying the cables violated their property rights, asserting claims of trespass, slander of title, and unjust enrichment. Plaintiffs sought to pursue the claims with class actions, initially with a nationwide class, and later with a series of statewide classes. After some early procedural sparring, see *In re AT&T Fiber Optic Cable Installation Litigation*, 2001 WL 1397295 (S.D. Ind. Nov. 5, 2001) (denying motion to remand), a Seventh Circuit decision in a similar case showed that plaintiff classes could not be certified for litigation. The parties agreed to general principles for a series of statewide class action settlements, and the cases proceeded on that path over several years. During that time, I decided a series of contested issues. See, e.g., 2001 WL 1224726 (S.D. Ind. July 6, 2001) (denying leave to submit briefs under seal); 2002 WL 1364157 (S.D. Ind. June 5, 2002) (denying motion to compel production of settlement agreement between AT&T and its insurers); 2003 WL 22080739 (S.D. Ind. Aug. 21, 2003) (denying request for additional attorney fees).

On the merits of some claims, I decided *Home on the Range v. AT&T Corp.*, 386 F. Supp. 2d 999 (S.D. Ind. 2005), which addressed how several federal land grant statutes from the nineteenth century – the Pacific Railroad Act of 1862, the

Northern Pacific Act of 1864, and the General Railroad Right of Way Act of 1875 – allocated property rights among the railroads, the adjoining landowners, and the United States government. That decision was not appealed and provided the foundation for a settlement for the plaintiff classes who own property adjoining federal land-grant railroads. In essence, the property owners adjoining railroads established under the earlier statutes did not have any interest in the railroad right of way. Property owners adjoining railroads built under the later General Railroad Right of Way Act had a limited property interest in the adjoining railroad rights of way. Most of the statewide class settlements have been fully implemented. The last few settlements are still in the final stages of distribution of claims. Baltimore County, Maryland opted out of the class settlement and that case remains pending against AT&T.

Plaintiffs' lead counsel were Henry J. Price, Price Waicukauski & Riley, Indianapolis, Indiana, tel. 317-633-8787 ; Nels Ackerson, Ackerson Kauffman Fex, Washington, DC, tel. 202-833-8833; and Daniel J. Millea, Zelle Hofmann, Minneapolis, Minnesota, tel. 612-336-9170. Lead defense counsel were B. Haven Walling, Jr., tel. 202-420-2658; Peter Morgan, tel. 202-420-2287; and Howard N. Feldman, tel. 202-420-4707 of Dickstein Shapiro, Washington, DC.

4. Eli Lilly & Co. v. Emisphere Corp., 408 F. Supp. 2d 668 (S.D. Ind. 2006). Eli Lilly entered into contracts for a joint biotechnology research program with Emisphere, a much smaller start-up company. After a bench trial, I found that Eli Lilly had breached the contracts by trying to appropriate for itself the intellectual property of Emisphere. Eli Lilly had conducted secret research projects that should have been joint projects and distributed Emisphere's confidential information to other scientists within Eli Lilly who were not entitled to access to it. Before a final determination of the remedy, the parties settled the case without an appeal.

Plaintiff's counsel were Donald E. Knebel and Dwight D. Lueck, Barnes & Thornburg, Indianapolis, Indiana, tel. 317-236-1313. Defendant's counsel were Colin A. Underwood, tel. 212-969-3350, and Aliza Ross, tel. 212-969-3142, both of Proskauer Rose, New York City, New York.

5. In re Lawrence Inlow Accident Litigation, No. IP 99-830. In terms of damages sought, this may have been one of the largest single-victim wrongful death cases in the U.S. Lawrence Inlow was the general counsel of Conseco Insurance. He was killed when he was hit in the head by a helicopter rotor blade as he was exiting a company helicopter on a windy day. At the time of his death, he was earning tens of millions of dollars each year. Several cases were consolidated into one case. I eventually granted summary judgment for the foreign helicopter manufacturer on the Inlow family's wrongful death claims. 2002 WL 970403 (S.D. Ind. April 16, 2002). I held that the danger posed by the decelerating blades under windy conditions was open and obvious and that the helicopter pilots were

“sophisticated intermediaries” under Indiana law, so that the manufacturer did not have a duty to warn passengers of the specific risk. The Seventh Circuit affirmed that decision. *First National Bank and Trust Corp. v. American Eurocopter Corp.*, 378 F.3d 682 (7th Cir. 2004). In earlier decisions, I dismissed Inlow’s life insurer’s claim against the manufacturer, holding that the life insurer did not have standing to pursue its own wrongful death claim against an alleged tortfeasor, 2001 WL 1781927 (S.D. Ind. Dec. 13, 2001), and resolved a host of other issues to streamline the litigation, 2001 WL 331625 (S.D. Ind. Feb. 7, 2001). Those decisions were not appealed.

Counsel for the Inlow plaintiffs were James T. Crouse, Mineo & Crouse, Raleigh, North Carolina, tel. 919-861-0500; John R. Howie, Howie & Sweeney, Dallas, Texas, who has died. Counsel for Conseco was Joseph H. Yeager, Jr., Baker & Daniels, Indianapolis, Indiana, tel. 317-237-1278. Counsel for defendants were Stephen C. Johnson, Lillick & Charles (now Nixon Peabody), San Francisco, California, tel. 415-984-8222; and Martin E. Rose, Rose Walker, Dallas, Texas, tel. 214-752-8600.

6. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. I then denied a motion to amend the judgment, 2005 WL 3544300 (S.D. Ind. 2005), and denied a stay pending appeal, 410 F. Supp. 2d 745 (S.D. Ind. 2006). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs’ taxpayer standing and the merits of the Establishment Clause issue. *Hinrichs v. Bosma*, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in *Hein v. Freedom from Religion Foundation*, 127 S. Ct. 2553 (2007). Based on *Hein*, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. *Hinrichs v. Speaker of House of Representatives*, 506 F.3d 584 (7th Cir. 2007). The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendant were Thomas Fisher, Solicitor General of Indiana, 317-232-6201, and William Bock III, Indianapolis, Indiana, tel. 317-692-9000.

7. *A Woman’s Choice–East Side Women’s Clinic v. Newman*, 132 F. Supp. 2d 1150 (S.D. Ind. 2001). This was a challenge to Indiana legislation imposing a new informed-consent requirement for abortions that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had initially granted a temporary restraining order

and then a preliminary injunction against enforcement of the statute. 904 F. Supp. 1434 (S.D. Ind. 1995). At the same time, I certified a question of state law, at the state's request, to the Indiana Supreme Court concerning the scope of the health exception to the new law's requirements. The state court answered the question, 671 N.E.2d 104 (Ind. 1996), and I responded by narrowing the scope of the preliminary injunction so as to enjoin only the requirement that required information be given "in the presence" of the woman at least 18 hours before the procedure. 980 F. Supp. 962 (S.D. Ind. 1997). The other portions of the law then took effect. The parties then undertook an extended discovery process to evaluate the effects of similar statutes in other states and to explore other issues. I held a court trial and received additional evidence in writing after the trial, and issued a permanent injunction tracking the narrowed scope of the preliminary injunction. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction. 305 F.3d 684 (7th Cir. 2002).

Counsel for plaintiffs were Simon Heller, then with the Center for Reproductive Law & Policy, New York City, tel. 646-549-3881, Kenneth J. Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059, and Mary J. Hoeller, Indianapolis, Indiana, tel. 317-633-4002. Counsel for defendants were Jon Laramore, then a Deputy Attorney General and now with Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300, Arend J. Abel, also then a Deputy Attorney General and now with Cohen & Malad, Indianapolis, Indiana, tel. 317-636-6481.

8. *Hoosier Environmental Council v. U.S. Department of Transportation*, 2007 WL 4302642 (S.D. Ind. Dec. 10, 2007). The case was an environmental challenge to construction of a new interstate highway between Indianapolis and Evansville as part of Interstate 69. I held that the federal and state agencies had not acted arbitrarily or capriciously in selecting the preferred route for the highway. The case is interesting because of the approval of "tiering" for environmental analysis of the government decisions. "Tiering" allows the government to look at some issues on a broad scale initially, and to defer some of the more detailed environmental analysis (of a specific highway route; for example) to a second stage of analysis. My decision approving of the chosen route was not appealed. Early construction has begun near Evansville.

Counsel for plaintiffs were John N. Moore, Chicago, Illinois, tel. 312-782-9503/312-795-3706, and Michael K. Sutherlin, Indianapolis, Indiana, tel. 317-634-6313. Counsel for the federal defendants were Jill E. Zengler and Shelese M. Woods of the U.S. Attorney's Office, tel. 317-226-6333. Counsel for the state defendants was Albert M. Ferlo, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, tel. 202-887-4000.

9. *United States Securities and Exchange Commission v. Church Extension of the Church of God*, 429 F. Supp. 2d 1045 (S.D. Ind. 2005). The financial arm of the

Church of God issued more than \$85 million in bonds to church members. The stated purpose for the bonds was to help finance the construction and remodeling of churches all over the world. The leaders of the financial arm, however, began investing the church assets in much riskier real estate and other investments. The church's financial arm eventually became insolvent. The SEC brought a civil enforcement action in 2002. I have supervised a receivership to marshal as many assets as possible, which has included a number of related actions and written opinions. A jury trial in 2005 found that the two leaders of the financial arm had committed securities fraud over several years by misleading bond buyers as the financial position worsened. The cited opinion decided the civil sanctions against those two leaders, who were unusual among securities fraud defendants because they did not line their own pockets. But they were reckless with the money entrusted to them, and investors lost tens of millions of dollars. The challenge was to tailor the penalties to those unusual facts. The receivership should conclude in the near future after recovering more than \$50 million for the church members who had invested in the fraudulent bonds.

Counsel for plaintiff SEC were Steven J. Levine and Tina K. Diamantopoulous, Chicago, Illinois, tel. 312-353-7390; counsel for defendants were Thomas M. Knepper and Jill Gladney, Chicago, Illinois, tel. 312-957-1300. Receiver was Jeff Marwil, Chicago, Illinois, tel. 312-962-3540. Counsel for bondholders was Elliott D. Levin, Indianapolis, Indiana, tel. 317-634-0300.

10. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc. This is a patent case involving implantable cardiac defibrillators. I have issued approximately twenty substantive decisions in the case, and the case has been before the Federal Circuit on five occasions. After claim construction and extensive motion practice, the case was tried to a jury on four claims of two patents. The jury found that one patent was not infringed but the other was infringed, and the jury awarded \$140 million. I set aside that verdict on multiple grounds and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. July 5, 2002). The plaintiffs did not appeal the loss of their \$140 million verdict, but they sought to pursue just one method claim of the patent the jury had found not infringed. The Federal Circuit affirmed in part and reversed in part, ordering further proceedings on that one method claim. I later granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that decision in part and reversed in part. 2008 WL 5257333 (Fed. Cir. 2008), but that decision has been vacated and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

Lead counsel for plaintiffs are J. Michael Jakes, tel. 202-408-4045 and Kara Stoll, tel. 202-408-4119 of Finnegan Henderson, Washington, DC; and Robert Stanley and John Schaibley of Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300. Lead counsel for defendants are Denis R. Salmon of Gibson Dunn & Crutcher, Palo Alto, California, tel. 650-849-5301; Mark A. Perry, Gibson Dunn,

Washington, DC, tel. 202-887-3667; Jeffrey Olson, Sidley Austin Brown & Wood, Los Angeles, California, tel. 313-896-6041; Phillip Whistler, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Eckles v. Consolidated Rail Corp.*, 890 F. Supp. 1391 (S.D. Ind. 1995), *aff'd*, 94 F.3d 1041 (7th Cir. 1996). The issue of first or second impression was whether the Americans with Disabilities Act required an employer to provide a "reasonable accommodation" to one employee by violating the seniority rights of other employees under a collective bargaining agreement. The statutory language of the ADA did not address the issue. The legislative history showed that Congress had recognized the issue but had not reached any definite conclusion. I granted summary judgment for the defendants, finding that the ADA did not require the employer to violate the collective bargaining rights of the other employees. I reasoned that rights under collective bargaining agreements were so well established under federal law that they could not be limited by implication, without explicit limitation by Congress. The Seventh Circuit agreed and affirmed, and other circuits have followed the lead of *Eckles*.

Counsel for plaintiff was Susan L. Kuss, now at Law Office of Susan L. Brach, LLC, Bluffton, SC, tel. 843-706-5977. Counsel for the defendant employer was Cynthia L. Wodock, Stewart & Irwin, Indianapolis, Indiana, telephone unknown; counsel for the union defendant were Kevin C. Brodar, United Transportation Union, Cleveland, Ohio, tel. 216- 228-9400; and Frederick W. Dennerline, III, Fillenwarth Dennerline Groth & Baird, Indianapolis, Indiana, tel. 317-353-9363.

2. *Henderson v. Irving Materials, Inc.*, 329 F. Supp. 2d 1002 (S.D. Ind. 2004). Plaintiff Henderson was the first African-American cement truck driver at the defendant's facility. He sued for race discrimination under Title VII of the Civil Rights Act of 1964, alleging that co-workers and one supervisor had created a racially hostile work environment. I denied the employer's motion for summary judgment on the key claim, finding that the cumulative effect of the harassment was sufficient to allow a finding of a racially hostile work environment under Seventh Circuit law. I also found that some forms of facially non-racial harassment could be viewed as racial when taken in context of other harassment and historic forms of violence directed against African-Americans.

Plaintiff's counsel was Denise H. LaRue, Haskin Lauter & LaRue, Indianapolis, Indiana, tel. 317-955-9500. Defendant's counsel was Paul H. Sinclair, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

3. *Eaton v. Onan Corp.*, 117 F. Supp. 2d 812 (S.D. Ind. 2000). This was one of the early cases challenging “cash balance” pension plans as a form of age discrimination. The question arose at the intersection of the Internal Revenue Code, the Age Discrimination in Employment Act, and the Employee Retirement Income Security Act. I granted summary judgment in favor of the pension plan and employer, concluding that cash balance pension plans are permissible under the law and are not inherently a form of unlawful age discrimination. This decision was not appealed, but the Seventh Circuit later agreed with this conclusion. See *Cooper v. IBM Personal Pension Plan*, 457 F.3d 636 (7th Cir. 2006).

Counsel for plaintiffs were William K. Carr, Denver, Colorado, tel. 303-296-6383; and William C. Barnard and Mary Doherty of Sommer & Barnard of Indianapolis. Mr. Barnard has died. Ms. Doherty is now with Taft Stettinius & Hollister, LLP in Indianapolis, tel. 317-713-3500. Counsel for defendant were Arthur P. Kalleres and Marc Sciscoe of Ice Miller, Indianapolis, Indiana. Mr. Kalleres has also died. Mr. Sciscoe’s telephone number is 317-236-2100.

4. *Watkins v. Anderson*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See description above in Answer 13(b).
5. *Doe v. Prosecutor*, 566 F. Supp. 2d 862 (S.D. Ind. 2008). An Indiana law enacted in 2008 allowed law enforcement authorities to search the homes and computers of convicted sex offenders at any time, and without a search warrant, probable cause, or reasonable suspicion. The new law applied not only to offenders on parole or probation, but also to offenders who had completed their sentences. Two offenders who had completed their sentences brought a class action challenging the new law under the Fourth Amendment. I found that the pre-enforcement challenge to the law was ripe, and I held that the new law violated the Fourth Amendment as applied to offenders who had already completed their sentences, including any terms of probation or parole. There was no appeal.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was David A. Arthur, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

6. *Zehner v. Trigg*, 952 F. Supp. 1318 (S.D. Ind. 1997), *aff’d*, 133 F.3d 459 (7th Cir. 1997). Prisoners who alleged they had been exposed to asbestos while working in a prison kitchen sued for violation of their Eighth Amendment rights. No plaintiff had suffered any physical injury, but they sought damages for emotional distress. The Prison Litigation Reform Act of 1995 provided in 42 U.S.C. § 1997e(e): “No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” Plaintiffs argued that the new legislation violated their constitutional rights under the Eighth and Fourteenth

Amendments. I granted judgment on the pleadings for the defense and upheld the constitutionality of the new statutory limit on damages. I concluded that although the new law limited remedies for constitutional violations, the limit was not so severe as to reach beyond the constitutional power of Congress or to violate other constitutional provisions. The Seventh Circuit affirmed.

Counsel for plaintiffs was John Emry, Franklin, Indiana, tel. 317-736-5800. Counsel for defendants was Wayne E. Uhl, Deputy Attorney General, now with Stephenson, Morow & Semler, Indianapolis, Indiana, tel. 317-844-3830.

7. Williams v. Humphreys, 125 F. Supp. 2d 881 (S.D. Ind. 2000). After federal welfare reform legislation established the Temporary Assistance for Needy Families (TANF) program, Indiana required that all children in families receiving TANF benefits assign to the state their rights to child support from non-custodial parents. But TANF also excluded from the benefit calculations many "after-born" children. The result was that TANF provided no benefits directly to those after-born children but required that those same children give up their child support rights to the state. I held that the policy requiring assignment of child support rights from those children amounted to an unconstitutional taking of private property for a public purpose without compensation. I issued a permanent injunction against the policy. There was no appeal.

Counsel for plaintiffs were Jacquelyn E. Bowie and Kenneth Falk, Indiana Civil Liberties Union, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was Frances Barrow, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

8. MCI, LLC v. Patriot Engineering & Environmental, Inc., 487 F. Supp. 2d 1029 (S.D. Ind. 2007). This is one of many recent cases involving accidental cuts of high-capacity fiber optic communications cables. Damages in such cases ordinarily should include the costs of repair and a reasonable sum for lost use of the cable. MCI and other telecommunication companies have pursued some much more aggressive damages theories. In this case, for example, the repairs took about eight hours and cost MCI \$22,000. MCI sought damages of more than \$630,000 based on the supposed rental costs for such high capacity cables. MCI used as evidence longer-term leases that included very high one-time or annual fees or deposits that amounted to 98 percent of the claimed loss-of-use damages. I rejected the attempt to base the damage calculation on cable leases with those high fees as unreasonable as a matter of law and granted summary judgment for the defendant on the issue. The parties later settled; there was no appeal.

Counsel for plaintiff MCI were Anthony J. Jorgenson and James John Proszek of Hall Estill Hardwick Gable Golden & Nelson, Tulsa, Oklahoma, tel. 918-594-0631, and Cathy Elliott, Bose McKinney & Evans, Indianapolis, Indiana, tel. 317-684-5248. Counsel for defendant Patriot were Jeffrey Musser, Scott Timberman,

and James D. Witchger of Rocap Witchger LLP, Indianapolis, Indiana, tel. 317-577-5380.

9. *Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d 845 (S.D. Ind. 1999). This was a relatively early case under the Private Securities Litigation Reform Act. The principal issue at this stage was whether the selection of a lead plaintiff in a securities case could be manipulated by having attorneys assemble an artificial “group” of investors who could pool their alleged losses to show that they had the largest stake in the case. I held that the statutory language allowing a “group of persons” to serve as lead plaintiff did not apply to a group of investors who had nothing in common with one another beyond their investment. I later granted the defendants’ motion to dismiss the case, and there was no appeal.

Counsel for plaintiffs were Kevin J. Yourman, formerly with Yourman, Alexander & Parekh, LLP, Los Angeles, California, firm now closed; for information on cases, send fax to 310-601-4109; Michael D. Braun, now with Braun Law Group, Los Angeles, California, tel. 310-442-7755; James A. Knauer, Kroger Gardis & Regas, Indianapolis, Indiana, tel. 317-692-9000; and William C. Potter, II, Indianapolis, Indiana, tel. 317-625-4834. Counsel for defendants were James H. Ham, III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300; and Ira A. Finkelstein, now with Harnik Wilker & Finkelstein, New York, New York, tel. 212-599-7575.

10. *Eco Mfg. LLC v. Honeywell Int’l*, 295 F. Supp. 2d 854 (S.D. Ind. 2003), *aff’d*, 357 F.3d 649 (S.D. Ind. 2003). The familiar round Honeywell thermostat presented questions at the intersection of patent law and trademark law. Plaintiff Eco Manufacturing wanted to manufacture a round thermostat. Honeywell threatened to sue for trademark infringement. Honeywell had obtained a utility patent on the round thermostat design in the 1930s. As the utility patent was about to expire, Honeywell then obtained a design patent on the round design. After the design patent expired, Honeywell eventually managed to obtain a registered trademark on the round design. I denied Honeywell’s request for a preliminary injunction that would have stopped Eco from using a similar round design. I found that the trademark was invalid and conflicted with patent law. After a utility patent expires, the public has a right to practice the patented invention. I also found that Honeywell had misled the Patent & Trademark Office when it obtained the trademark on the round design. The Seventh Circuit affirmed the denial of the preliminary injunction. The case later settled.

Counsel for plaintiff Eco were Michael Beck, David Lockman, and Paul Maginot of Maginot Moore & Bowman, Indianapolis, Indiana, tel. 317-638-2922. Counsel for defendant Honeywell was Paul R. Garcia, Kirkland & Ellis, Chicago, Illinois, tel. 312-861-2327.

e. Provide a list of all cases in which certiorari was requested or granted.

*Kauble v. Pension Ben. Guar. Corp.*, 1994 WL 722966 (S.D. Ind. 1994), aff'd mem., 94 F.3d 647 (7th Cir. 1996), cert. denied, 519 U.S. 1057 (1997).

*Grossbaum v. Indianapolis-Marion County Bldg. Auth.*, 909 F. Supp. 1187 (S.D. Ind. 1995), aff'd, 100 F.3d 1287 (7th Cir. 1996), cert. denied, 520 U.S. 1230 (1997).

*Eckles v. Consolidated Rail Corp.*, 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996), cert. denied, 520 U.S. 1146 (1997).

*K.R. by M.R. v. Anderson Comm. School Corp.*, 887 F. Supp. 1217 (S.D. Ind. 1995), rev'd, 81 F.3d 673 (7th Cir. 1996), cert. granted and judgment vacated, 521 U.S. 1114 (1997), on remand, 125 F.3d 1017 (7th Cir. 1997), cert denied, 523 U.S. 1046 (1998).

*Harmon v. OKI Systems*, 902 F. Supp. 176 (S.D. Ind. 1995), aff'd, 115 F.3d 477 (7th Cir.1997), cert. denied, 522 U.S. 966 (1997).

*Estate of Cole by Pardue v. Fromm*, 941 F. Supp. 776 (S.D. Ind. 1995), aff'd, 94 F.3d 254 (7th Cir. 1996), cert. denied, 519 U.S. 1109 (1997).

*Fleenor v. Farley*, 47 F. Supp.2d 1021 (S.D. Ind. 1998), aff'd, 171 F.3d 1096 (7th Cir. 1999), cert. denied, 528 U.S. 891 (1999).

*Snyder v. United States*, 1998 WL 1181015 (S.D. Ind. 1998), aff'd mem., 172 F.3d 53 (7th Cir. 1998), cert. denied, 528 U.S. 968 (1999).

*Mead Johnson & Co. v. Abbott Laboratories*, 41 F. Supp. 2d 879 (S.D. Ind. 1999), rev'd, 201 F.3d 883 (7th Cir. 2000), amended on denial of rehearing, 209 F.3d 1032 (7th Cir. 2000), cert. denied, 531 U.S. 917 (2000).

*Sefick v. United States*, 1999 WL 778588 (N.D. Ill. 1999) (sitting by designation), aff'd, 164 F.3d 370 (7th Cir. 1998), cert. denied, 527 U.S. 1035 (1999).

*Watts v. Network Solutions, Inc.*, 1999 WL 778589 (S.D. Ind. 1999), aff'd mem., 202 F.3d 276 (7th Cir. 1999), cert. denied, 530 U.S. 1088 (2000).

*Lowery v. Anderson*, 69 F. Supp. 2d 1078 (S.D. Ind. 1999), reconsideration denied, 1999 WL 778587 (S.D. Ind. 1999), aff'd, 225 F.3d 833 (7th Cir. 2000), cert. denied, 532 U.S. 959 (2001).

*American Amusement Mach. Ass'n v. Kendrick*, 115 F. Supp. 2d 943 (S.D. Ind. 2000), rev'd, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).

Midwestern Gas Transmission Co. v. McCarty, 120 F. Supp. 2d 1155 (S.D. Ind. 2000), rev'd, 270 F.3d 536 (7th Cir. 2001), cert. denied, 535 U.S. 1053 (2002).

Gregory-Bey v. Hanks, 2000 WL 1909642 (S.D. Ind. 2000), aff'd, 332 F.3d 1036 (7th Cir. 2003), cert. denied, 540 U.S. 1052 (2003).

United States v. Evans, 2001 WL 243287 (S.D. Ind. 2001), aff'd, 282 F.3d 451 (7th Cir. 2002), cert. denied, 537 U.S. 918 (2002).

A Woman's Choice-East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), rev'd, 305 F.3d 684 (7th Cir. 2002), cert. denied, 537 U.S. 1192 (2003).

Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2002 WL 1801525 (S.D. Ind. 2002), aff'd in part and rev'd in part, 381 F.3d 1371 (Fed. Cir. 2004), cert. denied, 544 U.S. 1032 (2005).

Latner v. Delta-HA, Inc., 2002 WL 31255473 (S.D. Ind. 2002), aff'd mem., 72 Fed. Appx. 448 (7th Cir. 2003), cert. denied, 540 U.S. 1182 (2004).

United States v. Emerson, 501 F.3d 804 (7th Cir. 2007), cert. denied, 128 S. Ct. 1098 (2008).

Caskey v. Colgate-Palmolive Co., 438 F. Supp. 2d 954 (S.D. Ind. 2006), aff'd, 535 F.3d 585 (7th Cir. 2008), cert. denied, 129 S. Ct. 738 (2008).

United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006), rev'd, 495 F.3d 795 (7th Cir. 2007), cert. denied, 128 S. Ct. 938 (2008).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. United States v. Avila, No. 07-2404, — F.3d —, 2009 WL — (March 6, 2009). The Seventh Circuit affirmed the defendant's conviction in a methamphetamine conspiracy but vacated the sentence of 396 months because of an error in calculating the advisory sentencing guidelines.
  2. United States v. Osborne, 551 F.3d 718 (7th Cir. 2009). The Seventh Circuit vacated and remanded a sentence in a child pornography case for further consideration of whether the defendant's prior conviction qualified as a conviction for "abusive sexual conduct involving a minor," which requires a mandatory minimum sentence of 15 years. I held that the defendant's prior conviction

qualified for the higher minimum sentence. In a case of first impression at the appellate level, the Seventh Circuit held that the state statute (making it criminal for a person 18 years old or older to have sexual contact with a person 14 or 15 years old) might have some "non-abusive" applications, so the court remanded for further consideration of the circumstances of the defendant's prior conviction.

3. *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 2008 WL 5257333 (Fed. Cir. Dec. 18, 2008). After an earlier remand for a partial new trial on one method claim of one patent, I granted summary judgment (a) to the plaintiffs on the issue of infringement, (b) to the defendants based on a finding of invalidity for anticipation, and (c) to each side on several damages issues. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed the finding of infringement, reversed the finding of invalidity, affirmed the findings on damages issues, and remanded for a trial on damages only. The Federal Circuit panel decision has been vacated, and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.
4. *Gaylor v. Astrue*, 2008 WL 4206360 (7th Cir. Sept. 8, 2008), reversed my decision affirming the Social Security Administration's denial of disability benefits. 2007 WL 968733 (S.D. Ind. 2007). The Seventh Circuit found that the Administrative Law Judge had not sufficiently explained his decision. The case was remanded to the SSA for further proceedings.
5. *Chapman v. Airleaf Publishing Book Selling*, 2008 WL 3977527 (7th Cir. Aug. 28, 2008). I dismissed this pro se copyright case for failure to state a claim upon which relief could be granted. 2007 WL 2751780 (S.D. Ind. 2007). The Seventh Circuit held that the case was so lacking in merit that the dismissal should have been for lack of subject matter jurisdiction instead.
6. *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008). The Seventh Circuit affirmed convictions after trial in a drug and firearm case, but on the government's cross-appeal, remanded for imposition of mandatory life sentence for a 55 year old defendant, as opposed to the 25 year sentence I had imposed. The issue was whether a 1974 conviction under the old Youth Corrections Act should be treated as expunged or whether it should count toward the "three strikes" sentencing law in 21 U.S.C. § 851. I had treated it as expunged because it should have been expunged but was not. The Seventh Circuit disagreed.
7. *Bright v. Hill's Pet Nutrition, Inc.*, 510 F.3d 766 (7th Cir. 2007). The Seventh Circuit affirmed in part and reversed in part the jury verdict for the defense in a trial for alleged sexual harassment and Family and Medical Leave Act violations. The Seventh Circuit remanded for a new trial on the sexual harassment claim because I excluded some evidence from plaintiff that the court deemed relevant.

8. *CSX Transportation, Inc. v. Appalachian Railcar Services, Inc.*, 509 F.3d 384 (7th Cir. 2007). The Seventh Circuit reversed my grant of summary judgment for defendant in a commercial dispute over whether CSX could recover payments it had mistakenly made for damage to railcars based on its misunderstanding of whether the rail accident had occurred on CSX track. 2006 WL 2264004 (S.D. Ind. 2006). The parties later settled.
9. *United States v. Cannon*, 253 Fed. Appx. 590 (7th Cir. 2007). The defendant pled guilty to conspiring to rob another drug dealer of cocaine. I sentenced him to 270 months in prison, plus 60 months in prison for a supervised release violation from an earlier case, without objection to the supervised release portion of the sentence. The Seventh Circuit had initially dismissed his appeal, 182 Fed. Appx. 558 (7th Cir. 2006), but both the defendant and the government later realized that because of the felony classification from the earlier case, the statutory maximum for the supervised release violation was 24 months. The Seventh Circuit vacated the 60-month sentence and remanded for a new sentence. I sentenced the defendant to 24 months on the supervised release violation, and the Seventh Circuit affirmed.
10. *Hinrichs v. Speaker of House of Representatives*, 506 F.3d 584 (7th Cir. 2007). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. *Hinrichs v. Bosma*, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in *Hein v. Freedom from Religion Foundation*, 127 S. Ct. 2553 (2007). Based on *Hein*, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. The Seventh Circuit did not revisit the merits of the Establishment Clause issues.
11. *Evory v. RJM Acquisitions Funding LLC*, 505 F.3d 769 (7th Cir. 2007). Plaintiffs alleged that debt collectors' letters offering to settle for a specific discount by a specific date were misleading because the debt collectors actually would have been willing to settle for less money and at any time. I held that these allegations did not state a viable claim under the Fair Debt Collection Practices Act. *Headen v. Asset Acceptance, LLC*, 458 F. Supp. 2d 768 (S.D. Ind. 2006), and 383 F. Supp. 2d 1097 (S.D. Ind. 2005). The Seventh Circuit held that the theory was viable and reversed the dismissal. After remand, two of the cases are going forward with certified plaintiff classes.
12. *United States v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007). The Seventh Circuit affirmed one defendant's criminal conviction and sentence, but reversed my order

suppressing evidence against the other defendant. In the affirmance, the court found that I erred by admitting evidence from the suppression hearing and had made an Apprendi error in imposing the sentence, but that both errors were harmless. I granted a motion to suppress by the other defendant, where the police had obtained a search warrant for her apartment by twice interrogating her elementary school-age daughter in private at the public school. I held that such tactics under the circumstances violated the family's constitutional right of privacy. *United States v. McCotry*, 2006 WL 2460757 (S.D. Ind. 2006). The Seventh Circuit reversed the suppression of evidence, finding no constitutional violation. That defendant then pled guilty.

13. *Wieland v. Buss*, 185 Fed. Appx. 527 (7th Cir. 2006). The habeas corpus petitioner pled guilty to aggravated battery. He argued that he would not have pled guilty if his lawyer had explained the potential sentences more accurately. I denied his petition for a writ of habeas corpus, concluding that the state courts had not acted unreasonably in applying Supreme Court precedent. *Wieland v. Davis*, 1:04-cv-991 (S.D. Ind. July 27, 2005). The Seventh Circuit reversed and granted the writ, holding that the attorney's performance was ineffective and had prejudiced the defendant, and that the state courts had acted unreasonably in denying relief.
14. *Brown v. Bartholomew Consolidated School Corp.*, 442 F.3d 588 (7th Cir. 2006). I affirmed a state administrative ruling in a special education case under the Individuals with Disabilities Education Act. 2005 WL 552194 (S.D. Ind. 2005). By the time the parents' appeal was ripe, the case had become moot. The Seventh Circuit ordered dismissal for lack of jurisdiction as moot.
15. *Norfleet v. Webster*, 439 F.3d 392 (7th Cir. 2006). I granted summary judgment for three defendants in this pro se case challenging medical care in a federal prison, but denied summary judgment for two defendants – a doctor and physician's assistant. Cause No. 1:03-cv-458 (S.D. Ind. Dec. 29, 2004). The Seventh Circuit reversed the denial of summary judgment for the doctor and physician's assistant, finding no issue of fact as to whether they could have acted with deliberate indifference to the prisoner's serious medical need.
16. *United States v. Graves*, 418 F.3d 739 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this crack cocaine distribution case but remanded for re-sentencing because the sentence was imposed when the Sentencing Guidelines were still mandatory, before *United States v. Booker*, 543 U.S. 220 (2005). On remand, I imposed the same 30-year sentence, which was affirmed in a later appeal. 184 Fed. Appx. 579 (7th Cir. 2006).
17. *United States v. Miller*, 405 F.3d 551 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this "ecstasy" distribution case but vacated for re-sentencing to reconsider whether the defendant might qualify under new case law

for a “minor role” adjustment under Sentencing Guidelines. I imposed the same sentence on remand, finding that the defendant did not play a minor role in the drug distribution.

18. *Canaan v. McBride*, 395 F.3d 376 (7th Cir. 2005). In this death penalty habeas corpus case, I affirmed the murder conviction and one finding of a death penalty aggravator, but found that a new trial was required as to another death penalty aggravator and that a new death penalty hearing was required. *Canaan v. Davis*, 2003 WL 118003 (S.D. Ind. 2003). The Seventh Circuit reinstated the aggravating factor finding but affirmed the ruling that a new death penalty hearing was required. The defendant was later sentenced to life without parole.
19. *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 381 F.3d 1371 (Fed. Cir. 2004). This patent case was tried to a jury, which ruled for the plaintiff on one patent for implantable defibrillators and awarded \$140 million. I set the verdict aside and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. 2002). On appeal, the Federal Circuit held that I had erred in construing one ambiguous claim of one patent and on several defenses. The court remanded for further proceedings on one method claim. I later ruled that the case should be assigned to another judge based on an unusual blend of Seventh Circuit and Federal Circuit rules. 2005 WL 1070681 (S.D. Ind. 2005). In another appeal, the Federal Circuit reversed that decision and said I should continue to handle the remanded case. 144 Fed. Appx. 106 (Fed. Cir. 2005). I did so and eventually granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that in part and reversed in part on December 18, 2008, but that decision has been vacated for rehearing *en banc*. (See above).
20. *United States v. Allen*, 383 F.3d 644 (7th Cir. 2004). The Seventh Circuit reversed a conviction for felon-in-possession of firearm after a bench trial. The Seventh Circuit held that the government had not proved beyond a reasonable doubt that defendant David Allen was the same David Allen whose felony conviction record was put into evidence.
21. *Old Town Neighborhood Ass’n v. Kauffman*, 333 F.3d 732 (7th Cir. 2003). I granted injunctive relief against a highway project through an historic neighborhood. 2002 WL 31741477 (S.D. Ind. 2002). The Seventh Circuit held that I should have issued a narrower injunction only against use of federal funds to carry out the project.
22. *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537 (7th Cir. 2003). In a question of first impression at appellate level, the Seventh Circuit reversed a decision regarding how best to reconcile two apparently conflicting statutory provisions affecting a tenant's rights when the landlord goes into

bankruptcy and the rented property is sold. My decision is available at 2001 WL 699881 (S.D. Ind. 2001).

23. *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003). The Seventh Circuit affirmed a defense jury verdict in a Fair Debt Collection Practices Act case but reversed and remanded my grant of judgment as a matter of law on one claim.
24. *A Woman's Choice-East Side Women's Clinic v. Newman*, 305 F.3d 684 (7th Cir. 2002). The Seventh Circuit reversed my decision in an as-applied challenge to an informed-consent abortion statute that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had held unconstitutional the requirement that information be provided to the woman in person at least 18 hours before the procedure. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction.
25. *United States v. Cannon*, 39 Fed. Appx. 342 (7th Cir. 2002). The Seventh Circuit vacated and remanded a sentence in a tax fraud case because of an error in calculating the defendant's criminal history points.
26. *New Hope Services, Inc. v. United States*, 285 F.3d 568 (7th Cir. 2002). A taxpayer prevailed at the administrative level in a tax dispute and then sued for attorney fees from the government under the Equal Access to Justice Act, 28 U.S.C. § 2412. I denied relief for failure to exhaust administrative remedies. Cause No. NA 96-C-116 (S.D. Ind. Aug. 18, 2000). The Seventh Circuit reversed, finding that the taxpayer had adequately exhausted administrative remedies.
27. *Higgs v. Carver*, 286 F.3d 437 (7th Cir. 2002). I dismissed this many-faceted prisoner civil rights case. 2000 WL 1902190 (S.D. Ind. 2000). The Seventh Circuit reversed on two counts, finding the dismissal premature.
28. *Midwestern Gas Transmission Co. v. McCarty*, 270 F.3d 536 (7th Cir. 2001). The state utility regulatory commission was considering a proposed "bypass" arrangement in which a large industrial user of natural gas sought to bypass the local gas utility and connect directly to an interstate pipeline. I abstained under *Younger v. Harris* and denied the gas pipeline's request to enjoin the state regulatory proceedings. 120 F. Supp. 2d 1155 (7th Cir. 2001). The Seventh Circuit reversed and held that the Federal Energy Regulatory Commission had exclusive jurisdiction over the question so that the state proceedings should have been enjoined.
29. *Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 261 F.3d 1329 (Fed. Cir. 2001). I granted summary judgment for defendants in this patent infringement action involving cardiac stents used to open blocked coronary arteries. Cause No. IP 98-1108-C (S.D. Ind. June 28, 2000). The Federal Circuit

affirmed in part and reversed in part, holding that I erred in construing some claims in the patents.

30. *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001). Indianapolis enacted an ordinance to require parental consent for children to have access to arcade video games with extreme violence or explicit sexual content. The video game industry challenged the ordinance as applied to violent games. I upheld the ordinance and denied an injunction, reasoning that the city could restrict children's access to extremely violent content much as it could restrict their access to explicit sexual content that would be legal for adults to possess. 115 F. Supp. 2d 943 (S.D. Ind. 2000). The Seventh Circuit reversed and held that the limits on children's access to violent video games violated the First Amendment.
31. *United States v. Arambula*, 238 F.3d 865 (7th Cir. 2001). The defendant in this cocaine case had testified against a co-defendant (also before me). At sentencing, I found that Arambula had lied in his testimony against the co-defendant to protect others involved in the cocaine distribution, and I enhanced his sentence under the Guidelines. The Seventh Circuit reversed and remanded for resentencing, holding that the lies were not material. I re-sentenced the defendant without that enhancement.
32. *Del Vecchio v. Conseco, Inc.*, 230 F.3d 974 (7th Cir. 2000). I granted summary judgment for a life insurance company on statute of limitations grounds in a case claiming fraud in marketing whole life insurance policies. Cause No. IP 98-91-C (S.D. Ind. Sept. 13, 1999). The Seventh Circuit held that the jurisdictional amount-in-controversy requirement was not satisfied, so that I should have dismissed the case instead for lack of jurisdiction.
33. *Weiss v. Cooley*, 230 F.3d 1027 (7th Cir. 2000). Prisoner sued jail officials for civil rights violations after he was attacked by other inmates. I granted summary judgment for defendants. Cause No. IP 97-471-C (S.D. Ind. May 29, 1998). The Seventh Circuit affirmed in part but reversed as to one defendant, finding a genuine issue of fact as to whether that defendant recognized the risk to the plaintiff.
34. *Zimmerman v. Tribble*, 226 F.3d 568 (7th Cir. 2000). I dismissed a prisoner's complaint stating several civil rights claims. Cause No. IP 97-1778-C (S.D. Ind. April 29, 1998) (copy not available). The Seventh Circuit affirmed in part but reversed as to the prisoner's claim that a library supervisor had retaliated against him by denying library access after the prisoner complained about his limited access.
35. *Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). In several consolidated cases challenging prison disciplinary decisions, a colleague and I denied habeas corpus

relief and then denied certificates of appealability. I also held that the petitioner was not entitled to proceed on appeal without payment of fees because he had accumulated three “strikes” in the form of frivolous cases. See *Finfrock v. Hanks*, Cause No. IP 97-861-C (S.D. Ind. Oct. 30, 1997) (denying certificate of appealability). The Seventh Circuit decided to overrule prior circuit law and remanded those determinations, finding that no certificate of appealability was needed in such appeals.

36. *Board of Trustees, Sheet Metal Workers’ Nat’l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031 (7th Cir. 2000). I held that this pension fund could not exercise “long-arm” jurisdiction over the shareholder of the bankrupt employer that defaulted on its pension contributions. 46 F. Supp. 2d 852 (S.D. Ind. 1999); 64 F. Supp. 2d 839 (S.D. Ind. 1999). The Seventh Circuit reversed and held that such long-arm jurisdiction over an employer’s shareholder was permissible under ERISA.
37. *Mead Johnson & Co. v. Abbott Laboratories*, 201 F.3d 883 (7th Cir. 2000), on rehearing, 209 F.3d 1032 (7th Cir. 2000). I granted a preliminary injunction under the Lanham Act against advertising for infant formulas that I found was misleading. 41 F. Supp. 2d 879 (S.D. Ind. 1999). The Seventh Circuit reversed, holding that the advertising was not misleading and that I erred by setting too low an injunction bond.
38. *Smith v. U.S. District Court Officers*, 203 F.3d 440 (7th Cir. 2000). Plaintiff sought a writ of mandamus to obtain copies of audio tapes of all proceedings in his earlier federal criminal case. I dismissed the petition. Cause No. IP-97-1924-C (S.D. Ind. Feb. 4, 1998). The Seventh Circuit decided a question of first impression and vacated, holding that the petitioner had a right of access to at least some of the tapes.
39. *Velasquez v. Frapwell*, 165 F.3d 593 (7th Cir. 1999). Indiana University fired an attorney who alleged discrimination on several grounds, including his National Guard service. I dismissed his claim under the Uniformed Services Employment and Reemployment Rights Act based on the Eleventh Amendment. 994 F. Supp. 993 (S.D. Ind. 1998). The Seventh Circuit affirmed. 160 F.3d 389 (7th Cir. 1998). The court then learned that one day before its affirmance, Congress had enacted new legislation to apply to pending cases, directing them to state courts. The Seventh Circuit therefore vacated the portions of its and my decisions regarding the USERRA claim.
40. *Schleibaum v. Kmart Corp.*, 153 F.3d 496 (7th Cir. 1998). In this ERISA case, I found a violation of the employee’s procedural rights but found that the plaintiffs were not entitled to any substantial recovery. Cause No. IP 95-284-C (S.D. Ind. Feb. 12, 1997). The Seventh Circuit affirmed as to the violation but remanded for creation of an equitable remedy.

41. *K.R. v. Anderson Community School Corp.*, 125 F.3d 1017 (7th Cir. 1997). K.R. was a young child with special needs. Her parents chose to enroll her in a Catholic school. Federal regulations required public school districts to provide assistance to children enrolled in private schools that was “comparable” to the help they would receive in public school. I held that the regulations required an assistant for the child, which public schools would have provided if she had attended public school. 887 F. Supp. 1217 (S.D. Ind. 1995). The Seventh Circuit reversed, 81 F.3d 673 (7th Cir. 1996), while other circuits followed the approach I had taken. The Supreme Court granted certiorari and remanded this case and others for reconsideration in light of 1997 statutory amendments. 521 U.S. 1114 (1997). On remand, the Seventh Circuit again held that the student was not entitled to assistance, and the Supreme Court denied a second petition for certiorari.
42. *United States v. Talbott*, 78 F.3d 1183 (7th Cir. 1996). Defendant was convicted of being a felon in possession of a firearm on one occasion and ammunition on another occasion, and I sentenced him as an armed career criminal under the Guidelines. The Seventh Circuit held that I had erred by imposing the burden on the defendant to prove his defense of necessity. (The Supreme Court later overruled the Seventh Circuit's opinion in *Talbott* on this point. *Dixon v. United States*, 548 U.S. 1 (2006).) The Seventh Circuit also held that Talbott should be sentenced at one offense level lower under the Guidelines because his crime was not in connection with a crime of violence. I imposed a lower sentence on remand, and the Seventh Circuit affirmed, 107 F.3d 874 (7th Cir. 1997).
43. *Gregory-Bey v. Hanks*, 91 F.3d 146, 1996 WL 394011 (7th Cir. 1996). I dismissed a habeas corpus petition in this robbery-murder for failure to exhaust state remedies, which had been long delayed. Cause No. IP 94-903 (S.D. Ind. April 7, 1995). The Court of Appeals reversed, holding that the state courts' delay meant that no further exhaustion was required. On remand, after further discovery and evidentiary hearings, I denied relief on the merits, 2000 WL 1909642 (S.D. Ind. 2000), and the Seventh Circuit affirmed, 332 F.3d 1036 (7th Cir. 2003).
44. *Grossbaum v. Indianapolis-Marion County Building Authority*, 63 F.3d 581 (7th Cir. 1995). Plaintiffs sought to erect a large menorah in the lobby of the City-County Building. Their request was denied, and they sought an injunction. I denied relief, reasoning that the local government had not opened up the lobby as a public forum and that the government had imposed neutral and permissible restrictions on the subject matter of private displays in the lobby. The Seventh Circuit reversed, holding that the government's restrictions amounted to “viewpoint” discrimination barred by the First Amendment. The government responded by prohibiting all private displays in the public lobby. When the plaintiffs sued again, I held that the new restrictions did not violate the First Amendment, 909 F. Supp. 1187 (S.D. Ind. 1995), and the Seventh Circuit later affirmed that ruling. 100 F.3d 1287 (7th Cir. 1996).

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Before April 2000, a substantial majority of the written decisions I issued were not published even in electronic form. They were distributed to the parties and placed in the case file. I designated approximately ten to fifteen percent of those decisions for publication on Westlaw and Lexis, and designated a smaller percentage for publication in the bound Federal Supplement volumes. (Some decisions have also been published by those businesses upon request by parties or counsel rather than by me.) The unpublished decisions are available from the case files. I have paper copies of most that were drafted by my law clerks and me. (I do not have copies of most decisions first drafted by the court's pro se law clerks for my review and revision. Those would need to be retrieved from case files in storage.) The paper copies from those years fill approximately four standard file drawers.

In April 2000, the Southern District of Indiana introduced a system that allowed judges to designate unpublished decisions so that they would be made accessible electronically on the court's Internet website. The database is still maintained. The opinions are maintained in a searchable database, accessible at: [http://www.insd.uscourts.gov/Search/opinions\\_search.htm](http://www.insd.uscourts.gov/Search/opinions_search.htm). These opinions are stored on the court's Internet server, housed at the Indianapolis Courthouse. I designated a total of 446 decisions on this database, including decisions from as early as December 1994 and as late as April 24, 2005. Many of these opinions are also available through Westlaw or Lexis.

On April 24, 2005, in response to the E-Government Act, the court's Case Management/Electronic Case Filing (CM/ECF) was upgraded to permit judges to designate opinions as "written opinions," defined as "any document issued by a judge . . . that sets forth a reasoned explanation for a court's decision." Since April 24, 2005, I have designated nearly 850 documents as "written opinions" that were not specifically designated "for publication." These opinions are stored on the court's CM/ECF server in Indianapolis, and the information should also be available on a server maintained by the Administrative Office of the U.S. Courts. Many of these opinions are also available through Westlaw or Lexis.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994). See discussion in Response 13(f).
  2. K.R. v. Anderson Community School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995). See discussion in Response 13(f).

3. *A Woman's Choice-East Side Women's Clinic v. Newman*, 904 F. Supp. 1434 (S.D. Ind. 1995). I issued a preliminary injunction blocking enforcement of a 1995 Indiana law requiring a woman seeking an abortion to make two trips to a clinic (one for a face-to-face meeting with a doctor and a second trip at least 18 hours later for the procedure itself). I found that plaintiffs had made a sufficient showing that the new law was likely to impose an "undue burden" on a significant number of women's right to choose to have an abortion. The preliminary injunction was not appealed. I later narrowed the scope of the injunction after the Indiana Supreme Court construed the health exception in the statute so as to reduce the constitutional problems. 980 F. Supp. 962 (S.D. Ind. 1997). That modification also was not appealed. I later issued a permanent injunction against the requirement that information be provided in person, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), and the Seventh Circuit reversed that decision, 305 F.3d 684 (7th Cir. 2002), as noted above.
4. *Estate of Cole v. Fromm*, 941 F. Supp. 776 (S.D. Ind. 1995). Cole committed suicide while in jail. His estate sued several jail officials alleging deliberate indifference to his safety. I granted summary judgment for the defendants, and the Seventh Circuit affirmed. 94 F.3d 254 (7th Cir. 1996).
5. *United States v. Simpson*, 944 F. Supp. 1396 (S.D. Ind. 1996). I granted a motion to suppress cocaine seized pursuant to a search warrant. I found that the police had violated the defendant's Fourth Amendment rights by making a recklessly false statement to obtain the warrant. The government did not appeal.
6. *Brownsburg Area Patrons Affecting Change v. Baldwin*, 943 F. Supp. 975 (S.D. Ind. 1996). A local political action committee challenged state campaign finance laws that applied to political action committees. I found that the statutes did not apply to the plaintiffs and therefore denied a preliminary injunction. The Seventh Circuit certified the question of state law to the Indiana Supreme Court, which agreed with my interpretation, 714 N.E.2d 135 (Ind. 1999), and the Seventh Circuit then affirmed. 1999 WL 33611333 (7th Cir. 1999).
7. *Zehner v. Trigg*, 952 F. Supp. 1318 (S.D. Ind. 1997), *aff'd*, 133 F.3d 459 (7th Cir. 1997). See discussion in Response 13(d), case # 6.
8. *Stovall v. McAtee*, 35 F. Supp. 2d 1125 (S.D. Ind. 1997). The plaintiff was badly injured by other inmates while he was detained in the Marion County Jail. He sued the sheriff in his individual and official capacities. I granted summary judgment for the sheriff in his individual capacity but denied summary judgment on the official capacity claims. There was no appeal; the case later settled.
9. *Fleenor v. Farley*, 47 F. Supp. 2d 1021 (S.D. Ind. 1998). Fleenor murdered his mother- and father-in-law in front of his wife and children. He was sentenced to death. I denied his petition for a writ of habeas corpus, addressing numerous

constitutional challenges to his convictions and death sentence. The Seventh Circuit affirmed.

10. Velasquez v. Frapwell, 994 F. Supp. 993 (S.D. Ind. 1998). See discussion in Response 13(f), case # 39.
11. Bibbs v. Newman, 997 F. Supp. 1174 (S.D. Ind. 1998). A deputy prosecutor in Marion County sued for sex discrimination on the job. Whether a deputy prosecutor is an "employee" entitled to protection under Title VII of the Civil Rights Act of 1964 depended on whether, under the First Amendment, the attorney position was one for which political affiliation could be considered in hiring and firing decisions. I found that the First Amendment and therefore Title VII did not protect the deputy prosecutor. There was no appeal.
12. Mason v. Hamilton County, 13 F. Supp. 2d 829 (S.D. Ind. 1998). Plaintiff Mason was high on drugs outside a Grateful Dead concert when he climbed a fence to "crash the gate." He refused a police officer's order to stop, and a deputy sheriff sent a police canine to stop Mason, resulting in serious injuries. A jury found that the deputy sheriff had not used excessive force by using the police dog to stop Mason from fleeing. I denied plaintiff's motion for judgment as a matter of law and a new trial, finding that whether the use of force was reasonable was a factual question for the jury to decide. There was no appeal.
13. United States v. Gosha, 78 F. Supp. 2d 833 (S.D. Ind. 1999). I denied motions to suppress drug evidence, finding that the police could conduct a warrantless walk-through inspection of house in which one defendant was arrested because they believed a child was left alone inside.
14. Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999). Lowery and another man murdered an elderly couple in their home, and Lowery was sentenced to death. I denied his petition for a writ of habeas corpus, deciding numerous constitutional challenges to the convictions and sentence. I later denied a motion to reconsider. 1999 WL 778587 (S.D. Ind. July 29, 1999). The Seventh Circuit affirmed. 225 F.3d 833 (7<sup>th</sup> Cir. 2000).
15. Schornhorst v. Anderson, 77 F. Supp. 2d 944 (S.D. Ind. 1999). Attorneys for D.H. Fleenor sought to stop his execution by asserting that he was incompetent to be executed. I held on an emergency basis that the state court finding that he was competent to be executed was reasonable, and denied the last-minute request to stop the execution.
16. United States v. Gold, 77 F. Supp. 2d 936 (S.D. Ind. 1999). I granted a defendant's motion to suppress a firearm seized after a traffic stop for which police had no probable cause. The government did not appeal.

17. *Sefick v. United States*, 1999 WL 778588 (N.D. Ill. 1999). While sitting by designation in the Northern District of Illinois, I held that the First Amendment did not entitle an artist to place a sexually suggestive artistic work in the lobby of a principal federal office building in Chicago. The decision was not appealed..
18. *Gray v. City of Columbus*, 2000 WL 683394 (S.D. Ind. Jan. 31, 2000). I denied summary judgment for the police department and police officers where a person who was not under arrest testified that she had been required to submit to a warrantless strip search and body cavity search. The case was later settled without an appeal.
19. *Porter v. City of Muncie*, 2000 WL 682660 (S.D. Ind. Feb. 16, 2000). Porter was mentally ill and, after a dispute with her husband, left her home on foot with two kitchen knives. Her husband called the police, and an officer located her. The encounter ended with the officer firing two shots that killed Porter. Her husband filed suit, claiming that the use of deadly force was unreasonable and excessive under the Fourth Amendment. After a bench trial, I found that the officer had been justified in shooting Porter to defend himself as she approached him with the knives and refused his orders to stop. There was no appeal.
20. *Watkins v. Miller*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See discussion in Response 13(c).
21. *Marion County Committee of Indiana Democratic Party v. Marion County Election Board*, 2000 WL 1206740 (S.D. Ind. Aug. 3, 2000). Indiana election law gives small political parties more time than it gives the two major parties to fill vacancies on the ballot. The plaintiff Democratic Party challenged the different treatment under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. I denied the Democratic Party's motion for a preliminary injunction, finding that the legislature had not discriminated unconstitutionally against the Democratic and Republican parties.
22. *American Amusement Machine Ass'n v. Kendrick*, 115 F. Supp. 2d 943 (S.D. Ind. 2000). See discussion in Response 13(f).
23. *Canaan v. Davis*, 2003 WL 118003 (S.D. Ind. Jan. 10, 2003). See description of *Canaan v. McBride* in Response 13(f).
24. *Porco v. Trustees of Indiana University*, 2005 WL 552462 (S.D. Ind. Feb. 24, 2005). Plaintiff had moved from Michigan to Indianapolis to attend law school. After paying the higher non-resident tuition for his first year, he sought the lower resident tuition rate for his second and third years. The university rejected his request, and he sued, alleging violation of his federal constitutional rights. I ruled in favor of the university, holding that lower tuitions at state schools for state residents do not violate the Constitution. The plaintiff's appeal was later

dismissed as moot because he had failed to seek a stay pending appeal to block distribution of the money deposited with the court. 453 F.3d 390 (7th Cir. 2006).

25. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). See discussion in Response 13(c), case # 6
26. *United States v. McCotry*, 2006 WL 2460757 (S.D. Ind. July 13, 2006). See discussion of *United States v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007), in Response 13(f), case # 12.
27. *Martin Marietta Materials, Inc. v. Brainard*, 2007 WL 4232184 (S.D. Ind. Nov. 28, 2007). Martin Marietta owned a long-established gravel and stone quarry. A suburb grew up around it. Residents of the area pushed the local government to restrict the mining activities. After numerous disputes and court cases, Martin Marietta sued the local government for breaching a contract and violating its constitutional property rights. I denied the local government's motion for summary judgment.
28. *Martin v. Indiana State Police*, 537 F. Supp. 2d 974 (S.D. Ind. 2008). Police obtained a warrant to search Martin's house for evidence of marijuana production and sales. In a garden bed just outside the house, the police found \$300,000 in cash sealed in buried pipes. The police seized the money and later turned it over to federal authorities for forfeiture. Martin later sued to recover the money. Among other issues, I found that the warrant was valid and was broad enough to authorize the search of the garden bed as part of the home's "curtilage." (I also found that the police may have violated state law by delivering the money to federal authorities without permission from the state court that had issued the warrant, but that any remedy would need to be pursued under state law in state courts.) No appeal was filed.
29. *Bowden v. Town of Speedway*, 539 F. Supp. 2d 1092 (S.D. Ind. 2008). Bowden was detained by police officers investigating unusual activity outside a business late at night. The detention lasted well beyond the point where it was clear that there was no criminal activity. Bowden sued for violation of his Fourth Amendment rights. On cross-motions for summary judgment, I held as a matter of law that a police officer had violated Bowden's rights by keeping him in a police car in handcuffs after it was clear that there was no criminal activity. I also granted defendants' motion for summary judgment in part and denied it in part. The case later settled; there was no appeal.
30. *Doe v. Prosecutor*, 566 F. Supp. 2d 862 (S.D. Ind. 2008). See discussion in Response 13(d), case # 5.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have always provided the Clerk's Office with an automatic recusal list. Judges provide the clerk with a list of parties from whose cases they would need to recuse, and no case with those parties should be assigned to that judge. My list for automatic recusal has included at various times one corporation in which my minor daughter held stock, two state agencies that my brother directed, a not-for-profit organization and then a city where my wife has worked as an attorney, and corporations in which the estate of my then father-in-law held stock. In addition, I recuse in any case in which my brother-in-law David J. Hensel is counsel.

For the first two years I served as a judge, I recused automatically from all cases in which my former law firm (Barnes & Thornburg) appeared as counsel. After those first two years, I recused from any cases in which Barnes & Thornburg had been involved while I was still with the firm. I do not have specific records or recollections of the particular cases.

During the first several years on the court, I also recused from almost all cases in which the law firm of Baker & Daniels appeared. Lawyers from that firm were then representing me and Indiana Attorney General Pam Carter and other defendants in lawsuits by former Attorney General's Office employees who had

been terminated or had resigned in connection with Attorney General Carter's transition, which I had served as volunteer transition director from November 1992 to January 1993. Several former employees filed federal lawsuits in the Southern District of Indiana claiming that they had lost their jobs because of improper considerations, including political affiliation, race, national origin, sex, and/or age. All cases were dismissed on the merits, holding that the applicable laws did not protect deputy attorneys general, without reaching the issues of the defendants' motives. The cases included *Americanos v. Carter*, 74 F.3d 138 (7th Cir. 1996) (affirming dismissal under Rule 12(b)(6)), which became the basis for dismissing other cases brought by deputy attorneys general. The other cases were *Wright v. Carter*, IP 94-C-1312; *Webster v. Carter*, IP 94-C-2104; and *Miller v. Carter*, IP 94-C-477. One example of such disqualification involving Baker & Daniels was *Robyns v. Community Centers of Indianapolis, Inc.*, IP 94-440-C-T/G, aff'd, 130 F.3d 1231 (7th Cir. 1997) (affirming Judge Tinder's grant of summary judgment), though I later handled a second related case several years later, and several years after the grounds for disqualification had been removed. See *Robyns v. Community Centers of Indianapolis, Inc.*, IP 98-1241, 2000 WL 1902193 (S.D. Ind. Dec. 28, 2000). The reason I recused from "almost" all of the Baker & Daniels cases is that this particular ground for recusal could be waived by all the parties through a "blind" process that prevented me from learning which parties declined to waive the ground for recusal. I recall that all parties did waive the ground for recusal in a few cases, but I have no specific records or memories of those cases. I also recused from cases involving the lawyers or the law firms adverse to me in those Attorney General transition lawsuits, but I do not have specific records or recollections of the particular cases. When I joined the bench, I had proposed this approach to the Judicial Conference on Codes of Conduct, and the committee endorsed the approach.

During approximately my first year or two on the bench, I also recused in any cases involving law firms that were involved in the case of *Nobles v. Cartwright*, 659 N.E.2d 1064 (Ind. App. 1995), in which I was a defendant stemming from my work as Counsel to the Governor. I do not have records or recollection of the specific cases affected. Shortly after the Indiana Court of Appeals decision, the matter was concluded successfully, and after that, I no longer recused in cases involving law firms that had been involved in the lawsuit.

I recused in an employment discrimination case against the South Indiana Conference of the United Methodist Church, *Cronin v. South Indiana Annual Conference*, 1:05-cv-1804 (S.D. Ind. Oct. 23, 2006). The plaintiff moved for my disqualification on the ground that my father is a retired United Methodist minister and had previously had administrative responsibilities in the conference, including service as a district superintendent of the church. I granted the motion to disqualify pursuant to 28 U.S.C. § 455(a) (disqualify where impartiality might reasonably be questioned).

I raised the issue of recusal in *Mead Johnson Co. v. Abbott Laboratories*, 1999 WL 778592 (S.D. Ind. Feb. 22, 1999). A few weeks after I heard evidence on a motion for preliminary injunction in a false advertising trademark case, my then father-in-law died. Shortly after his death, I learned that his estate included some stock in the plaintiff's parent company. Because my then-wife was a beneficiary of the estate, that meant I had unexpectedly acquired a disqualifying financial interest in the plaintiff. Under such circumstances, I could and did use the "safety valve" mechanism set forth in 28 U.S.C. § 455(f) to dispose of the disqualifying interest quickly and then proceeded to decide the case. I filed the cited opinion explaining the situation and my resolution of it.

I recused from *KnowledgeAZ, Inc. v. DeFosset*, No. 1:05-cv-1019, on April 11, 2007. After I had presided in the case for nearly two years, new attorneys for plaintiff filed a motion to disqualify Barnes & Thornburg from representing a defendant. The motion was based on a theory that an attorney for Barnes & Thornburg had done related work for a predecessor company of the plaintiff. My initial review of the motion indicated that its resolution might depend on whether the prior work was actually related to the issues and contracts in the current lawsuit. The problem for me was that the prior work had been done back in 1994 in my last few months as a partner of Barnes & Thornburg. I concluded that recusal was appropriate. The new judge assigned to the case later denied the motion for disqualification of the law firm.

Plaintiffs moved for my disqualification in 2008 in two parallel cases challenging conditions at a privately-managed jail facility in Indianapolis, *Kress v. CCA of Tennessee, LLC* (No. 1:08-cv-431) and *Olmstead v. CCA of Tennessee, LLC* (No. 1:08-cv-029). The motions asserted that I should recuse because one of the defendants' lawyers had worked for me as a law clerk (in 1999-2000) and because I had been a partner in the defendants' law firm (Barnes & Thornburg) before I was appointed to the court in 1994. I denied the motions to disqualify in an opinion available at 2008 WL 5216018 (S.D. Ind. Dec. 11, 2008). I explained that I have applied a one year "cooling off period" for law clerks after they leave employment with me, and that I had applied a two year cooling off period for cases with Barnes & Thornburg lawyers. In my judgment, recusal was not called for based on these prior relationships.

During my fourteen years service as a district judge, several pro se litigants who have been unhappy with my rulings in their current or previous cases have sought recusal. This is routine in a district court, and I did not keep records of all such requests. I have located several examples of cases in which pro se parties filed such requests. The following are examples of such cases:

*Raphlah v. Roob*, 2007 WL 3302440 (S.D. Ind. Nov. 5, 2007). This was a pro se habeas corpus case challenging the petitioner's state court commitment to a mental hospital in 2005. Several months after I dismissed the case as moot, the

petitioner filed a motion for my recusal. He argued that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration, which oversaw the hospital where petitioner had been confined, and would or should have been a witness. My brother had been the Secretary of the agency from 2001 until August 2003, long before the petitioner had been committed to the hospital. I denied the motion for recusal because it came too late and lacked merit. My brother had not been involved at any relevant time, and the habeas corpus case challenged the state court's decision to commit the petitioner to the hospital, not the management or conditions of the hospital.

*Raphlah v. Indiana Medical Bd.*, 2007 WL 3285805 (S.D. Ind. Nov. 5, 2007). The same pro se litigant filed motion seeking recusal more than three years after the case was closed. The plaintiff again asserted that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration from 2001 until August 2003. I denied the motion. Neither that agency nor my brother nor any other agency personnel had been named as defendants, nor had the plaintiff challenged any agency policy.

*Palmer v. United States*, 2007 WL 3286414, \*3 (S.D. Ind. Nov. 5, 2007). Palmer pled guilty to federal bank fraud and I sentenced her. She later sought relief under 28 U.S.C. § 2255 and asserted, among other arguments, that she should have been informed that one of the physicians she defrauded was the daughter of a former law partner from the firm where I was a partner from 1991 to 1994. I had never met the victim and had no relationship with her. I concluded that the partnership with the victim's late father more than a decade earlier was too tenuous to have required disqualification under 28 U.S.C. § 455.

*Nottingham v. Acting Judges of District Court*, 2006 WL 1042761 (S.D. Ind. March 24, 2006). Plaintiff had filed a nearly incoherent pro se complaint against all judges of the Southern District of Indiana, including myself, complaining about the results of previous lawsuits. He sought my recusal. If there had been a colorable claim against me or any of my colleagues, I would have recused. Because there was not even a colorable claim, I concluded that there was no need to recuse to allow a litigant to choose his or her judge, or to force the court to bring in a judge from another district, by filing frivolous claims against all the judges.

*Robinson v. Gregory*, 929 F. Supp. 334 (S.D. Ind. 1996). In a pro se case challenging alleged screening of prison mail, the plaintiff moved to disqualify me under 28 U.S.C. § 144, which requires a certificate of "good faith" signed by "counsel of record" stating that the judge has a personal bias or prejudice, apparently based on his disagreement with some of my earlier rulings in the case. I concluded that § 144 did not apply to such a request by a pro se litigant, and I

also found no reason to recuse under 28 U.S.C. § 455, the more general recusal statute.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Indiana State Ethics Commission. Chair, 1991 to 1994, appointed by Governor Evan Bayh to a four-year term. The Commission is responsible for developing, implementing, and enforcing ethical standards for the executive branch of state government, and for providing advisory opinions and education for state officers and employees. No reports were issued during my tenure. I resigned to accept appointment to U.S. District Court

Counsel to the Governor. January 1989 to June 1991, appointed by Governor Evan Bayh to serve as a member of his staff and as the chief lawyer for the administration.

Indiana State Recount Commission. November 1986 to January 1988, appointed pursuant to statute by the chairman of the Indiana Democratic Party (John Livengood) to serve as the Democratic member of the three-member commission for recounts in the 1986 election cycle, the first of the commission's existence.

Mayor's Task Force on Police Performance Assessment. October 1992 to 1994. I also served as a member of the task force. I was selected to serve by Marion County Prosecutor Jeff Modisett, though it is possible that Mayor Stephen Goldsmith made the formal selection. The task force developed a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers. As I recall, the proposal was made public some time in 1994 but quickly died for lack of support. Neither the chairman of the task force nor I have been able to locate a copy of the report.

Marion County Traffic Safety Partnership. Approx. 1993 to 1994. I served as chair of this multi-agency partnership to promote traffic safety. I served as a volunteer appointed by Marion County Prosecutor Jeff Modisett.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

November 1992 to January 1993 – Transition Director, Indiana Attorney General-elect Pamela Carter (unpaid volunteer position). Volunteer on issues research during the campaign in 1992.

1987 to November 1988 – Evan Bayh for Governor. Volunteer to coordinate issues research and position papers for the gubernatorial campaign.

1985 to November 1986 – Evan Bayh for Secretary of State. Volunteer as counsel to the campaign and for issues research, particularly in the field of election and recount law.

1988 and 1992 – Organized fundraisers among my colleagues at Barnes & Thornburg for Evan Bayh in 1988 and 1992, and in 1992 for the Indiana House Democratic Caucus, Pamela Carter for Attorney General, and Stan Jones for Superintendent of Public Instruction.

1974 – Volunteer for Sen. Birch Bayh's campaign for re-election. I worked as a "gopher" at campaign headquarters for several hours each day during the summer.

1973 – Youth coordinator for Philip Hayes, candidate for the U.S. House of Representatives from Indiana's Eighth Congressional District.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk for Judge Richard Cudahy, United States Court of Appeals for the Seventh Circuit from September 1983 to September 1984.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

October 28, 1994 to present  
United States District Court for the Southern District of Indiana  
46 East Ohio Street  
330 Birch Bayh United States Courthouse

Indianapolis, Indiana 46204  
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Partner

January 1989 to July 1991  
Office of the Governor of the State of Indiana  
206 State House  
Indianapolis, Indiana 46204  
Counsel to the Governor

October 1984 to January 1989  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Associate

September 1983 to September 1984  
United States Court of Appeals for the Seventh Circuit  
219 South Dearborn Street  
Chicago, Illinois 60604  
Law clerk to Judge Richard D. Cudahy

Summer 1983  
Kirkland & Ellis  
200 East Randolph  
Chicago, Illinois 60601  
Law clerk

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
1. 1984-89 – Associate at Barnes & Thornburg in the firm’s Intellectual Property and Trade Regulation department and the Litigation department. The trade regulation work included antitrust law in both litigation and counseling of clients. Much of the counseling work involved application of antitrust law to joint ventures in health care and other industries. The trade regulation litigation included both prosecuting and defending efforts to enforce covenants not to compete and trade secret cases, often on an expedited basis involving temporary restraining orders and preliminary injunctions. I represented manufacturers in disputes with their distributors and/or franchisees. I counseled businesses on trade secret protection, covenants not to compete, and vertical distribution relationships. In general litigation, I was involved in prosecuting and defending civil claims for securities fraud, common law fraud, RICO violations, breaches of contract, and other causes of action between businesses. I had a blend of first chair and second chair responsibilities. In a junior capacity, I helped draft the briefs for CTS Corporation before the Supreme Court of the United States in *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987), in which the Supreme Court upheld Indiana's control share laws regulating hostile corporate takeovers. I also did extensive legal and factual work in *Wabash Valley Power Ass’n v. Public Service Co. of Indiana*, a RICO and securities fraud case brought against our client, PSI, by the co-owner of the cancelled Marble Hill nuclear generating plant.
  2. 1989-91 – Counsel to the Governor: When Governor Bayh took office in 1989, I joined his staff as his counsel. My principal task was to provide legal advice for the Governor, other members of the staff, and agency directors. As the new administration took over the reins of state government, a wide range of legal issues arose, from personnel matters to litigation to the extent of executive powers.

When the new administration took office, several major lawsuits were pending that threatened the state with potential liabilities of hundreds of millions of dollars – enough to disrupt the state budget and Governor Bayh’s programs. Those lawsuits included several class actions seeking tax refunds, a class action by former patients of mental hospitals seeking payment for work performed at mental hospitals, and a state constitutional challenge to the school funding system. I managed those cases closely. By combining aggressive defenses and selective settlements, I reduced the threats to the administration’s programs and the state budget.

As Counsel to the Governor, I coordinated appointments of judges and prosecutors. While I worked for him, the Governor appointed one justice

to the Indiana Supreme Court, four judges to the Indiana Court of Appeals, and approximately 15 trial court judges.

As Counsel to the Governor I was the chief ethics officer for the Governor and the administration. I helped develop and implement a new, tougher ethics policy, first for the Governor's staff and then for the entire executive branch through legislation and rulemaking. I was the Governor's liaison to the State Ethics Commission, the State Election Board, the Attorney General, and the State's judiciary. I assisted the Governor and the chief of staff on selected personnel and legislative matters.

3. 1991-94 – Partner of Barnes & Thornburg: As a partner in the litigation department, I litigated, tried, and argued a variety of commercial, constitutional, and regulatory disputes at all levels of the federal courts and state courts and administrative agencies. I represented state and local governments in several constitutional challenges to government actions. I represented businesses and not-for-profit entities in contract and related disputes, including covenants not to compete and trade secret cases. I represented public utilities before the courts and the Indiana Utility Regulatory Commission. I represented the plaintiff in an antitrust case in the Southern District of Texas against Greyhound Lines, Inc., and I served as court-appointed counsel to a habeas corpus petitioner in the Southern District of Indiana.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an attorney in private practice, both as a partner and associate, approximately 75% of my practice was litigation. During that time, I appeared in court occasionally. Most of my private practice involved small numbers of complex matters in which most of the activity was outside the courtroom. As Counsel to the Governor, approximately 25% of my time was spent on litigation, but almost always in the role of a manager or client representative. As Counsel to the Governor, I appeared only once before a court.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 50% |
| 2. state courts of record:  | 45% |
| 3. other courts:            |     |
| 4. administrative agencies: | 5%  |

- ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: |      |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Eight. Two as sole counsel; three as chief counsel; and three as associate counsel.

- i. What percentage of these trials were:

1. jury;
2. non-jury: 100%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As counsel of record, I filed a petition for certiorari in *Bayh v. Government Suppliers Consolidating Services, Inc.*, which was denied. 506 U.S. 1053 (1993). For details, see Answer 17, below (case #1).

Before I was admitted to the Supreme Court bar, I also assisted with the following matters:

Jurisdictional and merits briefing on behalf of CTS Corporation in *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987), which upheld the Indiana Control Share statute against federal preemption and commerce clause challenges.

Petition for certiorari in *Johnson v. Duckworth*, which was denied. 479 U.S. 937 (1986). For details, see Answer 17, below (case #6).

Petition for certiorari in *Cambridge v. Duckworth*, which was denied. 489 U.S. 1056 (1989). I was court-appointed counsel for this habeas petitioner before the Seventh Circuit. The principal issue was whether a mistrial was required after a witness blurted out during the criminal trial that the petitioner had previously signed a guilty plea in the case.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Government Suppliers Consolidating Services, Inc. v. Bayh*, 975 F.2d 1267 (7th Cir. 1992). I was lead counsel for Governor Bayh in this lawsuit challenging the constitutionality of several Indiana laws regulating waste disposal and transportation. Two waste brokers brought suit in 1991 claiming that nine laws violated the Commerce Clause because they imposed an excessive burden on interstate waste shipments into Indiana. They also sought a preliminary injunction against enforcement of the statutes. After a hearing on the preliminary injunction, Judge Larry McKinney of the Southern District of Indiana denied the injunction and dismissed several of the challenges for lack of a ripe case or controversy or failure to state a claim. He held a bench trial to consider challenges to a statute that restricted "backhauling" of goods other than municipal waste on vehicles that had been used to carry municipal waste, and statutes requiring vehicles used to transport municipal waste for disposal in Indiana to be registered and labeled as municipal waste vehicles.

Judge McKinney found that these laws applied to both intrastate and interstate commerce. He found that both laws served legitimate state interests and did not unconstitutionally burden interstate commerce. On appeal, the Seventh Circuit reversed, concluding that the backhauling and vehicle registration laws would have a substantially greater effect on interstate commerce than on intrastate commerce. The Supreme Court denied certiorari.

Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Co-counsel for defendants were John Maley, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, 46204, 317-236-1313; Rosemary G. Spalding, Spalding & Hilmes, PC, 330 South Downey Avenue, Indianapolis, Indiana 46219, 317-375-1140; Arend J. Abel, Cohen & Malad, Suite 1400, One Indiana Square, Indianapolis, Indiana 46204, 317-636-6481; and Robert S. Spear, formerly of the Office of the Attorney General, 7530 U.S. Highway 31 South, Indianapolis, Indiana 46227, 317-884-4166.

2. *Department of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000 (Ind. 1989). Beginning in 1985, I was lead counsel, on a pro bono basis, for the Wabash Valley Archaeological Society and the Council for the Conservation of Indiana Archaeology to test whether the "lands unsuitable" provisions of federal and state surface mining laws could effectively protect significant archaeological sites. The subject of the case was the "Beehunter Site," a significant archaeological site that lay over substantial coal deposits

for which a coal company had sought a mining permit. Surface mining would have destroyed the site. I presented the case for preservation in two contested evidentiary administrative hearings before the Department of Natural Resources. Both ALJs found that the site was significant and was unsuitable for surface mining. The owner and the coal industry sought judicial review. The Dubois Circuit Court held in 1987 that the restriction on surface mining on this privately owned site amounted to an unconstitutional regulatory taking of private property without compensation.

The archaeology groups and the DNR appealed to the Indiana Supreme Court, which reversed the Dubois Circuit Court and upheld the DNR decision. The Supreme Court agreed with our arguments that the lands unsuitable designation did not interfere with the existing use of the land or deny all economically viable use of the property, and that the designation served legitimate state interests in protecting the state's heritage from unnecessary destruction. The U.S. Supreme Court denied certiorari.

The evidentiary hearings before the DNR were held in November 1985 and on December 19, 1985. The first was before Steve Lucas, Indiana Natural Resources Commission, Suite N-501, 100 North Senate Avenue, Indianapolis, Indiana 46204, 317-233-3322. The second was before Sue Shadley, Plews Shadley Racher & Braun LLP, 1346 North Delaware Street, Indianapolis, Indiana 46202, 317-637-0700. Judge Hugo Songer of the Dubois Circuit Court heard argument on two occasions, November 14, 1986, and July 9, 1987. He is now Senior Judge, and his address is Dubois Superior Court, One Courthouse Square, Jasper, Indiana 47546, contact phone number through the Clerk's Office at 812-481-7035. Counsel for the DNR on judicial review was Deputy Attorney General Myra Spicker, retired from the Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, current location in Foothill Ranch, CA. Opposing counsel throughout the case were David R. Joest, current address unknown; and James Buthod, current address unknown. Opposing counsel before the Indiana Supreme Court was G. Daniel Kelley, Jr., G. Daniel Kelley, Jr., Ice Miller LLP, One American Square, Suite 3100, Indianapolis, Indiana 46282, 317-236-2100.

3. *Stewart v. Stewart*, 521 N.E.2d 956 (Ind. App. 1988). A divorce court terminated a father's parental rights because he was infected with HIV. On appeal I was the principal author of the amicus brief of the Indiana Civil Liberties Union arguing that this discrimination against the father – amounting to the total destruction of his relationship with his daughter – was an irrational and unconstitutional interference with the father's parental relationship with his daughter. The Court of Appeals decision in favor of the father was the first in Indiana, and one of the early reported decisions in the nation, preventing such discrimination against persons with HIV.

I was the principal author of the constitutional arguments in the amicus brief. Richard Waples of the ICLU was principally responsible for the brief's discussion of the available medical evidence. His address is 410 North Aububon Road, Indianapolis, Indiana 46219, Indianapolis, Indiana 46219; 317-357-0903. Lead counsel for the father was Timothy

Rowe, 22 East Washington Street, Suite 600, Indianapolis, Indiana 46204; 317-632-2524. Lead counsel for the mother was Mary T. Wolf, current address unknown.

4. Office of Utility Consumer Counselor v. Public Service Co. of Indiana, 608 N.E.2d 1362 (Ind. 1993). Almost four years after PSI had formed a holding company, the Indiana Court of Appeals ruled that PSI should have obtained prior regulatory approval for the transaction. That ruling created significant obstacles in issuing new securities and raising new capital for PSI and other Indiana utilities with holding companies. The Indiana Supreme Court ruled that PSI was not required to obtain regulatory approval before it created the holding company. The case was important for PSI and for other Indiana public utilities and their investors because it removed the legal uncertainty and obstacles to raising capital.

I took the primary role in writing the brief, and I worked closely on the brief with my partner, Stanley C. Fickle, who did the oral argument before the Indiana Supreme Court. Counsel for the Office of Utility Consumer Counselor were James Turner, now with Duke Energy, reachable through corporate offices at 526 South Church Street, Charlotte, North Carolina 28202, 704-594-6200; and Robert K. Johnson, 350 Canal Walk, Suite A, Indianapolis, Indiana 46202; 317-506-7348.

5. Reel Pipe & Valve Co. v. City of Indianapolis. I was lead counsel for the City of Indianapolis in a constitutional and procedural challenge to the city's power to acquire private property for an economic development project along the nineteenth century Central Canal in downtown Indianapolis. In an area declared blighted in 1981, the city took initial steps in 1992 to begin acquisition of some private property to clear and redevelop the area. Several property owners opposed the effort and sought judicial review of the decision to add their property to an acquisition list. In an unusual hearing before thirteen judges of the Marion Superior Court, sitting en banc, the court ruled in the city's favor in July 1992. That decision was affirmed on appeal. 633 N.E.2d 274 (Ind. App. 1994). The case was significant because of the economic development project for which the land was essential, the constitutional issues concerning the city's power to acquire private property in a blighted area for economic development purposes, and the procedural protections for property owners who sought to challenge the city's decision.

The case was argued to the Marion Superior Court, en banc, on July 24, 1992. The presiding judge was Judge James Kirsch, currently Judge, Indiana Court of Appeals, Room 415, 200 West Washington Street, Indianapolis, Indiana 46204, 317-232-6909. Opposing counsel for the property owners were Douglass R. Shortridge, 748 Woodview North Drive, Carmel, Indiana 46032, 317-846-4801; and Jerry W. Newman, current address unknown. Co-counsel for the city was Sue A. Beesley, Bingham McHale, Suite 2700, 10 West Market Street, Indianapolis, Indiana 46204, 317-635-8900.

6. Johnson v. Duckworth, 793 F.2d 898 (7th Cir. 1986). I was the court-appointed attorney in this habeas corpus appeal. The petitioner, Thomas Johnson, had shot and killed his brother in an altercation after both had been drinking. He was charged with murder but

claimed self-defense. The prosecutor offered to accept a guilty plea to voluntary manslaughter. Johnson was 17 years old at the time. His father and attorney decided for him to reject the plea offer. At trial Johnson was convicted of murder and sentenced to 30 years. In his habeas case, Johnson raised pro se the question whether his father and attorney could decide for him to reject the plea offer. The Seventh Circuit appointed me to serve as counsel for supplemental briefing and oral argument on this issue. I argued that the decision to reject a plea offer, like the decision to accept an offer and plead guilty, is a fundamental decision that only the client can make. Under applicable professional standards, the attorney's role in such matters is only to advise. I also argued that neither Johnson's age nor his emotional condition could justify denying him the right to make this basic decision about his own fate. The Seventh Circuit agreed with my legal arguments and held that a defendant generally has the right to decide for himself or herself whether to accept or reject a plea offer. At the end of its opinion, however, the court held that the "unique circumstances" of the case (Johnson's age and emotional state) required denial of his petition. 793 F.2d at 902. The Supreme Court denied certiorari.

Opposing counsel was Charles N. Braun II, 11935 Glen Cove Court, Indianapolis, Indiana 46236; (317) 823-0789.

7. *Government Suppliers Consolidating Services, Inc. v. Bayh*, 133 F.R.D. 531 (S.D. Ind. 1990). While still serving as Counsel to the Governor, I was involved in an earlier round of litigation with the same two trash brokers who sued again in 1991. The 1990 case challenged Indiana laws that facially discriminated against interstate waste shipments. The plaintiffs sought the deposition of the Governor and sought documents and testimony concerning internal deliberations on policy. I appeared and filed a motion to quash and brief on behalf of the Governor that successfully asserted (for the first time in Indiana) a Governor's general immunity from deposition, at least absent a specific showing of extraordinary need. (Judge John Tinder's unreported decision on this motion is referenced in his later opinion, 133 F.R.D. at 532.) Defense witnesses asserted the governmental deliberative privilege in response to plaintiffs' discovery requests for documents and testimony reflecting internal policy deliberations. When they moved to compel, I prepared the brief filed by the Office of the Attorney General to oppose the motion. That brief argued that the governmental deliberative privilege should be recognized in Indiana. The opinions of both Magistrate John Godich and Judge John Tinder recognizing the privilege and upholding it in the case are published at 133 F.R.D.532.

Judge Tinder is now a judge on the Seventh Circuit, tel. 317-229-3680. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Representing defendants from the Office of the Attorney General was Harry John Watson, III, Deputy Attorney General, 5th Floor, 302 West Washington Street, Indianapolis, Indiana 46204, 317-232-6201.

8. Valley Transit Co. v. Greyhound Lines, Inc. In August 1992 a national bus company terminated a small regional carrier's leases for use of bus terminals in Houston, San Antonio, and Corpus Christi, Texas. I worked with my colleagues Richard H. Streeter and Michael Klein of Barnes & Thornburg, and Rene Oliveira of Brownsville, Texas, to prepare and file a federal antitrust action for attempted monopolization in the Southern District of Texas. We sought a temporary restraining order, arguing that the three terminals were "essential facilities" under antitrust law. Immediately before the hearing on Valley Transit's motion for a temporary restraining order, the national carrier consented to an order that allowed Valley Transit to stay in the terminals, thus saving Valley Transit's business and an important public service in the Rio Grande Valley. I do not know how the case was ultimately resolved after I joined the court.

The case was before Judge Filemon Vela, former Senior District Judge for the Southern District of Texas, who died in 2004. Opposing counsel for Greyhound Lines were Gary Gurwitz, Atlas & Hall, LLP, 818 Pecan Boulevard, McAllen, Texas 78501, 956-632-8226; Mark Horning, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-8126. Co-counsel for Valley Transit were Rene O. Oliveira, now State Representative, Room CAP 4N.10, P.O. Box 2910, Austin, Texas, 78768, 512-463-0640, also at 855 West Price Road, Suite 22, Brownsville, TX 78520, 956-542-1828; Richard H. Streeter, Barnes & Thornburg, 750 17th Street, N.W., Suite 900, Washington, D.C. 20006, 202-408-6933; and Michael A. Klein, last known address 4354 Idlewild Lane, Carmel, Indiana 46032, 317-843-2369.

9. NUCOR Corp. v. Aceros y Maquilas de Occidente, S.A. de C.V. I represented NUCOR in this declaratory judgment action before Judge Larry McKinney of the Southern District of Indiana. In early 1991, NUCOR entered into negotiations for a possible sale of steel to a steel broker, United Steel Corp. of Houston, Texas, for resale to a Mexican steel company, Aceros y Maquilas. After extended communications and negotiations, no steel was ever shipped. Aceros threatened to sue NUCOR for breach of contract and violation of the Texas Deceptive Trade Practices Act, but did not file suit. I filed a declaratory judgment action in federal court in Indiana against Aceros and United Steel. I was assisted by my colleagues Robert D. MacGill and Andrew J. Detherage. We sought a declaration that NUCOR had never entered into any binding contract with United Steel or Aceros, and had not violated the Texas Act. Judge McKinney granted NUCOR's motion for summary judgment. The legal issues were whether the statute of frauds under the Uniform Commercial Code was a defense to any contract claim, whether NUCOR had made United Steel its agent for dealing with Aceros, whether Aceros could assert a claim for promissory estoppel in the absence of an enforceable contract, and whether the Texas Deceptive Trade Practices Act could be applied to NUCOR's conduct, which was centered in Indiana. Judge McKinney ruled for NUCOR on all issues. The Seventh Circuit affirmed. 28 F.3d 572 (7th Cir. 1994). The case is representative of my commercial litigation work.

I was the principal author of the briefs in the district court and the Seventh Circuit, and argued the appeal. Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio

Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel for Aceros were Richard C. Arroyo, 855 West Price Road, Brownsville, TX 78520, 956-541-4825; and Alan J. McLaughlin, Suite 702, 111 Monument Circle, Indianapolis, Indiana 46204, 317-287-3520. United Steel did not participate in the case.

10. **Diversified Computer Services, Inc. v. Kathy Ann Cox.** I represented the defendant Kathy Cox in this 1986 action to enforce a covenant not to compete. Ms. Cox was a computer programmer employed by Diversified to write and maintain software for its clients. She then accepted a job with one of the accounts she served and was planning to start work. Diversified sued her in the Marion Superior Court and obtained an ex parte temporary restraining order that enforced a covenant not to compete and barred Ms. Cox from taking her new job. I filed a brief for Ms. Cox and tried the preliminary injunction hearing, which was also consolidated with the trial on the merits, before Judge Gerald Zore of the Marion Superior Court. Judge Zore held that the covenant not to compete was not enforceable and entered judgment for Ms. Cox. Judge Zore also found that Ms. Cox was entitled to damages for the wrongful temporary restraining order, including the attorney fees for dissolving the TRO. No appeal was taken. The case is representative of my work on covenant not to compete cases.

Judge Gerald Zore has retired, and his current address is unknown. Counsel for Diversified was Michael J. Hebenstreit, Whitham, Hebenstreit & Zubek, LLP, Suite 2000, 151 North Delaware Street, Indianapolis, Indiana 46204, 317-638-5555.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to matters described above, launching the Bayh administration in 1989-90 was the most significant. The Bayh administration took office after 20 years of control by the opposite party. The administration had many talented and energetic people but few with significant experience in state government or public life. We faced challenges ranging from personnel decisions and ethics policies to long-term strategic goals. There was a legal dimension to most of our issues. I participated in a wide variety of issues and decisions to try to avoid legal problems and recognize the opportunities we had.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Indiana University School of Law, Bloomington, Indiana. Spring 2004 – Federal Jurisdiction.

Indiana University School of Law, Bloomington, Indiana. Spring 1988. Selected topics in Antitrust Law. I have not been able to locate a syllabus or notes. The course reviewed major doctrines in antitrust law, including conspiracies, concerted action and combinations that are illegal per se; combinations subject to the rule of reason; joint ventures; state action exception; monopoly power and attempted monopolization.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I hope to continue to work as a volunteer with the Center for Constitutional Democracy in Plural Societies (based at the Indiana University School of Law in Bloomington), especially in helping the Burmese democracy movement in exile develop effective federal and state constitutions for a future democratic Burma. This work involves occasional meetings in Indiana and possible foreign travel on vacation time to meet with members of the movement. I have no other plans, commitments, or agreements to pursue outside employment during service on the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Since becoming a District Judge, I have tried to minimize the potential for conflicts of interest by avoiding investments and other relationships likely to require recusal. For example, I do not invest directly in any corporate stocks. If appointed to the Court of Appeals, I would provide the Clerk of the court with a list of automatic disqualifying relationships, which would include the City of Bloomington, Indiana, where my wife is an attorney. I would also need to avoid cases in which my brother-in-law David J. Hensel is an attorney. (He practices in Indianapolis with Taft Stettinius & Hollister.) I would also plan to avoid any issues in which the Center for Constitutional Democracy in Plural Societies might be involved. (The Center has not been involved in litigation anywhere, let alone in the United States.) If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In all cases I will follow the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I may not practice law and thus have not done pro bono representation of the disadvantaged. I have assisted the Center for Constitutional Democracy in Plural Societies, as described above, in advising the Burmese democratic opposition in exile, and hope to continue to do so. (Such assistance is not the practice of law.)

In private practice, I spent more than 200 hours per year on pro bono work. I served as court-appointed counsel in *Johnson v. Duckworth*, described above in response to Question 17. (167 hours), and I served as court-appointed counsel in two additional federal habeas corpus cases. One was *Brian Cambridge v. Duckworth*, 859 F.2d 526 (7<sup>th</sup>

Cir. 1988), on which I spent approximately 180 hours. The second was a case in the Southern District of Indiana, *Leland Powell v. State of Indiana*, on which I spent more than 50 hours. Associates I supervised spent more time. The writ was eventually granted in that case, and there was no appeal.

The work on the coal v. archaeology "Beehunter Site" case described above was all pro bono, and over the three years that I worked on the case, I spent 341 hours on the matter.

I also served as a volunteer attorney, board member, and vice president of litigation for the Indiana Civil Liberties Union. The ICLU does not represent clients who can afford private counsel. In 1984-85, I was lead counsel for the ICLU in *Bruce Grau v. Indiana State Bd. of Nursing Registration*, which challenged the constitutionality of an Indiana law that discriminated against graduates of out-of-state nursing schools, and I spent 155 hours on that matter. I was the principal author of the ICLU's amicus brief in *Stewart v. Stewart*, described above, and I spent 52 hours on that matter. As vice president of litigation, I also participated in evaluating and selecting cases for the ICLU to handle, and I often provided advice and assistance to the lead attorneys.

From 1985 to 1987, I served as a board member and treasurer of the Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in the Mapleton-Fall Creek neighborhood of Indianapolis to promote housing development, rehabilitation, and home ownership.

From October 1992 to 1994, I served as a member of the Mayor's Task Force on Police Performance Assessment, which studied and tried to develop a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers.

**26. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission that operates in Indiana at this time.

In approximately June 2008, after I learned that Judge Kenneth Ripple had advised the President that he intended to take senior status, I spoke with Senator

Evan Bayh to express my interest in the event that Senator Obama would win the presidential election. A few days after the election, I spoke with Senator Bayh again about the matter. I was contacted by the White House Counsel's office on January 30, 2009, to ask if I would agree to a background check, and I said yes. On February 3, 2009, the White House Counsel's office contacted me by telephone and emailed a copy of a questionnaire and asked me to complete it. On February 4, 2009, I spoke by telephone with the White House Counsel's office with a few questions about how best to provide the requested information. Beginning on approximately February 7, 2009, I was contacted by the Office of Legal Policy (OLP) of the Department of Justice and received additional forms to complete, and I have been in touch with that office by telephone and email concerning the timing and logistics of those responses. In addition, I have been interviewed by the ABA Standing Committee representative for the Seventh Circuit. On March 16, 2009, I met with Attorney General Holder, Associate Attorney General Perrelli, and OLP staff in separate meetings at the Department of Justice. I also met with Counsel to the President Gregory Craig and members of his staff and then with members of the White House communications staff on that same day, and I met briefly with President Obama that same day. My nomination was submitted to the Senate on March 17, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

1056

AFFIDAVIT

I, David Frank Hamilton, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 18, 2009

  
(SIGNED)

  
(NOTARY)

Linda S. Carmichael  
State of Indiana Notary Public  
Resident of Marion County  
My Commission Expires 8/11/2014

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

AMENDED QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).  
Richard Guilford Kerlikowske, Jr. (R. Gil Kerlikowske)
2. **Position:** State the position for which you have been nominated.  
Director of National Drug Control Policy
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
Seattle Police Department Headquarters  
PO. 34986, 610 Fifth Ave.  
Seattle, WA 98124-4986
4. **Birthplace:** State date and place of birth.  
November 23, 1949  
St. Joseph, MI
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
MA. Criminal Justice University of South Florida (Tampa) 1985  
BA. Criminal Justice University of South Florida (Tampa) 1978  
AA Police Administration St. Petersburg (FL) Junior College 1978  
With the exception of my first year of college in St. Petersburg, I went to school part-time under the G.I. Bill while working as a police officer. Note: My education began in 1969 and was completed in 1985 due to service in the military and part time status while working as a police officer.
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.  
Chief of Police 2000-current Seattle Police Department, , P.O. Box 34986, 610 Fifth Ave  
Seattle, WA 98109  
  
Deputy Director, 1998-2000 Office of Community Oriented Police Services, U.S.  
Department of Justice, 1100 Vermont Ave., N.W., Washington, D.C. 20005

Police Commissioner, 1994-1998 Buffalo Police Department, 74 Franklin St., Buffalo, New York 14202

Chief of Police 1990-1994 Fort Pierce Police Department, 920 South U.S. Highway 1, Fort Pierce, FL 34954

Chief of Police 1987-1990 Fort St. Lucie Police Department 121 SW Port St. Lucie Blvd. Bldg "C" Port St. Lucie, FL. 34984

Officer, detective, sergeant, lieutenant 1972-1987 St. Petersburg Police Department, St. Petersburg Police Department 1300 1 Avenue North St. Petersburg, FL 33705

**Boards and Commissions**

Washington State Criminal Justice Standards and Training Commission 2007-current  
 Fight Crime: Invest in Kids, Board Chair. Washington, DC a non-profit organization advocating for early childhood programs and quality after school programs 1996-current  
 Salvation Army: local Advisory Board in FL, NY, past; WA January 2002-current  
 United Way FL and WA: past president, past advisory board member  
 Boy Scouts, District Commissioner in FL and NY, past  
 National Conference (Christians and Jews) Buffalo, board member, past  
 St. Mary's School for the Deaf, Buffalo, NY, board member, past  
 Fort Pierce-St. Lucie Chamber of Commerce, FL, board member, past  
 Hospital Corporation of America, Port St. Lucie and Fort Pierce, FL member of Hospital Board of Trustees, past  
 School Superintendent's Advisory Committee, Fort Pierce, FL, Chair, past  
 Rape Crisis Center, St. Petersburg, FL, Chair of Advisory Council, past

7. **Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.**

U.S. Army, February 1970-February 1972, Military Police Corps, Specialist 4<sup>th</sup> Class, Honorable Discharge

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Community Service Award, Association of Hispanic Chambers of Commerce, 2008  
 Seattle University Community Leader Award, 2008  
 Friend of Freedom Award, Council on American-Islamic Relations, 2008  
 Leadership Award, Police Executive Research Forum, 2006  
 James V. Cotter Award for Excellence (Commission on Accreditation of Law Enforcement Agencies) 2006

Person of the Year Award, Ceasefire. 2006  
 Brotherhood/Sisterhood Award. The National Conference. 1998  
 Progressive Leadership Award. Citizen Action of New York, 1996  
 Gary P. Hayes Award for Innovation in Policing, 1991  
 Attorney General's Award (FL) for Outstanding Crime Prevention Unit, 1988 and 1990  
 Visiting Fellow. U.S. Department of Justice, National Institute of Justice, 1984  
 Honor Graduate. Outstanding Military Police Officer. 1970  
 U.S. Army Presidential Service Medal. 1972

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Not Applicable

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Not Applicable

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

- b.
- Fight Crime: Invest in Kids, February 1998 - current
  - Member, International Association of Chiefs of Police
  - Member, Police Executive Research Forum Member
  - Member, Center Against Spouse Abuse (CASA), St. Petersburg, FL, past note: Major Cities Chiefs Association, the member is the agency, ex. Seattle Police and not the agency head.

- c. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

To my knowledge, none of the organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.**

12a - I have tried to recall and identify all published writings and statements. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis.

Attached at Tab A are copies of the following:

*A Note on the 2008 Crime Statistics*, Seattle Police Department, 2009

*Restore Voting Rights to Ex-Felons*, Gil Kerlikowske and John Lovick, Seattle Post-Intelligencer, February 13, 2009

*A Report to the Community: Thank You for Helping Us Do Our Jobs Better*, Seattle Police Department, September 14, 2008

*Imprisoned in the \_\_\_\_\_; Freeing the silent sufferers of human trafficking and bringing their captors to justice*, Law Enforcement Technology, September 2008

*Safe at home? Policing the U.S. hometown in a post 9/11 environment*, Crime, Law and Social Change. Vol. 50, Issues 1-2, p. 47-58, :September 2008 (not available)

*To fight crime, start early*, Seattle Times, October 11, 2007

*A Report to the Community: Message from Chief Gil Kerlikowske*, Seattle Police Department, September 16, 2007

*NetSmartz: A Comprehensive Approach to Internet Safety and Awareness*, R. Gil Kerlikowske; Malinda Wilson, The Police Chief, April 2007

- Starting kids early on a path to success*, Seattle Times, February 22, 2006
- Bullying Prevention Is Crime Prevention, A Report by Fight Crime: Invest in Kids*, 2003
- Formation of Commission on Forensic Science and Public Policy Completed*, Judicature, Jan/Feb 2006
- Reducing Criminality*, Letter To the Editor, New York Times, June 29, 2005
- Leading Beyond Tradition: A Breakthrough Strategy for Law Enforcement Foreword by G. Kil Kerlikowske*, William E. Cooper, 2005
- Seattle Police Department Strategic Plan*, Seattle Police Department, 2004
- Renew Assault-Weapons Ban*, The Seattle Times, 8/25/2004
- Save the Assault Weapons Ban*, Christian Science Monitor, 8/24/2004
- Expulsion Not Only Solution*, Daily Oklahoman, 9/29/2003
- Limiting cases of criminal injustice*, Bob Boruchowitz and Gil Kerlikowske. Guest Columnists, Seattle Post-Intelligencer, February 27, 2003
- SPD Special Report: Addressing the Issue of Racial Profiling—One Year Later*, Seattle Police Department/R. Gil Kerlikowske, August 2001 (only available at Seattle public library)
- A sound investment*, Letter To the Editor, U.S. News, May 29, 2001
- Support for early childhood programs*, Letter to the Editor, Newsweek, Nov 6, 2000
- A Less Lethal Options Program for Seattle Police Department: A Report with Recommendations*, Seattle Police Department/R. Gil Kerlikowske, Clark Kimerer, September 2000 (copy not provided—only available at Seattle public library)
- Commentary: A powerful weapon against crime*, Albany Times Union, February 26, 1998 (unavailable)
- Want to Really Cut Crime? Provide the Care Kids Need So They Won't Become Criminals*, Buffalo News, 2/18/1998
- Modern Policing*, Letter to the Editor, U.S. News, August 30, 1993
- Community Survey: An Assessment of Police Services and Performance*, Chief R. Gil Kerlikowske and Captain Brian E. Reuther, Florida Police Chief, December, 1989

*Community Close-Up: Buffalo's Neighborhood Initiatives*, Book: Community Policing: A Contemporary Perspective. date not available (unavailable)

*Federal cuts hurt crime fight*, Special to The Times, Seattle Times, date not available

*Studies prove it: The best way to fight crime*, Elliot L. Richardson and R. Gil Kerlikowske, Boston Globe. date not available

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.**

*Not Applicable*

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.**

12 c. I have tried to recall and identify all testimony I have delivered. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. For testimony which I delivered at the state level for which I have written testimony, I have included four copies of the text. For state-level testimony for which I do not have the written testimony, I have requested copies from the relevant legislative body and have been informed that copies can not be provided to me at this time.

Attached at Tab C are copies of the following:

*Letter to Washington State Liquor Control Board, 6/20/2008*

*Committee on Ways and Means, Subcommittee on Income Security and Family Support, U.S. House of Representatives, Hearing on Improving the Child Welfare System, Congressional Testimony, February 27, 2008*

*Open Letter re: Mayor's Budget, 9/17/2007*

*The new need to know, Homeland Security, 9/1/2007*

*Seattle's Red Light Cameras Making Streets Safer, Seattle Office of the Mayor, 7/19/2007*

*Boeing to staff FBI Fusion Center, Washington Technology, 6/1/2007*

*Law Enforcement and Private Sector Information Sharing, Congressional Testimony, 5/25/2007*

*Senate Labor, Commerce, Research and Development Committee on Senate Bill 5197 to Close the Gun Show Loophole, Congressional Testimony, 2/8/2007*

*Open letter re: SPD Staffing Levels, 10/25/2006*

*Criminal Activity and Violence Along the Southern Border – Hearing Before the Subcommittee on Investigations of the Committee on Homeland Security, House of Representatives, One Hundred Ninth Congress, Second Session, Congressional Testimony, 8/16/2006*

*Washington: gun Show Background Checks gets Support, Crime Control Digest, 12/16/2005*

*Seattle Police Chief Urges Background Checks at Gun Shows, Brady Campaign to Prevent Gun Violence, 12/12/2005*

*Port Security - Prepared Statement for a Special Hearing Before a Subcommittee on Appropriations, United States Senate, One Hundred Seventh Congress, Second Session, Seattle, WA, page 61, Congressional Testimony, April 4, 2002*

*Multi-Agency Mardi Gras Summit, Seattle Police Department, March 11, 2001*

*Mardi Gras 2001 After Action Report, Seattle Police Department, 2001*

*Testimony R. Gil Kerlikowske President Police Executive Research Forum House Judiciary Constitution Applying Federal Law to Bailbondsmen & Bounty Hunters, Congressional Testimony, 3/12/1998*

*Judiciary Committee, Subcommittee on the Constitution, U.S. House of Representatives, Hearing on H.R. 3168 Citizen Protection Act of 1998, Congressional Testimony March 12, 1998*

*John S. Farrell Legislative Committee Chair Police Executive Research Forum House Judiciary Crime Gun Bills, Congressional Testimony, 7/22/1997*

*House Education Early Childhood, Youth and Families Revision of Special Education Program, Congressional Testimony, 2/6/1997*

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of**

**the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.**

12 d. I have tried to recall and identify all speeches and talks I have delivered. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. For those speeches and talks for which I have prepared remarks, I have included four copies of the text. The majority of these speeches or talks, however, did not have written prepared remarks.

Attached at Tab D are copies of the following:

*New Directions for Policing Serious and Complex Crime* (No transcript avail), summary provided, 2009 Speaker 2009 International Conference for Police and Law Enforcement Executives Halifax, Nova Scotia, 4/19/2009, (no transcript available)

*Center of Excellence in Policing and Security Symposium* - New South Wales, Australia, 3/10/2009, no transcript or video available

*How Cold Case Investigations are Relevant to DNA Post-Conviction Cases* (video), National Institute of Justice DNA Symposium, 1/22/2009, no transcript or video available

*Press Conference Remarks re: Fatal Shooting of police officer*, Seattle Police Department, 1/2/2009, no transcript available, video available online.

*Press Conference (Video): Youth Violence*, City of Seattle's "Seattle Channel" at seattlechannel.org, 12/16/2008, no transcript available. video available online.

*Remarks at Symposium on Law Enforcement and Violence Prevention*, December 1, 2008

*Remarks at Ryther Child Care Center*, November 13, 2008

*Press Conferenc: Wallingford Sexual Assault Suspect Arrested*, City of Seattle's "Seattle Channel" at seattlechannel.org , 10/31/2008, no transcript available, video available online.

*Guns Reduce Crime* (Debate Transcript), The Rosenkranz Foundation/ Intelligence Squared US, 10/28/2008

*Press Conference Remarks re: Mayor's Press Conference: Traffic Safety Speed Van*, City of Seattle's "Seattle Channel" at seattlechannel.org, 10/20/2008, no transcript available, video available online.

*A Message from Chief Kerlikowske about Civilian Oversight and Transparency in the Seattle Police Department*, August 26, 2008

*National Night Out: Some Thoughts and Observations by Chief R. Gil Kerlikowske.* August 14, 2008

*Press Conference Remarks re: Concealed Weapons.* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 6/9/2008, no transcript available, video available online.

*Remarks at May 20th Promotional Ceremony,* May 20, 2008

*Press Conference Remarks re: New Technology for Reporting Crime Tips,* Seattle Police Department, 4/4/2008, no transcript available, video available online.

*Press Conference: 2007 Seattle Crime Stats,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 1/17/2008, no transcript available, video available online.

*Press Conference: Recent Undercover Operation involving Seattle Nightclubs,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 9/9/2007, no transcript available, video available online.

*Press Conference: Downtown Public Safety,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 8/16/2007, no transcript available, video available online.

*Press Conference: Police Accountability,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 6/29/2007, no transcript available, video available online.

*Youth Violence Forum: The West Side Story Project,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 5/30/2007, no transcript available, video available online.

*Press Conference (Video): 26 Year Old Cold Case,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 4/6/2007, no transcript available, video available online.

*ACAP Child & Family Services 37th Anniversary Breakfast and Fundraiser,* March 19, 2007

*City Inside/Out: Neighborhood Policing,* City of Seattle's "Seattle Channel" at [seattlechannel.org](http://seattlechannel.org), 3/16/2007, no transcript available, video available online.

*Safe at Home? Policing the Hometown in the Era of Homeland Security,* (speech), Patrick V. Murphy lecture on Perspectives in Police Leadership in New York City, November 28, 2006

*Chief's Statement to City Council Committee on Increasing Sworn Staffing,* October 25, 2006

*Chief's Statement to City Council Committee on Charter Amendment,* July 14, 2006

*An Explanation of the Investigation and Disciplinary Process in the Seattle Police Department,* January 2006

*International Roundtable: Police Challenges in the 21<sup>st</sup> Century,* Eastern Kentucky University, Justice and Safety Center, October 10-11, 2005, no transcript available

*Silver Successes, Golden Opportunities*, 7<sup>th</sup> National Conference on Preventing Crime, National Crime Prevention Council, 2005

*Convicting the Guilty. Exonerating the Innocent: How DNA and Other Methods are Dramatically Changing Policing*, Police Executive Research Forum Annual Meeting, April 22, 2005, no transcript available

*Brookings Welfare Reform and Beyond Initiative Public Forum. Measuring Child Well-Being: Reducing Risky Behavior* (Transcript), Brookings Institution, 3/30/2005

*Law Enforcement and Homeland Security Panel: Making Intelligence Relevant*, U.S. Department of Homeland Security Conference, August 10, 2004, no transcript available

*Forum on disparate law enforcement*, City of Seattle Employees Black History Month Committee, February 26, 2004, no transcript available

*Reporting on Terrorism the News media and Public health*, Columbia University Mailman School of Public Health, 2004, (video, only available at DIA- will not release)

*Law Enforcement Perspective*, 2003 Hate Crimes Conference, Organization of Chinese Americans, October 15, 2003

*The End of Community Policing*, 2<sup>nd</sup> Annual National Community Policing Conference. Office of Community Oriented Policing, U.S. Department of Justice., June 18, 2003

*Remarks given at Washington Association of Sheriff and Police Chiefs Conference*, May 21, 2003

*Remarks given to Rotary Club*, March 6, 2003

*Covering Police in Times of Crisis Forum*, Western Knight Center for Specialized Journalism, 12/8/2001, transcript not available

*Lessons Learned from the streets of Seattle, Cincinnati and Los Angeles*, University of Southern California's Institute for Justice and Journalism - Covering Police in Times of Crisis Conference, 12/5/2001, transcript not available

*Remarks given to The Junior State of America*, November 10, 2001

*Visions for the Seattle Police Department*, University of Washington Evans School of Public Affairs, May 15, 2001, (video, only available at University of Washington library)

*Community Policing in the 21st Century, 1999 Bureau of Justice Assistance National Partnership Meeting: Working Together for Peace and Justice in the 21st Century*, 4/6/1999, transcript not available

*DWI Issues and Initiatives*, (recording, only available at SUNY Buffalo Law Library). State University of New York at Buffalo, 1997

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

12e. I have tried to recall and search for interviews that I have given and other articles in which I have been quoted. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. This list includes articles from primary sources in which I was quoted as a result of statements that had been disseminated to the press.

Attached at Tab E are copies of the following:

*Securing the Border; Bernard Madoff Pleads Guilty*, CNN, 3/12/2009

*President Obama Signs Omnibus Spending Bill*, Newshour with Jim Lehrer, 3/11/2009

*An Unsolved Killing; What does the firing of a U.S. Attorney have to do*, The New Yorker, 8/6/2007

*Top Cop Says Invest Now*, Seattle's Child, 11/2007

*U.S. Cities Boost Security for July 4 Events*, NPR, 7/2/2007

*CEOs stop suspects in their tracks*, Law Enforcement Technology, 5/1/2007

*Bush Appointee Resigns*, CNN, 4/28/2007

*New Defense Secretary Takes Over; United States to Share Nuclear Technology*, CNN, 12/18/2006

*Violent Crime on the Rise in America*, CNN Lou Dobbs Tonight, 12/18/2006

*Interview with George Clooney: Total of U.S. Soldiers Wounded in Iraq*, CNN, 9/14/2006

*Lebanon Mourns After Qana Attack; Heat Wave Scorches Country*, CNN, 8/31/2006

*6 Women Shot, 1 Dead at Seattle's Federation*, The Indiana Jewish Post & Opinion, 8/2/2006

*Crisis in the Middle East; Jewish center Shootings Rattle Seattle*, CNN, 7/29/2006

*Violence Intensifies in Middle East: Secretary Rice Pushes for Possible*, CNN, 7/29/2006

*Gunman Opens Fire in Jewish Federation of Greater Seattle, Killing One*, CBS Evening News, 7/29/2006

*Seattle Shooting at Jewish Center May be Hate Crime*, NBC News, 7/29/2006

*Shooting in Seattle Might Indicate Mideast Tensions Affecting America*, CBS Evening News, 7/26/2006

*A Weekend Party that Turned Into a Killing Spree*, CTV Television, 3/27/2006

*Seattle Massacre*, ABC News, 3/26/2006

*Investigation Continues on Friday's Worst Mass Murder in Seattle*, NBC News, 3/26/2006

*More Fallout in Controversy Over Bush Administration's Domestic-Spying Program*, CNN, 12/28/2005

*U.S. Terror Alert*, Federal News Service, 10/19/2005

*Highlights of U.S. Broadcast News Coverage of the Middle East*, Federal News Service, 10/19/2005

*Baltimore, MD's Reaction to Terrorist Threat*, NBC News, 10/18/2005

*Rethinking Evacuation Plans*, PBS NewsHour with Jim Lehrer, 9/26/2005

*After the Storm: Are We Prepared: Speaking Out*, Newshour with Jim Lehrer, 9/26/2005

*Seattle Channel Spends a Day with Chief Kerlikowske*, City of Seattle Web site, 6/27/2005

*A Closer Look at Stun Guns*, ABC News, 12/10/2004

*Bloody Weekend*, Newshour with Jim Lehrer, 9/13/2004

*End of the Ban*, PBS NewsHour with Jim Lehrer, 9/13/2004

*Federal Assault Weapons Ban Expires*, Online NewsHour, PBS.org, 9/13/2004

*Listeners' Comments*, NPR, 8/14/2004

*Chief Gil Kerlikowske Discusses How Seattle is Handling Terror Alerts*, NPR, 8/7/2004

*Nightline Your Questions Answered*, ABC News, 8/5/2004

*The Abrams Report for July 23, 2004*, MSNBC, 7/23/2004

*Nightline the Final Report*, ABC News, 7/22/2004

*Faulty Analysis*, CNN Paula Zahn Now, 7/9/2004

*On Guard, But How Well?*, The National Journal, 3/6/2004

*Bullied children more prone to depression: raises suicide risk*, Family Practice News, 1/1/2004

*Security Preparations for New Year's Eve Celebrations Across the U.S.*, NPR, 12/31/2003

*Fight Crime: Invest in Kids*, Marketplace Morning Report, 11/28/2003

*Many US Cities Need More Federal Money to Fully Prepare for Potential*, CBS Morning News, 9/10/2003

*New Report Critical of Terror Alert System*, CNN, 8/11/2003

*Homeland Security's 'Intractable Problem'*, The National Journal, 8/9/2003

*The Search for Patrick Dennehy Continues*, MSNBC, 7/3/2003

*Lester Holt Live for July 3, 2003*, MSNBC, 7/3/2003

*How Are Cities Responding to Terror Alerts?*, CNN, 5/21/2003

*Continuing Events in the War with Iraq*, NPR, 3/21/2003

*How Baltimore and Seattle Are Coping with Heightened Security Alert*, NPR, 2/15/2003

*Intelligence Officials Have Sobering New Assessments of Al-Qaeda's*, NBC News, 2/12/2003

*Health and Human Services Assistant Sec. Jerome Hauer and Seattle Police*, CNBC, 2/10/2003

*Local Governments Struggling to Pay for Security Mandates*, Marketplace, 2/7/2003

*Dangerous Mission Communicating with Sniper*, ABC News, 10/22/2002

*Vouching for Veracity: Policing Immigration*, Newshour with Jim Lehrer, 8/14/2002

*Americans One Year After September 11*, MSNBC, 8/12/2002

*Cost of Increased Security*, Marketplace, 7/4/2002

*Murder of Gun Control Advocate and Federal Prosecutor Tom Wales*, CBS Evening News, 4/17/2002

*State of the Union Address and Responses*, MSNBC, 1/29/2002

*Police Departments Leading Homeland Security Want Freedom from Rules*, CBS Evening News, 1/11/2002

*America Continues Strike*, MSNBC, 10/8/2001

*What Goes Around Comes Around*, The American Enterprise, 10/1/2001

*The legal, political, and public war on racial profiling and its unlike*, Texas Review of Law & Politics, 9/1/2001

*Fine Line Between Overpolicing and Underpolicing*, NPR, 7/23/2001

*Missing- person cases: A Balancing Act for Police*, New York Times, 7/21/2001

*Police from Cities Plagued by Mardi Gras Violence Meet to Try to Come Up*, CBS Evening News, 3/12/2001

*Chief Gil Kerlikowske Discusses Finding Answers to Growing Problem of Violence*, NBC News, 3/11/2001

*Seattle Police Officer Apologizes for his Lack of Action in the Mardi Gras*, CBS Evening News, 3/9/2001

*Police Officials from Several Cities Meet to Grapple with the Problems*, CBS Evening News, 1/11/2001

*Police Departments Across the Country Reluctant to Devote More Resources*, NPR, 12/27/2000

*Seattle Demonstrations Against WTO Turned Ugly with Many Arrested*, ABC News, 12/1/2000

*Landslides and Flooding Kill 100 in Sumatra*, ABC News, 11/28/2000

*Recent Wave of Violent Crime by Young Attackers in the Seattle Area*, CBS Evening News, 9/29/2000

*Political leaders should listen to Kerlikowske*, The Tribune, 7/29/1996

*Laptop 54, Where are you?*, Business Week, 8/7/1995

*Many Citizens and Police Forces Hope Crime Law Will Increase Number*, CBS Evening News, 9/13/1994

**13. Public Office, Political Activities and Affiliations:**

- a. **List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.**

Chief of Police, Seattle, Washington, 2000-current, Mayor Paul Schell

Deputy Director, Office of Community Oriented Policing Services, 1998-2000, Attorney General Janet Reno

Police Commissioner, Buffalo Police Department, 1994-98, Mayor Anthony Massiolo

Chief of Police, Fort Pierce (FL), 1990-1994, City Manager James A. "Bo" Powell

Chief of Police, Port St. Lucie (FL), 1987-1990, City Manager Wayne Allgire

I have not run for elected office and have not held any position with a political party.

- b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

**14. Legal Career: Answer each part separately.**

- a. **Describe chronologically your law practice and legal experience after graduation from law school including:**
- i. **whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;**
  - ii. **whether you practiced alone, and if so, the addresses and dates;**
  - iii. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.**
  - iv. **whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.**

## b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
  - ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
- i. Indicate the percentage of your practice in:
    1. federal courts;
    2. state courts of record;
    3. other courts;
    4. administrative agencies
  - ii. Indicate the percentage of your practice in:
    1. civil proceedings;
    2. criminal proceedings.
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- i. What percentage of these trials were:
    1. jury;
    2. non-jury.
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Not Applicable

**15. Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Not Applicable

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Not Applicable

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Seattle University, Seattle, WA, January, 2002 – current: Course CRJS 522: Issues in Law Enforcement. Syllabus attached at Tab F.

Buffalo State College courses on crime and the police response to crime that I taught had similar themes and would be during the 1995-97 years while Police Commissioner in Buffalo

Florida Atlantic University and Indian River Community College, Fort Pierce, Fl. The FAU courses were taught at Indian River Community College (this was the off-site campus for FAU) and the courses, as noted, were under the auspices of FAU or IRCC during the 1988-93 years. I would teach once or twice a year on "contemporary issues in policing." The theme was around causes of crime, the police response to crime, etc.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former

**employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.**

Current

City of St. Petersburg retirement, currently receiving \$900 a month

Future

Retirement from State of Washington Law Enforcement Officer Pension System. +/- \$2500 per month upon retirement

City of Seattle Deferred Compensation Plan, future value not readily ascertainable

Deferred compensation from contributions by self and former employers (City of Fort Pierce, FL, and City of Port St. Lucie, FL) now in IRA managed by D.A. Davidson & Co., future value not readily ascertainable

- 19. Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

There are none

- 20. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).**

City of Seattle salary as Police Chief, \$216,515.00  
 Retirement from City of St. Petersburg, FL, \$10,095  
 Seattle University, adjunct professor, \$3,700  
 Maryland Police Chiefs, lecture on leadership fee, \$1,500  
 Honoraria, Rosenkrantz Foundation, panel discussion, \$1,000

- 21. Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**

Attached at TAB E

- 22. Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the**

**position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

**b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

**23. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.**

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UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

**Ronald Harris Weich**

2. **Position:** State the position for which you have been nominated.

**Assistant Attorney General for Legislative Affairs, Department of Justice**

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

**Office of the Senate Majority Leader  
S-221 The Capitol  
Washington, DC 20510**

4. **Birthplace:** State date and place of birth.

**November 19, 1959  
New York City, NY**

5. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

**Yale Law School; attended 1980 – 1983; J.D. Degree awarded in May, 1983.**

**Columbia University; attended 1976 – 1980; B.A. Degree awarded in May, 1980.**

**London School of Economics and Political Science; attended 1978 – 1979; no degree awarded (General Course student).**

6. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services.

Include the name and address of the employer and job title or job description where appropriate.

**United States Senate**

<i>Chief Counsel to Majority Leader Harry Reid</i>	Jan 2007 – present
<i>Senior Counsel to Minority Leader Harry Reid</i>	Jan 2005 – Dec 2006
<i>Chief Counsel to Senator Edward M. Kennedy</i>	July 1995 – Feb 1997
<i>General Counsel, Committee on Labor and Human Resources</i>	Jun 1992 – Jun 1995
<i>Counsel to Senator Edward M. Kennedy</i>	Jan 1990 – May 1992
<i>Counsel to Senator Arlen Specter</i>	Feb – Dec 1989

**Zuckerman Spaeder LLP, 1800 M Street, NW, Washington, DC 20036**

<i>Partner</i>	Mar 1997 – Dec 2004
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**Bazelon Center for Mental Health Law, 1101 15<sup>th</sup> Street, NW, Washington, DC 20005**

<i>Trustee (uncompensated)</i>	1997-2004
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**Vera Institute of Justice, 233 Broadway, New York, NY 10279**

<i>Trustee (uncompensated)</i>	1997-2004
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**Dean for America, 60 Farrell Street, South Burlington, VT 05403**

<i>Part-time Policy Advisor</i>	May 2003 – Feb 2004
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**District of Columbia Community Corrections Facility Siting Advisory Commission**

<i>Appointed Member (uncompensated)</i>	2003
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**Washington Council of Lawyers, 555 12<sup>th</sup> Street, NW, Washington, DC 20004**

<i>Board member (uncompensated)</i>	1998-2002
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**DC Prisoners Legal Services Project, 11 Dupont Circle, Washington, DC 20036**

<i>Board member (uncompensated)</i>	2000-2001
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**Emory University School of Law, 1301 Clifton Road, Atlanta, GA 30322**

<i>Adjunct Professor of Law</i>	Jan – Jun 1995
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**Federal Sentencing Reporter, 2000 Center Street, Berkeley, CA 94704**

<i>Advisory Board member (uncompensated)</i>	1988 – present
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**United States Sentencing Commission, One Columbus Circle, NE, Washington, DC 20002**

<i>Special Counsel</i>	Nov 1987 – Feb 1989
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**Office of the Manhattan District Attorney, One Hogan Place, New York, N.Y. 10013**

***Assistant District Attorney***

**Aug 1983 – Nov 1987**

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

**None.**

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

**Named by *Roll Call* newspaper as one of the 50 most influential congressional staff members (2007-09).**

**Named by *National Law Journal* as one of 105 most influential lawyers in the United States (1994).**

**Award from National Mental Health Association for Outstanding Advocacy (1992)**

**Runner-up, Yale Law School Moot Court Prize Argument (1983).**

**Graduated *magna cum laude* from Columbia University (1980).**

**Elected to Phi Beta Kappa (1980).**

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups

**American Bar Association (ABA), member 1988 – 2006**

**-- ABA Criminal Justice Section, member 1988 – 2006; Council member 2000-2002;  
Vice Chair for Government Relations 2000-2002**

**-- ABA Individual Rights and Responsibilities Section, member 1998-2002**

**District of Columbia Bar Association (1997 – present)**

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

**District of Columbia; admitted 1997**

**New York State (First Department); admitted 1983**

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

**U.S. Supreme Court; admitted 2002**

**U.S. Court of Appeals for the District of Columbia Circuit; admitted 1988**

**District of Columbia; admitted 1997**

**New York State (First Dept.); admitted 1983**

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

**Member, Interfaith Family Project (2005-present) (3rd grade Sunday School teacher)**

**Member, Palisades Swimming Pool Association (2007-present)**

**Advisory Board Member, Federal Sentencing Reporter (1988 – present)**

**Trustee, Bazelon Center for Mental Health Law (1997-2004)**

**Trustee, Vera Institute of Justice (1997-2004)**

**Member, National Association of Criminal Defense Lawyers (1997-2004)**

**Board member, Washington Council of Lawyers (1998-2002)**

**Board member, DC Prisoners' Legal Services Project (2000-2001)**

**Member, Citizens for the Constitution (1999)**

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

**I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:**

**ARTICLES:**

**Dan Freed: My Teacher, My Colleague, My Friend**, forthcoming publication in the *Federal Sentencing Reporter* (2009)

**The Innocence Protection Act of 2004: A Small Step Forward and a Framework for Larger Reforms**, 29 *The Champion* No. 2 at 28 (March 2005).

**The Innocence Protection Act: Death Penalty Reform on the Horizon**, 25 *The Champion* No. 3 at 18 (April 2001).

**Managed Care and Managed Sentencing — A Tale of Two Systems**, 11 *Federal Sentencing Reporter* 139 (1998)

**Victims' Rights Amendment: Unique Problems in Corporate Criminal Cases**, 4 *Business Crimes Bulletin* No. 7 at 4 (1997).

**The Battle Against Mandatory Minimums: A Report from the Front Lines**, 9 *Federal Sentencing Reporter* 94 (1996).

**Introduction to FJC Survey**, 7 *Federal Sentencing Reporter* 151 (1994).

**Proposed 1992 Guideline Amendments**, 4 *Federal Sentencing Reporter* 239 (1992).

**The Strange Case of the Disappearing Statute**, 3 *Federal Sentencing Reporter* 239 (March - April 1991) (and Guest Editor of FSR issue).

Contribution to Post-Mistretta Forum, 1 *Federal Sentencing Reporter* 372 (February-March 1989).

The Relevant Conduct Controversy, 2 *Federal Sentencing Reporter* 150 (1989) (co-author).

Emergency Amendments, 2 *Federal Sentencing Reporter* 71 (1989).

Plea Agreements, Mandatory Minimum Penalties and the Guidelines, 1 *Federal Sentencing Reporter* 266 (1988).

The Constitutionality of the New Claims Court, 29 *Federal Bar News & Journal* 477 (1982) (co-author).

**CLIENT REPORTS:**

*Note: The following policy reports were written under the direction of paying clients of my law firm and their contents do not necessarily reflect my personal views.*

The Bush Administration Takes Aim: Civil Rights Under Attack, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2003).

Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2003) (co-author).

Insatiable Appetite: The Government's Demand for New and Unnecessary Powers After September 11, report prepared for the American Civil Liberties Union (2002).

Upsetting Checks and Balances: Congressional Hostility Towards the Courts in Times of Crisis, report prepared for the American Civil Liberties Union (2001).

Justice on Trial: Racial Disparities in the American Criminal Justice System, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2000) (co-author).

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

**I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:**

**Report and Recommendations of the District of Columbia Community Corrections Facility Siting Advisory Commission (April 2003) (I was an appointed member of this Commission)**

**Building Consensus on Election Reform: A Report of the Constitution Project's Forum on Election Reform (2001) (I served as legislative counsel to the organization that issued this report)**

**"Great and Extraordinary Occasions": Developing Guidelines for Constitutional Change (1999) (I was a member of the working group that developed these guidelines and endorsed the guidelines themselves)**

**Report of the Drugs and Violence Task Force convened by the U.S. Sentencing Commission (1996) (According to an electronic database I participated in this task force as a representative of Senator Kennedy, for whom I worked at that time, but as best as I can determine a final report was never issued)**

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

**I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:**

**Testified before the U.S. Senate Judiciary Committee on "Blakely v. Washington and the Future of the Federal Sentencing Guidelines" (July 13, 2004)**

**Testified on behalf of the American Bar Association before the U.S. Sentencing Commission on "Proposed Amendments to the Sentencing Guidelines" (February 26, 2002)**

**Testified on behalf of the Justice Project before the Maryland Senate Committee on Judicial Procedures on "Post-Conviction DNA Testing" (October 23, 2001).**

**Testified on behalf of the American Civil Liberties Union before the National Committee on Vital and Health Statistics, Subcommittee on Privacy and Confidentiality, on "Implementation of Medical Privacy Regulations: Significance of the 'Minimum Necessary' Standard." (August 22, 2001)**

**Testified on behalf of the American Civil Liberties Union before the U.S. House Committee on Banking and Financial Services on "H.R. 4585 – the Medical Financial Privacy Protection Act" (June 14, 2000)**

Testified on behalf of Citizens for the Constitution before the Constitution Subcommittee of the U.S. House Judiciary Committee on "H.J. Res. 9 The Line Item Veto Constitutional Amendment" (March 23, 2000)

Testified before the U.S. Senate Judiciary Committee on "S. 1673, the Unborn Victims of Violence Act" (February 23, 2000).

Testified before the Constitution Subcommittee of the U.S. House Judiciary Committee on H.R. 2436, the Unborn Victims of Violence Act" (July 21, 1999).

Memo to "Interested Persons" on behalf of the American Civil Liberties Union regarding an amendment to juvenile justice legislation (June 16, 1999).

Testified on behalf of the American Civil Liberties Union before the U.S. Senate Committee on Health, Education, Labor and Pensions on "Medical Records Confidentiality in a Changing Health Care Environment" (April 27, 1999).

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

**I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:**

Panelist, "Liberty and Security in the Next Administration: War, Rights, and Antiterrorism" (October 3, 2008 panel at Yale Law School, New Haven, CT) (videotape available at [http://ylsqtss.law.yale.edu:8080/qtmedia/alumni2008/aw08panel2Fri100308\\_s.mov](http://ylsqtss.law.yale.edu:8080/qtmedia/alumni2008/aw08panel2Fri100308_s.mov))

Panelist, "Strickland v. Washington: How Effective is the Right to the Effective Assistance of Counsel Standard?" (November 7, 2007 conference at the Library of Congress sponsored by the Constitution Project) (videotape available at [http://www.loc.gov/today/cyberlc/feature\\_wdesc.php?rec=4234](http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=4234))

Panelist, "Congress and the Balance of Power" (2007 American Constitution Society annual meeting) (videotape available at <http://www.acsblog.org/news-and-announcements-congress-and-the-balance-of-power.html>)

Guest, class on legislative process at Harvard Law School, Cambridge, MA (Professor Flug) (February, 2007) (extemporaneous remarks, no transcript available)

Panelist, "Round Table Discussion: Survey of New Developments in National Security Law: Views from the Hill" (November 2006 meeting of the American Bar Association Standing Committee on Law and National Security in Washington, DC) (extemporaneous remarks, no transcript available)

Speaker, "Public Interest Lobbying Skills" (September 19, 2006 workshop sponsored by the Washington Council of Lawyers in Washington, DC) (extemporaneous remarks, no transcript available)

Panelist, "Separation of Powers: Restoring the Balance Among the Branches" (2006 American Constitution Society annual meeting) (transcript attached and available at <http://www.acslaw.org/files/Separation%20of%20Powers--Restoring%20Balance%20Among%20the%20Branches--transcript.pdf>)

Panelist, "The Meaning of the 2004 Election for People with Mental Disabilities" (December 2, 2004 panel discussion sponsored by the Bazelon Center for Mental Health Law in Washington, DC) (extemporaneous remarks, transcript unavailable but article describing the panel is attached and available at: <http://www.bazelon.org/about/inbrief/spring2005.pdf>)

Facilitator, "Forum on Blakely, the Kennedy Commission, and Beyond: The Future of State and Federal Sentencing Policies" (September 14, 2004 panel discussion at the National Press Club sponsored by the Open Society Institute and the Constitution Project). (Audiotape available at: [http://www.soros.org/initiatives/washington/events/blakely\\_20040914?skin=printable](http://www.soros.org/initiatives/washington/events/blakely_20040914?skin=printable))

Panelist, "Federal Sentencing in Flux: The Impact of Blakely on White Collar Criminal Enforcement" (August 4, 2004 panel discussion sponsored by the Washington Legal Foundation in Washington, DC) (extemporaneous remarks, no transcript available but flyer attached).

Guest, The Diane Rehm Show on National Public Radio, discussion of sentencing law (August 12, 2003) (extemporaneous remarks, no transcript available)

Guest, C-Span Discussion on developments in sentencing law (August 11, 2003) (videotape provided to Committee).

Panelist, "Commuting the Death Sentences in Maryland: Executing Juveniles and Mentally Retarded." (March 27, 2003 panel discussion at the American University College of Law, Washington, DC) (extemporaneous remarks, no transcript available).

Panelist, "Whither Federalism? The Impact of Globalization and the War on Terror" (2002 Federalist Society Convention, Washington, DC) (extemporaneous remarks, no transcript available but convention program attached).

Panelist, "The New Medical Privacy Regulations: Will They Protect Our Most Personal Information" (February 15, 2001 Cato Institute Policy Forum) (videotape available at <https://www.cato.org/events/010215pf.html>)

Participant, Press Conference on release of client report entitled "Upsetting Checks and Balances: Congressional Hostility Towards the Courts in Times of Crisis" (November 1, 2001) (extemporaneous remarks, no transcript available, but client report produced in response to question 12(a) above).

Participant, Press Conference on release of client report entitled "Justice on Trial: Racial Disparities in the American Criminal Justice System" (May 4, 2000) (extemporaneous remarks, no transcript available, but client report produced in response to question 12(a) above).

Panelist, "Invading Our Privacy: How the Government Plans to Violate Patient Confidentiality" (May 27, 1999 panel discussion at the Heritage Foundation, Washington, DC) (extemporaneous remarks, no transcript available).

Panelist, Federal Public Defenders' Training Conference in Las Vegas, NV (Sept. 14, 1998) (extemporaneous remarks, no transcript available).

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

**I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following (where noted, I spoke on behalf of a client):**

"Behind the Scenes, an Army of Senate Aides Takes On the Filibuster Fight," *New York Times*, May 20, 2005.

"Add-Ons End Years of Wrangling, Clear Path for DNA Testing Bill," *Congressional Quarterly Weekly*, October 16, 2004 (on behalf of client).

"Supreme Court Starts Term with Prison Sentencing Rules," *USA Today*, October 4, 2004.

"Long Term in Drug Case Fuels Debate on Sentencing," *New York Times*, September 12, 2004.

- “Trial by jury,” *San Francisco Chronicle*, August 10, 2004.
- “Rulings rein in Bush,” *New York Newsday*, June 29, 2004.
- “What Price Can We Put on Freedom? State May Limit Compensation for False Convictions,” *Daily Press* (Newport News, VA), February 29, 2004 (on behalf of client).
- “Long-Distance Operator,” *National Journal*, January 17, 2004
- “Dean walks the line on gun control,” *Burlington Free Press*, September 28, 2003.
- “Words as Tactics In War on Terror,” *New York Times*, September 14, 2003.
- “Feeney Makes an Impression as Freshman on Capitol Hill,” *Orlando Sentinel*, April 28, 2003.
- “The Politics of Judicial Confirmation,” *Washington Lawyer*, September 2002.
- “Downside of taking the Fifth: Public relations suffers,” *USA Today*, February 12, 2002.
- “Justice During Wartime,” *Legal Times*, November 19, 2001 (on behalf of client).
- “Bush Plan Draws Criticism from Civil Libertarians,” *St. Louis Post-Dispatch*, November 18, 2001 (on behalf of client).
- “Anti-terror laws face little challenge,” *Chicago Tribune*, November 11, 2001 (on behalf of client).
- “Senator presses for new law banning genetic bias,” *Disability Compliance Bulletin*, June 29, 2001 (on behalf of client).
- “Press Rips HIPAA,” *Hospitals & Health Networks*, June, 2001 (on behalf of client).
- “For Sale: Privacy Concerns, Drug Marketing Collide at the AMA,” *Modern Physician*, May 1, 2001 (on behalf of client).
- “Bush To Employ Medical Privacy Rules,” *Associated Press Online*, April 12, 2001 (on behalf of client).
- “White House Plans to Revise New Medical Privacy Rules,” *New York Times*, April 8, 2001 (on behalf of client).
- “Bush Administration Disputes Medical Privacy Rules,” *Seattle Post-Intelligencer*, April 07, 2001 (on behalf of client).

**“Leahy Challenges Congress to Fill Gaps in Medical Information Privacy Rule,”**  
*Cyberspace Lawyer*, March 2001 (on behalf of client).

**“Close Eye on Ashcroft Promise; Friends, Foes Wait to See on Racial Profiling Policy,”**  
*Newsday*, February 4, 2001 (on behalf of client).

**“Conservatives Get Champion at Justice,”** *Washington Post*, December 23, 2000.

**“U.S. Moves To Cloak Medical Records; New Privacy Rules Are Strengthened,”**  
*Washington Post*, December 20, 2000 (on behalf of client).

**“Clinton Will Issue New Privacy Rules to Shield Patients,”** *New York Times*, December 20, 2000 (on behalf of client).

**“Health Privacy Rules To Be Issued,”** *Associated Press Online*, December 20, 2000 (on behalf of client).

**“Don’t Pardon Ex-President Clinton – Commute His Sentence,”** *National Journal*,  
September 13, 2000.

**Tony Snow Interview of Ron Weich regarding the Innocence Protection Act,** Fox News  
Network, June 16, 2000 (on behalf of client).

**“GOP Targets Lawyer for Elian’s Dad,”** *Chicago Tribune*, April 27, 2000.

**“Privacy Initiative Elicits Praise, Concern,”** *Los Angeles Times*, October 30, 1999 (on behalf of client).

**“Health data privacy pushed; New U.S. rules would limit access to medical records,”**  
*Chicago Sun-Times*, October 30, 1999 (on behalf of client).

**“Plan Would Guard Data on Patients; Clinton Proposal Too Full of Loopholes, Advocates Say,”**  
*Chicago Tribune*, October 30, 1999 (on behalf of client).

**“SHIA, ACLU Clash Over Privacy Of WC Medical Records,”** *National Underwriter*,  
October 11, 1999 (on behalf of client).

**“Ashcroft and Carnahan Joust Over Victims’ Rights,”** *St. Louis Post-Dispatch*, October 10,  
1999.

**“Reno Toughs Out Term,”** *Chicago Tribune*, August 4, 1999.

**“Rep. Franks Changes Language in Internet Filtering Bill,”** *Newsbytes*, March 2, 1999 (on behalf of client).

“Senate’s Internet Legislation Under Fire,” *New York Times*, July 27, 1998 (on behalf of client).

“Senate Approves Internet Filters, Son of CDA,” *Newsbytes*, July 22, 1998 (on behalf of client).

“Debate heats up over privacy of computerized medical records,” *Orange County Register*, July 7, 1999 (on behalf of client).

“Nation Debates Need for Medical Privacy,” *Baltimore Sun*, June 27, 1999 (on behalf of client).

“The Web’s Pornucopia,” *National Journal*, January 9, 1999 (on behalf of client).

“Wired in Washington,” *National Journal*, August 8, 1998 (on behalf of client).

“Compressed Data; Backing for Bill To Shield Children,” *New York Times*, June 29, 1998 (on behalf of client).

“Starr: If Lies Were Told, Civil Case ‘Doesn’t Matter,’” *Chicago Tribune*, April 3, 1998.

“Politics Perils U.S. Sentencing Panel,” *Chicago Tribune*, August 12, 1997.

“Lobbyists, Tired of Giving, Lobby for Campaign Finance reform,” *The Hill*, January 22, 1997.

“Congress is expected to vote ban on smoking in schools,” *Boston Globe*, March 22, 1994.

13. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

**Member, District of Columbia Community Corrections Facility Siting Commission (2002-03). Appointed by D.C. Councilmember Kathy Patterson.**

**I have never run for elective office.**

**In addition, the government jobs I have listed in response to Question #7 may be considered “public offices.”**

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**I have volunteered for various political campaigns, including:**

**Joel Harnett for Mayor of New York City (1977) – driver**  
**Nick Scoppetta for Attorney General of New York State (1978) – driver; general assistance**  
**Edward M. Kennedy for Senator from Massachusetts (1994) – GOTV volunteer**  
**John Kerry for President (general election 2004) – volunteer policy advisor**  
**Barack Obama for President (general election 2008) – GOTV volunteer**

**In addition, I was a paid employee of VT Governor Howard Dean’s unsuccessful campaign for the Democratic presidential nomination in 2004. I took a 50% leave of absence from my law firm from approximately May 2003 to February 2004 to serve as a part-time policy advisor to the campaign.**

14. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

**I have never clerked for a judge.**

ii. whether you practiced alone, and if so, the addresses and dates;

**I have never practiced law alone.**

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

**United States Senate**

<i>Chief Counsel to Majority Leader Harry Reid</i>	<b>Jan 2007 – present</b>
<i>Senior Counsel to Minority Leader Harry Reid</i>	<b>Jan 2005 – Dec 2006</b>
<i>Chief Counsel to Senator Edward M. Kennedy</i>	<b>July 1995 – Feb 1997</b>
<i>General Counsel, Committee on Labor and Human Resources</i>	<b>Jun 1992 – Jun 1995</b>
<i>Counsel to Senator Edward M. Kennedy</i>	<b>Jan 1990 – May 1992</b>
<i>Counsel to Senator Arlen Specter</i>	<b>Feb – Dec 1989</b>

Zuckerman Spaeder LLP, 1800 M Street, NW, Washington, DC 20036

*Partner* Mar 1997 – Dec 2004

Dean for America, 60 Farrell Street, South Burlington, VT 05403

*Part-time Policy Advisor* May 2003 – Feb 2004

Emory University School of Law, 1301 Clifton Road, Atlanta, GA 30322

*Adjunct Professor of Law* Jan – Jun 1995

United States Sentencing Commission, One Columbus Circle, NE, Washington, DC 20002

*Special Counsel* Nov 1987 – Feb 1989

Office of the Manhattan District Attorney, One Hogan Place, New York, N.Y. 10013

*Assistant District Attorney* Aug 1983 – Nov 1987

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
- ii. your typical clients and the areas, if any, in which you have specialized.

**In the 26 years since I graduated from law school, I have principally been a government lawyer. I began my career as a New York City prosecutor (1983-87), then came to Washington to work for a federal agency (1987-89) and moved from there to the staffs of two senators (1989-97). After fourteen years in government service I joined a law firm where I was worked for eight years (1997-2004) as a litigator and public policy specialist. In 2005 I returned to the Senate to join the staff of Senate Minority Leader Harry Reid.**

**I currently serve as Chief Counsel to Senator Reid, who is now the Senate Majority Leader. I play a leading staff role with respect to anti-terror legislation, all civil and criminal justice bills, judicial nominations and institutional legal issues. This is my**

second period of service in the Senate -- earlier in my career I worked on similar issues for Judiciary Committee members Edward Kennedy and Arlen Specter. I also handled several public health policy issues for Senator Kennedy and helped to manage a large professional staff as General Counsel of what was then called the Labor and Human Resources Committee.

Between these two periods of employment in the Senate, I was a partner in the law firm of Zuckerman Spaeder LLP. As a member of the firm's litigation department, I represented clients before courts, legislatures and administrative agencies in civil and quasi-criminal matters. I also counseled clients regarding public policy and legislative strategy, and drafted a number of policy reports for clients. I have included these policy reports among the publications listed in response to question 12(a), but I wish to emphasize that they were written under the direction of paying clients, and their contents do not necessarily reflect my personal views.

Among my litigation clients at the law firm were the Oneida Indian Nation of New York, the International Brotherhood of Teamsters, several generic drug companies and various individuals. Among my public policy clients at the law firm were U.S. Pharmacopeia, the American Psychological Society, the Justice Project and the Campaign for Tobacco-Free Kids. The aforementioned policy reports were written for the American Civil Liberties Union and the Leadership Conference on Civil Rights. Both of these organizations were paying clients of my law firm.

Still earlier in my career, prior to my first stint as a Senate staff member, I served as Special Counsel to the United States Sentencing Commission, an independent judicial branch agency. I served as the Commission's legislative liaison, drafted guideline amendments, and represented the Commission in federal district courts throughout the United States in cases challenging the constitutionality of the Sentencing Reform Act of 1984.

My first legal job was in the Office of the Manhattan District Attorney. As an Assistant District Attorney in a trial bureau (Trial Bureau 30), I was responsible for hundreds of criminal prosecutions, most of which resulted in guilty pleas. According to records recently provided to me by that Office, I tried approximately twelve felony cases to jury verdict. In addition, I handled hundreds of misdemeanor prosecutions at the beginning of my time in the Office, and conducted approximately seven misdemeanor trials, some of which were jury trials and others of which were bench trials. I also conducted numerous pre-trial hearings, in both misdemeanor and felony cases.

Finally, in response to question 6, I listed two other miscellaneous legal jobs: In 1995 I was an adjunct professor at Emory Law School where I taught a class on "Legislative Process." And in 2003-04 I was a part-time paid policy advisor to Vermont Governor Howard Dean during his unsuccessful campaign for the Democratic presidential nomination.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Over the course of my career, approximately 20% of my legal work has involved litigation and 80% has involved public policy matters. In the aggregate, I have appeared in court "occasionally." (see description below).

- i. Indicate the percentage of your practice in:
  - 1. federal courts;
  - 2. state courts of record;
  - 3. other courts.

Over the course of my career, approximately 20% of my litigation experience has been in federal court and 80% in state court (see description below).

- ii. Indicate the percentage of your practice in:
  - 1. civil proceedings;
  - 2. criminal proceedings.

Over the course of my career, approximately 10% of my litigation experience has been in civil proceedings and 90% has been in criminal proceedings (see description below).

.....

I began my legal career as an Assistant District Attorney in New York, where 100% of my practice involved litigation in New York City Criminal Court (misdemeanor cases) and New York State Supreme Court (felony cases). I appeared in court almost every day.

Thereafter I worked for the U.S. Sentencing Commission, where I spent approximately 20% of my time working on litigation generated by challenges to the constitutionality of the Sentencing Reform Act of 1984. I appeared in federal district courts across the country on behalf of the Commission as *amicus curiae* in those cases. See, e.g., U.S. v. Dibiase, 687 F. Supp. 38 (D. Conn en banc 1988). These appearances all took place in criminal cases, but my role in them was to present oral argument on matters of constitutional and administrative law in response to motions by defendants. The other 80% of my work for the Commission involved drafting guideline amendments and serving as the agency's liaison to Congress.

In 1989 I joined the staff of Senator Arlen Specter and later joined the staff of Senator Edward M. Kennedy. My work for these members was strictly legislative in nature and involved no litigation.

During the eight years I was a partner in the law firm of Zuckerman Spaeder LLP, I spent approximately 50% of my time as a litigator and 50% of my time as a public policy specialist. The litigation component of my practice mostly involved drafting briefs and other pleadings and rarely involved formal court appearances. I did, however, appear in federal court on behalf of the International Brotherhood of Teamsters in a quasi-criminal

matter, first in the Southern District of New York and then in the Second Circuit (U.S. v. IBT, 172 F.3d 217 (2d Cir. 1999)).

In my current role as Chief Counsel to Senate Majority Leader Reid I do not appear in court, although I occasionally work with the Office of the Senate Legal Counsel and make recommendations with respect to litigation in which the Senate or individual Senators are a party.

- d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
  - i. What percentage of these trials were:
    1. jury;
    2. non-jury.

As described in the preceding answer, I tried approximately 20 cases to verdict in the years I served as an Assistant District Attorney in New York City. At least 75% of these cases were jury trials and the rest were bench trials. During these trials I was typically the sole lawyer on behalf of the government, although I recall that I “second-chaired” a trial early in my career. Later in my career as a prosecutor I sometimes had a junior lawyer assist me during significant trials.

Other court appearances during my career – on behalf of the Sentencing Commission and on behalf of my law firm clients – did not involve cases tried to verdict or judgment.

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never presented oral argument before the U.S. Supreme Court. However I have filed briefs with the Supreme Court in the following matters:

1. Mistretta v. United States, 488 U.S. 361 (1989). I was one of several named attorneys on the staff of the U.S. Sentencing Commission who, along with outside counsel, filed a brief on behalf of the Commission as *amicus curiae* in this landmark case upholding the constitutionality of the Sentencing Reform Act in the face of a separation of powers claim.
2. Bousley v. Brooks, 523 U.S. 614 (1998). As pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums, I filed an *amicus curiae* brief urging that a newly announced rule of criminal procedure be applied retroactively.

3. Abdur'Rahman v. Bell, 537 U.S. 88 (2002). On behalf of six former Tennessee prosecutors, I filed an *amicus curiae* brief urging that a death row inmate be granted habeas corpus relief based on prosecutorial misconduct. The writ of certiorari was dismissed as improvidently granted, but Justice Stevens filed a dissent which cited our brief.

4. Miller v. U.S (No. 04-38), cert denied, 544 U.S. 919 (2004). As pro bono counsel to indigent criminal defendant Shannon Miller, I filed a petition for certiorari challenging the composition of the 11<sup>th</sup> circuit panel that denied Miller's appeal of a criminal conviction. Certiorari was denied.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

**In replying to this question, I have attempted to identify current contact information for other attorneys involved in these cases but have been unable to do so completely.**

1. Miller v. U.S (No. 04-38), cert denied, 544 U.S. 919 (2004). As pro bono counsel to indigent criminal defendant Shannon Miller, I filed a petition for certiorari challenging the composition of the 11<sup>th</sup> circuit panel that denied Miller's appeal of a criminal conviction. Certiorari was denied. The United States was represented by the Solicitor General's Office, which did not file a brief in opposition to the petition.

*Co-Counsel for Petitioner Miller*  
**Federal Public Defender Paul Rashkind**  
 150 W Flagler Street  
 Miami, FL 33130  
 (305) 536-6900 x205

2. Abdur'Rahman v. Bell, 537 U.S. 88 (2002). On behalf of six former Tennessee prosecutors, I filed an *amicus curiae* brief urging that a death row inmate be granted habeas corpus relief based on prosecutorial misconduct. The writ of certiorari was dismissed as improvidently granted, but Justice Stevens filed a dissent which cited our brief.

*Attorney for Petitioner*  
Professor James Liebman  
Columbia Law School  
435 West 116<sup>th</sup> Street  
New York, NY 10027  
212-854-3423

*Attorney for Respondent*  
Tennessee Attorney General Paul G. Summers  
*currently at:*  
Waller Lansden Dortch & Davis LLP  
511 Union Street  
Nashville, TN 37219  
(615) 850-8790

3. *U.S. v. International Brotherhood of Teamsters (IBT)*, 172 F.3d 217 (2d Cir. 1999). As counsel to the IBT, I presented oral argument in this case regarding federal reimbursement for expenses incurred by the IBT for a union election under the terms of a federal court consent decree. The Second Circuit, in an opinion by Judge Leval joined by Judges Van Graafeiland and Burns, denied my client's appeal. I also participated (but did not present oral argument) in an earlier stage of the litigation, where the Second Circuit ruled that the IBT was entitled to federal funding for its election under certain circumstances. *U.S. v. International Brotherhood of Teamsters*, 141 F.3d 405 (2d Cir. 1998).

*Attorney for the United States*  
Karen Konigsberg  
Office of the United States Attorney, Southern District of New York  
1 St. Andrews Plaza  
New York, NY 10007  
(212) 637-2200

*In-house counsel for the IBT*  
David Neigus  
*currently at:*  
International Association of Machinists and Aerospace Workers  
9000 Machinists Place  
Upper Marlboro, MD 20772  
(301) 967-4500

4. *Bousley v. Brooks*, 523 U.S. 614 (1998). As pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums, I filed an *amicus curiae* brief urging that a newly announced rule of criminal procedure be applied retroactively. Our position was adopted by the Court.

*Attorney for Petitioner*

I. Marshall Smith  
Current address unknown

*Attorney for the United States*  
Michael Dreeben  
Office of the Solicitor General  
(202) 514-2203

5. Mistretta v. United States, 488 U.S. 361 (1989). I was one of several named attorneys on the staff of the U.S. Sentencing Commission who, along with retained counsel, filed a brief on behalf of the Commission as *amicus curiae* in this landmark case upholding the constitutionality of the Sentencing Reform Act in the face of a separation of powers claim.

*Attorney for Petitioner*  
Professor Alan Morrison  
*currently at:*  
American University Law School  
4801 Massachusetts Avenue, NW  
Washington, DC 20016  
(202) 274-4236

*Attorney for the United States*  
Solicitor General Charles Fried  
*currently at:*  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138  
(617) 495-4636

6. U.S. v. Dibiase, 687 F. Supp. 38 (D. Conn. en banc 1988). In the lower court litigation leading up to Mistretta, discussed above, I represented the Sentencing Commission as *amicus curiae* in federal district courts across the country. One example of this litigation was the Dibiase case, in which I argued the matter before an en banc panel of judges in the District of Connecticut.

*Attorney for Defendant*  
Darcy McGraw  
*currently at:*  
240 Lawrence Street  
New Haven, CT 06515  
(203) 368-4234

*Attorney for the United States*  
Paul Cassell  
*currently at:*  
University of Utah Law School

332 South 1400 East  
Salt Lake City, UT 84112  
(801) 581-6833

7. People of the State of New York v. William Mingués. (Indictment No. unknown), 165 A.D. 2d 774 (1<sup>st</sup> Dept. 1990), leave to appeal denied, 76 NY2d 988 (1990). As an Assistant District Attorney I prosecuted the defendant, a career criminal, for a series of elevator robberies. He was convicted of Robbery in the First Degree and sentenced to a maximum of 20 years. The case was tried in New York State Supreme Court before the Honorable Allen Murray Myers. The defendant's appeals were denied. I have not been able to ascertain the name of the defense attorney.

8. People of the State of New York v. William Velez (Indictment No. 4115/85). As an Assistant District Attorney I prosecuted the defendant for stabbing a taxicab driver in the chest, inflicting a wound which required two dozen stitches. He was convicted of Assault in the Second Degree and sentenced to a maximum of six years in state prison. The case was tried in New York State Supreme Court before the Honorable Jeffrey Atlas.

*Attorney for the Defendant*  
Mark Weinstein  
401 Broadway  
New York, NY 10013

9. People of the State of New York v. Eric Washington (Indictment No. 7042/86). As an Assistant District Attorney I prosecuted the defendant for stealing \$600 from a man at knife point. He was convicted of Robbery in the First Degree, Robbery in the Second Degree and Criminal Possession of Stolen Property in the Second Degree and sentenced to a maximum of 15 years in state prison. The case was tried in New York State Supreme Court before the Honorable Leslie Crocker Snyder.

*Attorney for the Defendant*  
Brian Buchbinder  
Legal Aid Society of New York  
199 Water Street  
New York, NY 10038  
(212) 577-3300

10. People of the State of New York v. Keith Morris (Indictment No. 1590/86). As an Assistant District Attorney I prosecuted the defendant for stealing money and credit cards from a woman in an elevator at knife point. The defendant was convicted of Robbery in the First Degree and sentenced to a maximum of nine years in state prison. The case was tried in New York State Supreme Court before the Honorable Jay Gold.

*Attorney for the Defendant*  
David Leibman  
401 Broadway

New York, NY 10013

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Most of my significant legal activities in recent years have occurred in the congressional arena, where I have functioned in both the government and private sectors. For example:

1. **FISA Amendments Act of 2008 (Pub. L. 110-261)**. As Chief Counsel to Senator Reid, I helped to facilitate passage of this major national security law. I worked to coordinate joint activities of the two Senate committees with jurisdiction over the Foreign Intelligence Surveillance Act (the Select Committee on Intelligence and the Judiciary Committee) and participated in negotiations among these Senate committees, their House counterparts and Bush Administration officials within the intelligence community.
2. **PROTECT Our Children Act of 2008 (Pub. L. 110-401)**. As Chief Counsel to Senator Reid, I helped to resolve procedural difficulties that had impeded passage of this legislation to develop a National Child Exploitation Prevention and Interdiction Strategy and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators.
3. **Honest Leadership and Open Government Act of 2007 (Pub. L. 110-81)**. Senator Reid was a leading sponsors of this landmark law, which has been called the most sweeping ethics and lobbying reform in a generation. As Reid's Chief Counsel, I was one of the principal draftsmen and strategists behind this effort.
4. **Patient Safety and Quality Improvement Act of 2005 (Pub. L. 109-41)**. When I was in private practice I was retained by U.S. Pharmacopeia, a non-profit organization that administers a widely used medication error reporting system, to draft and seek enactment of a federal evidentiary privilege for information developed by such systems. Such a law was eventually enacted in 2005.
5. **Innocence Protection Act (title IV of the Justice For All Act, Pub. L. 108-405)**. In private practice I represented the Justice Project, a non-profit organization that advocates improvements to the administration of capital punishment in the United States. On behalf of the group I helped to draft and championed passage of the Innocence Protection Act, a bipartisan initiative to (a) expand access to DNA testing for death row inmates with legitimate claims of innocence, and (b) encourage improvements in state systems for the appointment of indigent defense counsel in capital cases.

6. ADAMHA Reorganization Act of 1992 (Pub. L. 102-321). Early in my congressional career, as counsel to Senator Kennedy, I was the principal staff author and strategist behind this significant public health initiative which for the first time brought the National Institutes of Mental Health (NIMH), Drug Abuse (NIDA) and Alcoholism and Alcohol Abuse (NIAAA) within the research portfolio of the National Institutes of Health. This law also established the Substance Abuse and Mental Health Services Administration (SAMHSA) to carry out federal support for drug treatment and mental health services throughout the United States.

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As an attorney in private practice from 1997 to 2004, prior to joining Senator Reid's staff in January 2005, I performed lobbying activities on behalf of the following clients on the following issues:

The Constitution Project: Election reform

The Justice Project: Improved access to DNA testing; improved indigent counsel systems

Leadership Conference on Civil Rights: Initiatives to reduce racial disparities in the criminal justice system

Oneida Indian Nation of New York: Issues relating to the Nation's land claims and gaming interests in upstate New York

Campaign for Tobacco-Free Kids: Legislation to reduce underage smoking

American Civil Liberties Union: Medical privacy, Internet privacy, financial privacy

American Psychological Society: Support for behavioral research within NIH and other federal agencies

National Alliance for the Mentally III: Mental Health Parity Legislation

National Pawnbrokers Association: Bankruptcy and Firearms issues

National Prison Project: Issues arising from the Prison Litigation Reform Act of 1995

International Brotherhood of Teamsters (IBT): Issues arising from union governance provisions of the IBT's longstanding federal court consent decree

U.S. Pharmacopeia (USP): Legislation to strengthen USP's medication error reporting system

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

**In 1995 I was an Adjunct Professor of Law at Emory University School of Law and taught a course entitled "Legislative Process" to approximately 100 students.**

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**None.**

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

**None.**

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**Financial disclosure form submitted.**

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

**Statement of Net Worth attached.**

22. **Potential Conflicts of Interest:**

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

**My wife Julie Stewart is president of Families Against Mandatory Minimums (FAMM), a non-profit organization that conducts public education in support of judicial discretion at sentencing. She is not a registered lobbyist, and FAMM does not lobby the Department of**

Justice, but there may be instances in which advocacy by my wife's organization would appear to conflict with my responsibilities at the Department. I have already consulted with ethics officials at DOJ to establish a protocol for recusing myself from such matters.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

**In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.**

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

**I have been a government lawyer for 18 of the 26 years since I graduated from law school. During my years in government service I have frequently worked on matters that, in my view, served the disadvantaged. For example, as a prosecutor I worked closely with crime victims; as a member of the U.S. Sentencing Commission staff I worked to establish fair and effective sentencing guidelines; and as a member of Senator Kennedy's staff I assisted in efforts to reauthorize the Legal Services Corporation. Moreover, in 2004 I left a lucrative law firm partnership to serve the public interest as a member of Senator Reid's staff.**

**During my years in the private sector I handled several pro bono matters. For example:**

-- In 1998 I served as pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums as *amicus curiae* in Bousley v. Brooks (523 U.S. 614 (1998)).

-- In 1999 I served as pro bono counsel to Our Place DC, a Washington-based social service agency, in negotiations that led the organization to separate from a parent entity and become an independent non-profit organization.

-- In 2004 I served as pro bono counsel to the Sierra Club in Sierra Club v. Leavitt (No. 03-10262-F) (11<sup>th</sup> Cir. 2004) in a challenge to the recess appointment of Judge Pryor to the Eleventh Circuit. Subsequently I litigated the same issue as pro bono counsel to an indigent defendant named Shannon Miller in Miller v. U.S. (No. 04-38), cert denied, 544 U.S. 919 (2004).

RONALD H. WEICH  
STATEMENT OF NET WORTH (as of 12/31/08)

**ASSETS:**

Cash on hand and in banks	\$15,000.00
U.S. Government securities (Thrift Savings Plan)	\$81,772.86
Listed securities (see Schedule A)	\$533,551.73
Unlisted securities--add schedule	0
Accounts and notes receivable	0
Real estate owned (see Schedule B)	\$1,255,970.00
Real estate mortgages receivable	0
Autos and other personal property (see Schedule C)	\$69,750.00
Life insurance (see Schedule D)	
Cash Surrender Value of Mass Mutual Policy	\$9,988.87
Other assets:	
20 acres of farmland in Pullman, WA	\$28,000.00
<b>TOTAL ASSETS:</b>	<b>\$1,994,033.46</b>

**LIABILITIES:**

Notes payable to banks-secured (Home Equity Loan)	\$60,217.00
Notes payable to banks-unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	0
Unpaid income tax	0
Other unpaid income and interest	0
Real estate mortgages payable (see Schedule B)	\$676,891.00
Chattel mortgages and other liens payable	0
Other debts	0
<b>TOTAL LIABILITIES</b>	<b>\$737,108.00</b>
<b>NET WORTH:</b>	<b>\$1,256,925.46</b>

GENERAL INFORMATION

Are any assets pledged?	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

SCHEDULE A - Listed Securities

My Retirement Account at Smith Barney:

Washington Mutual Investors Fund Class A	\$1,348.68
Capital Income Builder Fund Class A	\$22,387.45
Capital World Growth and Income Fund Class A	\$19,689.86
EuroPacific Growth Fund Class A	\$68,009.34
Growth Fund of America	\$72,598.39
Income Fund of America Class A	\$21,440.44
Smallcap World Fund Class A	\$32,435.88
Washington Mutual Investors Fund Class A	\$73,115.77
<b>TOTAL:</b>	<b>\$311,025.81</b>

Spouse's Retirement Account at T. Rowe Price:

Growth Stock	\$58,345.55
Small Cap Value	\$95,143.13
<b>TOTAL</b>	<b>\$153,488.68</b>

Spouse's Roth Conversion IRA at Smith Barney: \$2,626.32

Children's College Funds (529A) at American Funds:  
(Two identical accounts aggregated)

Growth Fund of America	\$21,659.74
Smallcap World Fund	\$5,887.10
Capital World Growth and Income	\$19,037.04
Washington Mutual Investors Fund	\$19,827.04
<b>TOTAL</b>	<b>\$66,410.92</b>

**TOTAL LISTED SECURITIES: \$533,551.73**

SCHEDULE B - Real Estate

## Primary Residence (Washington, DC)

Current value:	\$820,970
Amount of mortgage:	\$437,705

## Residential Rental Property (Washington, DC)

Current value:	\$300,000
Amount of mortgage:	\$239,186

## Vacation / Rental Condominium (Antigua, Guatemala)

Current value: (No mortgage)	\$135,000
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<b>TOTAL VALUE OF REAL ESTATE:</b>	<b>\$1,255,970.00</b>
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<b>TOTAL AMOUNT OF MORTGAGES:</b>	<b>\$676,891.00</b>
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SCHEDULE C - Automobiles and Personal Property

2006 Toyota Prius	\$12,300
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2006 Mazda 5	\$7,450
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General Household Property (est.)	\$50,000
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<b>TOTAL ESTIMATED VALUE OF AUTOS AND HOUSEHOLD PROPERTY:</b>	<b>\$69,750</b>
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SCHEDULE D - Life Insurance

Empire General Term Life Insurance  
Beneficiary = self  
Death benefit = \$750,000

Mass Mutual Variable Universal Life Insurance  
Beneficiary = self  
Death benefit = \$250,000  
Cash Surrender Value = \$9,988.87

Genworth Life and Annuity Term Life Insurance  
Beneficiary = spouse  
Death benefit = \$400,000

1105

AFFIDAVIT

I, Ronald H. Weich, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

March 18, 2009  
(DATE)

M Weich  
(NAME)

Heather Vachon  
District of Columbia

Subscribed and sworn to before  
me this 18<sup>th</sup> day of  
March, 2009

Notary Public  
**NOTARY PUBLIC**  
**DISTRICT OF COLUMBIA**  
**MY COMMISSION EXPIRES OCTOBER 14, 2013**

## QUESTIONS AND ANSWERS

Responses of David F. Hamilton  
 Nominee to the U.S. Court of Appeals for the Seventh Circuit  
 to the Written Questions of Senator Jeff Sessions

1. During his campaign, President Obama announced: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old-and that's the criteria by which I'll be selecting my judges." Which, if any, of these categories do you believe best describes your judicial philosophy as laid out by the President?

**RESPONSE:**

Federal judges take an oath to administer justice without respect to persons and to do equal right to the poor and to the rich. Empathy for all parties – to be distinguished from sympathy – is important in fulfilling that oath. If confirmed, I will apply the law fairly and accurately to all parties before me.

2. In his questionnaire, Judge Gerard Lynch noted that he got several cases wrong and that the appeals court reversed him appropriately. In which of the following cases where your decisions were either reversed or vacated do you believe the appellate court decided the case correctly? Please explain why.

- a. Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994).

**RESPONSE:**

I agree with the Seventh Circuit's reversal, 63 F.3d 581 (7th Cir. 1995). The Seventh Circuit relied heavily on an intervening Supreme Court decision, *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), which provided helpful guidance in applying First Amendment free speech protections (as distinct from free exercise of religion protections) to these issues.

- b. American Amusement Machine Ass'n v. Cottey, 115 F. Supp.2d 943 (S.D. Ind. 2000).

**RESPONSE:**

I recognize the Seventh Circuit's decision, 244 F.3d 572 (7th Cir. 2001), as controlling law within the circuit. I respectfully disagree with it for the reasons stated in my opinion. In summary, I do not believe the Seventh Circuit's opinion gave sufficient weight to parents' interests in limiting their minor children's unsupervised access to extremely violent games in public arcades.

c. **Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005).**

**RESPONSE:**

I have no disagreement with the ultimate reversal on the issue of taxpayer standing, see 506 F.3d 584 (7th Cir. 2007), which was based on an intervening decision by the Supreme Court, *Hein v. Freedom from Religion Foundation*, 551 U.S. 587 (2007), which sharply curtailed reliance on taxpayer standing in Establishment Clause cases.

d. **United States v. McCotry, 2006 U.S. Dist. LEXIS 62777 (S.D. Ind. 2006).**

**RESPONSE:**

On the issue on which my decision was reversed, see 495 F.3d 795 (7th Cir. 2007), whether the police violated a mother's constitutional rights by interrogating her young daughter at public school to pursue a criminal investigation of her mother, I recognize the Seventh Circuit's decision as controlling law within the circuit. I respectfully disagree with it for reasons stated in my opinion.

3. **The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

a. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain.**

**RESPONSE:**

I believe it is an individual right, as held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

b. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

**RESPONSE:**

I have not considered the question before with the kind of care needed to make a court decision. However, I believe the Supreme Court's decision in *District of Columbia v. Heller* did not limit the individual right to the context of military service or hunting, but extended it to traditionally lawful uses of firearms, including defense of property and persons.

**c. What restrictions, if any, do you believe would be constitutional against an individual's Second Amendment rights?**

**RESPONSE:**

The Court's opinion in *District of Columbia v. Heller* made clear that the right is important and that any restrictions on it would need to be justified by powerful reasons. At the same time, the Court said that its decision "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 128 S. Ct. at 2816-17. Lower courts will need to examine those examples of still-valid laws and apply their teachings to other restrictions that are challenged.

**d. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

**RESPONSE:**

I have not had occasion to study the matter, and have not had the benefit of full adversarial presentations of competing views. Since *District of Columbia v. Heller* declined to adopt a particular standard of review for laws regulating gun ownership, possession, and use, lower courts will need to examine the cited examples of still-valid laws and apply their teachings to other restrictions that are challenged.

**e. Do you believe that the Second Amendment should be incorporated against the State?**

**RESPONSE:**

I have not had occasion to study the particular question or the broader case law on incorporation of specific provisions in the Bill of Rights into the liberty protected by the Fourteenth Amendment, and I have not had the benefit of full adversarial presentations of competing views. If the question were presented to me, I would do my best to apply faithfully the doctrines and case law developed in earlier incorporation cases.

**4. Do you believe that the spontaneous questioning of a private citizen by another citizen could ever implicate the Fifth Amendment? If so, please explain.**

**RESPONSE:**

I do not believe so. I understand the Fifth Amendment privilege against self-incrimination to apply to questioning by government actors, not by private individuals acting in an entirely private capacity.

5. In *Video-Home-One, Inc. v. Brizzi*, Civ. No. 105CV1712DFHVSS (Nov. 22, 2005), you granted a temporary restraining order blocking enforcement of an Indiana criminal law that barred the sale or display of sexually explicit material within 500 feet of a church of school. By contrast, you upheld an Indianapolis ordinance that restricted unaccompanied minors' access to violent video games in *American Amusement Machine Ass'n v. Cottey*, 115 F. Supp.2d 943 (S.D. Ind. 2000). In *Cottey*, you wrote that you saw no "principled constitutional difference between sexually explicit material and graphic violence. You were reversed in *Cottey* by the Seventh Circuit.
- a. Your statement in *Cottey* is remarkable next to your decision in *Brizzi*. You stated that there was no "constitutional difference between sexually explicit material and graphic violence," yet you upheld a restriction on graphic violence but enjoined enforcement of an obscenity restriction. Please explain this discrepancy.

**RESPONSE:**

The principal difference between the two cases is that the violent video game case dealt with limits on children's unsupervised access to violent video games in arcades, while the *Video-Home-One* case dealt with the location of stores selling sexually explicit material that is legal for adults to buy or rent. The city's violent video game ordinance contained similar restrictions on children's access to sexually explicit video games. Those restrictions were so clearly constitutional that the industry did not even try to challenge them.

Under controlling Supreme Court precedents discussed in the *Video-Home-One* opinion, restrictions on locations of stores selling legal but sexually explicit materials can be justified based on the so-called "secondary effects" they cause, such as increases in local crime. For the court to have upheld the statute, the state needed to offer evidence showing that businesses like the plaintiff (a general-audience video rental store that had a small collection of sexually explicit videos in a separate, adults-only section) would have such secondary effects on the neighborhood. The state had no such evidence. Instead, the state conceded that the statute was unconstitutional and agreed to a permanent injunction.

6. In an interview with *NUVO: Indianapolis's Alternative Voice*, you discussed procedural rules and appeared to distance yourself from the judicial role described by Chief Justice Roberts during his confirmation hearing. You stated:

"[T]he rules are so complicated that there can be traps for even very capable lawyers. So judges are given some discretion - not in deciding what the rules are, but in how tightly they will be enforced. Reasonable and conscientious judges reach different decisions from time to time. In that sense, the call is not was that a ball or strike. But taking into account what happened and its effect on both parties, what are the practical consequences. . . ."

**I'm alarmed and very troubled by your statement that a judge's job is not to call the game fairly, but instead to be results-oriented. From a procedural perspective it makes little sense to rule on anything other than the law that is clearly set by Congress and to do so consistently between all litigants.**

- a. Please explain your statement and how it comports with the Civil Rules of Procedure and Criminal Rules of Procedure.**

**RESPONSE:**

I did not say that the judge's job is not to call the game fairly, nor did I say that the judge should be "results-oriented" I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them expressly give the judge both the power and the obligation to use discretion in deciding whether to excuse some failures to comply and in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising the discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

- 7. During your hearing, you responded to a question from Senator Cardin that asked you to share "a moment during your career where you stood up for something that was not popular, stood up for people who were disadvantaged, whether it was against government or big companies, that indicated your willingness to step forward in order to protect the rights of individuals." As part of your response, you pointed to your time spent as a District Court judge, stating: "I try not to go out of my way to be unpopular. That's just not the way we decide cases. Sometimes the right result turns out to be the popular result; sometimes the right result is unpopular. You just go with the right result."**
- a. I agree that a judge's decision should not be based on what is popular versus what is unpopular. However, the way that a judge should decide cases is through a correct application of the law to facts - not on what he or she personally believes is the "right result." Please explain how you define the "right result."**

**RESPONSE:**

I define the “right result” as the result that follows from correct application of law to the facts of the case.

8. **In a 2003 speech you made a statement that “part of a judge’s job is to write a series of footnotes to the Constitution.” During your hearing, Senator Coburn asked you about this statement and you stated that: “[A] least to me, the concept of the footnote implies what we’re trying to do is not something new, but work out the details of how those principles apply to new situations.”**
- a. **Your reference to judge-made “footnotes to the Constitution” is very confusing to me. Please list and describe all the “footnotes” which you believe you have added to the Constitution during your 14-year tenure on the bench.**

**RESPONSE:**

The phrase “footnotes to the Constitution,” described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not “add” footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

- b. **Are any of the “footnotes” that you added contrary to the express language or original intent of the Founding Fathers?**

**RESPONSE:**

I have not added footnotes to the Constitution. I believe the constitutional decisions I have made have been consistent with the express language and original intent of the Founding Fathers.

- c. **In which areas do you believe “footnotes” remain to be written in the Constitution?**

**RESPONSE:**

I do not believe judges write footnotes into the Constitution. Judges will continue to decide the constitutional cases that come before them.

9. **During your hearing, Senator Coburn asked you whether you believed courts should look to international law in interpreting the Constitution. In response, you stated:**

**“There are situations that we’ve seen in which the Supreme Court or other courts, in struggling with a difficult question, will look to guidance from wise commentators from many places, professors from law schools, experts in a particular fields who have written about it. And in recent years the Supreme Court has started to look to some courts from other countries where some members of the court may believe that there is some wisdom to be gained. As long as it’s confined to something similar to citing law professors’ articles, I don’t have a problem with that, but I think that all of us remember that the Constitution, after all, is the product of a rebellion against a foreign power, and it is an American document that we are interpreting and applying.”**

- a. In which Supreme Court decisions do you believe it was valid for the Court to look for other countries for “some wisdom to be gained”? Please explain.**

**RESPONSE:**

The example I had in mind was from Justice Stevens' dissenting opinion in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 133 (2001), regarding statutory interpretation. Justice Stevens quoted Justice Aharon Barak of the Supreme Court of Israel, who had written “that the ‘minimalist’ judge ‘who holds that the purpose of the statute may be learned only from its language’ has more discretion than the judge ‘who will seek guidance from every reliable source.’” That point is valid in any legal system that requires statutory interpretation. After quoting Justice Barak, Justice Stevens went on to point out that a “method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court's own views of how things should be, but it may also defeat the very purpose for which a provision was enacted.”

- b. Based on your answer to Senator Coburn, do you believe it was appropriate for members of the Supreme Court to look to international law in striking down the death penalty for person under the age of 18 in Roper v. Simmons, 543 U.S. 551 (2005)?**

**RESPONSE:**

No.

10. In Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005), you permanently enjoined sectarian prayers invoking the name Jesus Christ, yet explicitly noted that Muslim clerics could still pray to Allah. Please explain how this comports with Supreme Court precedent by not favoring one religion over another.

**RESPONSE:**

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. Under the reasoning of that case, some official prayers are permissible and some are not. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered “sectarian.” See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be “sectarian” if it “specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)”). Under this reasoning, similarly, a prayer asserting that Mohammed was God’s prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, “Allah,” I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric’s prayers’ content and setting could lead one to conclude that they were sectarian.

11. If standing had been appropriate in Hinrichs, do you believe your opinion should stand?

**RESPONSE:**

Yes, based on the evidence before me showing repeated and consistent sectarian official prayers. On the merits, the decision followed the controlling Supreme Court precedent in *Marsh v. Chambers* and was consistent with all other lower court decisions I knew of addressing comparable practices of official, sectarian prayer. When the Seventh Circuit addressed the merits in the decision on a stay pending appeal, the court agreed with my view of the merits. 440 F.3d 393 (7th Cir. 2006).

12. In United States v. Rinehart, 2007 U.S. Dist. LEXIS 19498 (S.D. Ind. Feb. 2, 2007), you sentenced a 32-year-old defendant to fifteen years in prison for engaging in and video-taping sexual relations with two young girls, one age 16 and one age 17. In your written opinion, you found that the sexual relationship was “consensual.” You disapproved of the fifteen year mandatory minimum sentence and noted that “this court could not impose a just sentence in this case.” Further, you wrote: “The only way that [the defendant’s] punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen.”

**a. Do you stand by your statement?**

**RESPONSE:**

Yes, because of the unusual circumstances detailed in the opinion, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further.

**b. Do you believe it was appropriate for you to urge for clemency in your written opinion? Please explain.**

**RESPONSE:**

Yes. Congress must enact legislation with broad application, and as I explained in the opinion, Rinehart's conduct fell within the letter of the law but did not, in my view, reflect the much more heinous conduct that Congress targeted with the mandatory minimum 15-year sentence. I applied the law in the case, but recognized that the President has the power to grant clemency. My understanding is that it would be unusual for a President to grant clemency in a case without giving the prosecutor and sentencing judge the opportunity to comment on the case. I thought it was appropriate to set out my views while the case was still very fresh in my mind rather than try to remember it years later.

**Responses of David F. Hamilton**  
**Nominee to the U.S. Court of Appeals for the Seventh Circuit**  
**to the Written Questions of Senator Orrin G. Hatch**

1. **Judge Hamilton, I believe that the qualifications to be a federal judge include not only what your resume tells us but also your judicial philosophy. By that I mean your understanding of a federal judge's power and role in our system of government. In a 2003 speech for the dedication of the Birch Bayh Courthouse, you agreed with the notion that "part of our job as judges is to write a series of footnotes to the Constitution." You addressed this briefly in your hearing, but I would like a fuller explanation as well as a few examples of footnotes you have added to the Constitution?**

**RESPONSE:**

The phrase "footnotes to the Constitution," described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not "add" footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

2. **In those remarks, you said that supporters of the Equal Rights Amendment had lost the battle but won the war because the Supreme Court has since taken positions very similar to the ERA. To be honest, I find that observation disturbing because it suggests that it does not matter how the Constitution is changed, whether by the people or by judges. The Supreme Court can amend the Constitution just as much, perhaps even more, by changing its meaning as the people can by changing its words. Do you believe it was legitimate for the Court to accomplish what it would have required the ERA to accomplish? Do you believe that judicial amendments are as legitimate as popular amendments?**

**RESPONSE:**

I believe the development of equal protection law applied to sex discrimination over a series of cases is legitimate, similar to the development of the case law on racial classifications, from the separate-but-equal standard in *Plessy v. Ferguson* to the gradual erosion of that standard and its eventual overruling in *Brown v. Board of Education*. At the same time, of course, the courts are not justified in disregarding amendments adopted under Article V of the Constitution. Both the process of case-by-case adjudication and the Article V amendment processes are constitutionally legitimate, and were both, in my view, expected by the Framers, provided that case-by-case interpretation follows the usual methods of legal reasoning and interpretation. If there were a conflict between the two, an amendment adopted under Article V clearly would take precedence over conflicting case law.

3. **In that same vein, let me ask you about your remarks at a 2001 naturalization ceremony when you spoke about how the temptation to limit freedom can be very strong. You gave examples of limiting an *individual's* freedom of speech, religion, or property. But there is also the *collective* freedom of the people to govern themselves. When judges change the meaning of statutes or the Constitution, they change the law and undermine the ability of the people to govern themselves. I would like your comment on that.**

**RESPONSE:** I agree with your observation about the risk that judges can, if they err, undermine the ability of the people to govern themselves. The role of the courts is to ensure that statutes and constitutional provisions are given their intended scope and effect and are not erroneously narrowed or broadened.

4. **Judge, I have a few questions about some of your decisions. These are also directed at your judicial philosophy, your approach to judging. First, let me ask you about your decision last year in *United States v. Woolsey*. The defendant in that case received a mandatory sentence because of two previous drug felony convictions. You ignored one of those previous convictions because you thought it should have been set aside. As you put it, you treated as having been done what you believed should have been done. I find this stunning. Applying the law to the facts that were actually before you apparently would have led to a result you did not like, so you changed the facts. You, in effect, decided a different case than the one that was before you, I assume in order to reach a result you preferred. The Seventh Circuit unanimously reversed you and stated that judges do not have the authority to decide cases based on their personal views of what is wise or appropriate. I thought that was just a given. What made you think that you could, in effect, make up facts in order to achieve a particular result? Please explain why you thought you had authority to take the approach you did, treating as having been done what had not been, but which you thought should have been, done.**

**RESPONSE:**

When I received the Seventh Circuit's opinion in *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008), I agreed that I had made a mistake in imposing on a 55 year old man a 25 year mandatory sentence rather than a mandatory life sentence. In making that mistake, I was not acting on the basis of personal preferences or beliefs. I was trying to apply to a conviction under the repealed Youth Corrections Act the standards Congress has set forth in 18 U.S.C. § 3553(a) for sentencing and 21 U.S.C. §§ 841 and 18 U.S.C. § 924(c) for mandatory minimum sentences in drug and firearm cases. I agree that judges should not make decisions based on their personal views of what is wise or appropriate.

5. **In your 2005 decision in *Hinrichs v. Bosma*, you held that prayers using “Christ’s name or title” or making specific theological claims about Jesus violated the First Amendment while there was “little risk” in using the name “Allah.” Against the backdrop of the Supreme Court decision upholding the constitutionality of legislative invocations, and since no one need even listen to, let alone participate, in such a prayer, isn’t such regulation of the content of prayers what America’s founders sought to guard against and the sort of “entanglement” with religion that the Supreme Court has warned against?**

**RESPONSE:**

In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court held that official legislative prayers did not violate the Establishment Clause where those prayers had not been used “to proselytize or advance any one, or to disparage any other, faith or belief.” Under the reasoning of that case, some official prayers are permissible and others are not, depending on the content and circumstances. As a district judge, I applied the standard and reasoning of *Marsh v. Chambers*, which required attention to the content and circumstances of the prayers.

**Responses of David F. Hamilton  
Nominee to the U.S. Court of Appeals for the Seventh Circuit  
to the Written Questions of Senator Charles E. Grassley**

1. **In your opinion, what is the role of a judge in society? How would you define "judicial activism?"**

**RESPONSE:**

The role of a judge in our society is to decide cases within the court's jurisdiction according to the law and the evidence.

I would define "judicial activism" as the use of judicial power beyond the clear constraints on the court's jurisdiction, the use of biased fact-finding to reach a preferred result, and decisions that are not based on reasonable interpretations of applicable constitutional, statutory, or regulatory provisions or common law precedents. I would also apply the term to decisions that give too little deference to legislative policy judgments and/or fact-finding.

2. **In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, "judges could and should refuse to enforce federal laws that were 'contrary to the manifest tenor of the constitution.'" The quote "contrary to the manifest tenor of the constitution" is from Federalist Paper 78. What do you think that Hamilton meant when he used the words "manifest tenor of the constitution?"**

**RESPONSE:**

In context, I believe that Hamilton simply meant by the phrase "the manifest tenor of the constitution" the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

- i. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the "manifest tenor of the constitution?"**

**RESPONSE:**

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

- ii. **What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?**

**RESPONSE:**

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

- iii. **What about laws that impose tough mandatory minimums on individuals who possess child pornography?**

**RESPONSE:**

No.

- iv. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. **In *United States v. Rinehart*, you issued a separate written order of judgment and conviction "so that it may be of assistance in the event of an application for executive clemency." In this case, you found the applicable mandatory minimum sentence to be unjust. The defendant, a 32 year-old local police officer had "consensual" sexual relations with two young girls, ages 16 and 17. According to your opinion, the sexual relationships were legal under state and federal law. The defendant, however, took pictures of one of the girls engaged in "sexually explicit conduct" and took videos of him and the other girl engaging in sexual relations. These images were on the defendant's home computer, and he was charged under the Child Protection Act of 1984, which requires a mandatory minimum of 15 years. You sentenced him to that 15 year minimum since you "could not impose a just sentence in this case." You further stated, "The only way that Rinehart's punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen."**

- a. **The Child Protection Act of 1984 passed the House by a vote of 400-1 and passed the Senate by voice vote. Do you believe that the punishments that this law sets forth are unconstitutional?**

**RESPONSE:**

No, I do not believe the punishments are unconstitutional.

- b. **If they are not unconstitutional, shouldn't the judgment of whether or not the punishments are "just," which is clearly a policy matter, be addressed by the elected, legislative branch?**

**RESPONSE:**

Decisions about just punishments begin with the decisions of the legislative branch in enacting the laws. Congress has also enacted legislation requiring judges to consider a number of factors and goals in imposing just sentences, in 18 U.S.C. § 3553(a). Judges have the duty of applying those laws in individual cases.

- c. **Do you stand by your actions in Rinehart?**

**RESPONSE:**

Yes, I imposed the sentence that the law required. Several circumstances made the case unusual, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further. I believe the opinion was correct for the reasons stated in the opinion, pointing out how far Rinehart's conduct was from the more heinous conduct that Congress targeted with the 15-year mandatory minimum sentence.

**Responses of David F. Hamilton  
Nominee to the U.S. Court of Appeals for the Seventh Circuit  
to the Written Questions of Senator Lindsey Graham**

1. **In 2005, you ruled that the prayers offered to open Indiana House sessions were sectarian Christian prayers, in violation of the Establishment Clause. You ruled that the prayers at issue were "expressly and consistently sectarian" and that such prayers may not use "Christ's name or title or any other denominational appeal." In contrast, on a post-judgment motion you ruled that the use of "Allah" in such a prayer would likely not advance a particular religion. After an intervening Supreme Court case, the Seventh Circuit dismissed the case for lack of standing.**

**Please explain why you ruled that using "Allah" in such a prayer would not violate the Establishment Clause, but using "Christ" would. Under your reasoning at the time, would using "Mohammad" in such a prayer have violated the Establishment Clause?**

**RESPONSE:**

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ie]d details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

2. **In 2006, you suppressed evidence obtained through a warrant based on information revealed by a 9-year-old about her mother during questioning by a school social worker. You ruled that there was a violation of the mother's constitutional right of family privacy and integrity under Fourteenth Amendment substantive due process. The Seventh Circuit unanimously reversed your ruling.**

**Given that law enforcement officials had some reason to believe that the child's mother was engaged in illegal activity, please explain why you did not view the government's interest in speaking to the child in this case as compelling, unlike the Seventh Circuit. Given that the child voluntarily confided in the school officials,**

**please explain your ruling that the method with which the evidence was obtained "shocked the conscience."**

**RESPONSE:**

As detailed in my opinion, 2006 WL 2460757 (S.D. Ind. 2006), the child voluntarily told the principal that her mother and her boyfriend would need to get "the stuff" out if school officials visited the home. All further information was obtained when the police used the social worker to question the child for purposes of the police investigation. The police investigation was carried out for the sole purpose of a possible prosecution of the child's mother, without taking steps associated with child protection. The case was a difficult one in an area of constitutional law that does not arise often.

**Responses of David F. Hamilton  
Nominee to the U.S. Court of Appeals for the Seventh Circuit  
to the Written Questions of Senator John Cornyn**

1. In a speech that you gave in 2003 at the dedication of the Birch Bayh United States Courthouse, you said “Judge S. Hugh Dillin of this court has said that part of our job here as judges is to write a series of footnotes to the Constitution. We all do that every year in cases large and small.”<sup>1</sup> Do you think that it is the role of a judge to write “footnotes to the Constitution?” What does that mean to you?

**RESPONSE:**

The phrase “footnotes to the Constitution,” described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. I think it is the role of judges to write such “footnotes to the Constitution,” in this sense of applying the Constitution to the facts of the particular case and adding to the body of case law interpreting the Constitution.

2. In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, “judges could and should refuse to enforce federal laws that were ‘contrary to the manifest tenor of the constitution.’”<sup>2</sup> The quote “contrary to the manifest tenor of the constitution” is from Federalist Paper 78. What do you think that Hamilton meant when he used the words “manifest tenor of the constitution?”

**RESPONSE:**

In context, I believe that Hamilton simply meant by the phrase “the manifest tenor of the constitution” the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

- a. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the “manifest tenor of the constitution?”**

**RESPONSE:**

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

<sup>1</sup> David F. Hamilton, *Dedication of Birch Bayh United States Courthouse*, 37 IND. L. REV. 613 (2004).

<sup>2</sup> David Hamilton, *Remarks Before the Indianapolis Bar Association*, March 18, 2008.

- b. **What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?**

**RESPONSE:**

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

- c. **What about laws that impose tough mandatory minimums on individuals who possess child pornography?**

**RESPONSE:** No.

- d. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

**RESPONSE:**

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. **President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." What role do you believe that empathy should play in a judge's consideration of a case?**

**RESPONSE:**

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

- a. **Do you believe that following "the manifest tenor of the constitution" allows judges to consider empathy in their decision-making?**

**RESPONSE:**

Yes, because empathy is the ability to understand the world from another person's point of view, and I believe that is essential to decision-making that is fair to all parties. Empathy should not be confused with sympathy for one side or another, which has no role in the process.

- b. You are President Obama's first judicial nominee and numerous press reports have asserted that your nomination sets the tone for future judicial nominees. Do you believe that you fall into his mold for federal judges, as described in his quote?**

**RESPONSE:**

Yes, I believe I am the type of judge who will apply the law to the facts in every case fairly and impartially.

- c. According to local practitioners cited in the *Almanac of the Federal Judiciary*, you are "the most lenient of any of the judges in the district." Others quotes include: "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case"; "He goes out of his way to make the defendant comfortable"; "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty." (emphasis added) What is your reaction to these statements?**

**RESPONSE:**

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

**Responses of David F. Hamilton  
Nominee to the U.S. Court of Appeals for the Seventh Circuit  
to the Written Questions of Senator Tom Coburn, M.D.**

1. **President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."**

- **What role do you believe empathy should play in a judge's consideration of a case?**

**RESPONSE:**

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

- **As President Obama's first judicial nominee, do you believe that you fit his criteria? Why, or why not?**

**RESPONSE:**

Yes, because I will continue to do my best to follow the law, to treat all parties who come before me with respect and dignity, and to understand how legal rules or decisions will affect behavior and incentives for different people and institutions.

- **Local practitioners quoted in the Almanac of the Federal Judiciary were quoted as saying: "[Hamilton] is the most lenient of any of the judges in the district." "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case." "He goes out of his way to make the defendant comfortable." "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty."**
- **What is your reaction to these statements?**

**RESPONSE:**

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

2. **In your 1994 response to a confirmation questionnaire, you said that "members of the judiciary have a responsibility to exercise their power with restraint and deference to the elected branches of government, and with appropriate respect and restraint when dealing with state and local governments."**

- **How did your decision to obstruct, for seven years, Indiana's implementation of a statute requiring informed consent for women seeking abortion honor your responsibility to exercise restraint, respect, and deference to the state legislature?**

**RESPONSE:**

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me. That standard gives substantial respect and deference to legislatures, but still requires the court to consider actual evidence of the purpose and effects of a law restricting access to abortions.

3. **Would you agree that, in most basic terms, a judge's role is to interpret the law? If so, why, in a 2006 article, did you take issue with the popular analogy of a judge being like an umpire, calling balls and strikes? Instead, you seemed to advocate a more results-oriented approach by saying: "[T]aking into account what happened and its effects on both parties [and] what are the practical consequences...Judges do have an obligation to see that justice is done."**

**RESPONSE:**

I agree the judge's role is to interpret the law and to be fair to all parties. In the quoted comment in the interview, I was not advocating a "results-oriented approach" to deciding

cases. I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them give the judge both the power and the obligation to use discretion in excusing some failures to comply or in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

4. **The Seventh Circuit chastised your obstruction of Indiana's informed consent statute at issue in *A Woman's Choice v. Newman*. In the reversing opinion, Judge Easterbrook wrote, "[F]or seven years Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in *Casey*, by this court in *Karlin*, and by the fifth circuit in *Barnes*. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since *Casey*...Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences."**

- **What is your response to this criticism? Did you ignore existing precedent to advance your own policy position on abortion?**
- **Do you stand by your decision in the *Newman* case? Do you still believe that Indiana's informed consent requirements create an undue burden for women seeking an abortion?**

**RESPONSE:**

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me concerning the effects of similar laws. The Seventh Circuit found that my factual findings were not clearly erroneous. I did not ignore existing precedent to advance any personal views. To the extent the criticism is based on the time it took to resolve the case, I note that the State chose not to appeal my decisions granting and then modifying a preliminary injunction in 1995 and 1997. After resolving the preliminary injunction issues, I set a prompt trial date. All parties jointly asked me to postpone the trial date on more than one occasion so they could pursue discovery, especially into some complex statistical issues.

I believe my final decision on the merits was correct based on the evidence before me, and based on the applicable case law at that time. I have not seen later evidence on the actual experience under the Indiana law, after the Seventh Circuit's decision, so I could not express an opinion now about whether the law is now imposing an "undue burden."

5. **Some of your statements in your rulings in the Newman case suggest a personal hostility to the law. For example, you complain in your 1997 ruling (980 F. Supp. 962) finally permitting the waiting-period and mandatory-disclosure provisions of the law to go into effect that these provisions "appear likely to be useless, patronizing, and annoying, and there is no evidence that these provisions will actually serve any constitutionally legitimate purpose."**
- **How would you characterize that statement today, upon reflection?**
  - **Was your description - of provisions you were finally permitting to take effect - appropriate in your role as a judge?**
  - **Do you stand by your characterization of the waiting-period and mandatory-disclosure provisions as "useless, patronizing, and annoying"?**
    - **Why, specifically, do/did you believe that it is "useless, patronizing, and annoying" for a pregnant woman considering abortion to be informed of:**
      - i. **the name of the physician performing the abortion?**
      - ii. **the nature of the proposed abortion procedure?**
      - iii. **the risks of and alternatives to the abortion?**
      - iv. **the probable gestational age of her baby?**
      - v. **the medical risks associated with carrying the baby to term?**
      - vi. **medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care?**
      - vii. **that adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care?**

**RESPONSE:**

The quoted phrase reflects my view of the evidence before me as the issues were framed by the parties, not a personal policy preference. The parties and I all took the view that evidence of benefits of the challenged law, or lack of benefits, could be relevant in applying the "undue burden" standard or other standards that other Justices concluded were more appropriate. The parties presented evidence on that question of benefits, and I

made factual findings based on that evidence. The evidence indicated that most women seeking abortions gave the decision careful thought and that the doctors and clinics in Indiana were taking effective steps to ensure that all women were aware of their alternatives and had made a considered decision before having an abortion. The State had ample opportunity to present contrary evidence, subject to adversarial testing in the courtroom, showing that the informational requirements and waiting period would address real problems. The State was not able to do so, as I explained in detail. See 904 F. Supp. at 1450-52; see also 132 F. Supp. 2d at 1175 (State's attorney was unable to identify any evidence tending to show that the information requirements and waiting period actually persuaded women to decide not to have abortions they were considering).

The description of the evidence before me remains accurate with respect to the effects or lack of effects of such requirements on that record. If different evidence were presented to me in another case today, I would give that evidence a fresh look, recognizing that the evidence presented to one district court in one case ten years ago is not the complete word or the last word on the subject.

6. **In *Hinrichs v. Bosma*, you enjoined the Speaker of the Indiana House of Representatives from permitting sectarian prayer, which you ruled included any prayer mentioning the name of Jesus Christ. You wrote: "If the Speaker chooses to continue any form of legislative prayer, he shall advise persons offering such a prayer (a) that it must be non-sectarian and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief, and (b) that they should refrain from using Christ's name or title or any other denominational appeal." You added: "The Speaker has also asked whether, for example, a Muslim imam may offer a prayer addressed to "Allah." The Arabic word "Allah" is used for "God" in Arabic translations of Jewish and Christian scriptures. If those offering prayers in the Indiana House of Representatives choose to use the Arabic Allah ... or any other language's terms in addressing the God who is the focus of the non-sectarian prayers contemplated in *Marsh v. Chambers*, the court sees little risk that the choice of language would advance a particular religion or disparage others."**
- **Following your reasoning in *Hinrichs*, if state legislators in my home state of Oklahoma decided to begin their day with a prayer that made reference to Jesus Christ, you would find that was a violation of the Establishment Clause. Is that correct? Please explain.**
  - **Also following your reasoning in *Hinrichs*, if state legislators in my home state of Oklahoma decided to begin their day with a prayer referencing Allah, you would not find that was a violation of the Establishment Clause. Is that correct? Please explain.**

**RESPONSE:**

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered “sectarian.” See *Lee v. Weisman* 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be “sectarian” if it “specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)”). Under this reasoning, similarly, a prayer asserting that Mohammed was God’s prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, “Allah,” I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric’s prayers’ content and setting could lead one to conclude that they were sectarian.

In the *Hinrichs* case, the finding of an Establishment Clause violation was based not on any one prayer, but on evidence showing a pattern of repeated and consistent sectarian prayers. If the evidence did not show such a pattern in the hypothetical cases you described, the conclusion would not necessarily be the same.

7. **In addition to having Dawn Johnsen as your sister-in-law, from 1999 to 2007 you were on the Board of Visitors of the Indiana University law school, where Ms. Johnsen was on the faculty.**
- a. **Have you ever read any of Ms. Johnsen's writings on abortion? Did you agree with them? Have you discussed them with her?**

**RESPONSE:**

I recall reading one “issue brief” that Professor Johnsen wrote on the subject a couple of years ago. If I recall correctly, I thought it was a concise and accurate description of the history of the Supreme Court’s treatment of the issue, and I recall telling her so after I read it.

- b. **Have you and Ms. Johnsen ever discussed the topic of abortion?**

**RESPONSE:**

I am sure that we have discussed the topic from time to time, most likely in the context of family gatherings.

- c. **Did you and Ms. Johnsen ever discuss your case involving the Indiana informed-consent statute?**

**RESPONSE:**

After a decision was issued in the case, we probably discussed it, but I don't recall any such discussion. She has sometimes read decisions of mine that have attracted some media attention, as this case did. I never sought or received any advice from her about the case.

**WRITTEN QUESTIONS FOR R. GIL KERLIKOWSKE  
NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY  
FROM SENATOR ARLEN SPECTER**

**SOUTHWEST BORDER/ MEXICO**

**QUESTION:**

1. ONE OF THE MOST PRESSING ISSUES WE FACE TODAY IS THE ESCALATING VIOLENCE IN MEXICO BETWEEN DRUG CARTELS AND THE GOVERNMENT. THAT CONFLICT HAS RECENTLY SPILLED OVER INTO THE UNITED STATES. WHAT MEASURES DO YOU BELIEVE WE NEED TO TAKE TO RESPOND TO THIS CRISIS?

**ANSWER:**

**Spillover violence from Mexico into our border states is a serious concern. There are several actions which must be taken, many which I believe are already under way by Federal, state, and local authorities. First, these incidents of spillover violence are crimes which must be thoroughly investigated within the jurisdictions where they are committed and violators must be brought to justice. Secondly, any intelligence which can be gained from suspects captured in the U.S. must be used to further our understanding of the drug cartels and their illegal operations within our borders. Thirdly, close coordination is required with appropriate Mexican officials to ensure they are doing everything they can to catch Mexican criminals before they cross over to the United States. Upon confirmation, I will follow up on these and other issues related to spillover violence.**

**GENERAL DRUG POLICY**

**QUESTION:**

2. PRESIDENT OBAMA PLEDGED DURING HIS CAMPAIGN LAST YEAR THAT HE WOULD ATTEMPT TO "SHIFT" THE PARADIGM" OF DRUG POLICY TO "FOCUS MORE ON A PUBLIC HEALTH APPROACH." DO YOU SHARE THE SAME GOAL OF SHIFTING THE PARADIGM OF DRUG POLICY TOWARD TREATMENT?
  - A. WHAT MEASURES WOULD YOU RECOMMEND TO DO SO?

**ANSWER:**

**I certainly share the same view as President Obama on this matter and I believe we need an expanded conversation about drug policy. I have stated on the record before, the drug problems we face in this country are not problems we can arrest our way out of. In my view there are too many "silos" in our approach to the issues and too many "either, or;" examples would be "enforcement or treatment," "source country eradication or border interdiction." Criminal justice plays a large role in getting people into treatment,**

yet the two systems do not communicate well. Nor do we recognize and take advantage of leveraging resources to support an outcome wherein someone is brought back to society as a productive individual.

In order to be successful, we must employ evidence-based public health policies for the prevention and treatment of drug abuse. The field of public health relies upon sound science to drive its interventions. The same will be true in the work that I will oversee.

The position I seek your confirmation to perform will provide me with some unique authorities, which have been established by the Congress. Included are authorities such that the Director of ONDCP shall:

- consult with and assist State and local governments with respect to the formulation and implementation of National Drug Control Strategy
- seek the support and commitment of State, local, and tribal officials in the formulation and implementation of the National Drug Control Strategy

For the National Drug Control Strategy to be an effective tool, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

3. FEDERAL APPROPRIATIONS FOR DRUG ABUSE TREATMENT THROUGH THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION TOTALED \$2,192,933,000 FOR FY 2009. THIS MARKED AN INCREASE OF \$34,361,000 ABOVE THE FY 2008 LEVEL. DO YOU BELIEVE THE RESOURCES DEDICATED TO THIS GOAL ARE ADEQUATE?
  - A. DO YOU BELIEVE THE AVAILABLE RESOURCES HAVE BEEN PROPERLY ALLOCATED?

ANSWER:

Let me start by saying I am a proponent of drug treatment. It works and it deserves our support. If confirmed, I will oversee the development of the National Drug Control Strategy and Budget. These processes and the products will be tightly linked. I can assure you the Strategy will take into consideration data on treatment need and capacity and budget to reach Strategy goals.

#### BACKGROUND

QUESTION:

4. YOU WERE WIDELY CRITICIZED FOR THE SEATTLE POLICE DEPARTMENT'S RESPONSE TO THE MARDI GRAS RIOTS IN SEATTLE'S PIONEER SQUARE DISTRICT ON FEBRUARY 28, 2001. THE RIOTS LEFT ONE PERSON DEAD—A 20-YEAR-OLD NAMED KRISTOPHER KIME—AND

OVER 70 INJURED. THE CRITICISM REPORTEDLY AROSE FROM YOUR ORDER TO YOUR OFFICERS NOT TO INTERVENE DURING THE RIOTS, AND INSTEAD TO SET UP A PERIMETER AROUND THE RIOTERS. THE CITY OF SEATTLE LATER ACKNOWLEDGED THE DEFICIENCY OF THE POLICE STRATEGY AND SETTLED WITH MR. KIME'S FAMILY FOR NEARLY \$2 MILLION. THIS ISSUE ALSO LED TO A VOTE OF "NO CONFIDENCE" IN YOU BY APPROXIMATELY 88% OF THE SEATTLE POLICE OFFICERS GUILD IN 2002.

A. DO YOU BELIEVE THE CRITICISM YOU RECEIVED IN THIS INSTANCE WAS JUSTIFIED?

ANSWER:

**The Chief of Police is ultimately responsible for the actions of the entire department and for the safety of the people within his/her jurisdiction. Therefore, the criticism of me for the outcome of the disturbance is properly directed.**

B. WHAT HAVE YOU LEARNED FROM THAT INCIDENT? DID YOU CHANGE YOUR TACTICS WITH RESPECT TO SIMILAR INCIDENTS THAT HAVE OCCURRED SINCE THE MARDI GRAS RIOTS?

ANSWER:

**The Seattle Police Department, and all big-city police departments, thoroughly examine the incidents they are involved in and seek to improve their actions. Just as steps were taken after the World Trade Organization demonstration, the Department, along with other cities that experienced Mardi Gras violence (Austin, Texas, Philadelphia, Pennsylvania, and Fresno, California) came together to learn what happened in each jurisdiction. Changes in procedures and tactics were made. Seattle has about 100 demonstrations a year and has not experienced similar problems since.**

C. SOME ATTRIBUTED THE 2002 "NO CONFIDENCE" VOTE TO A PERCEIVED DOUBLE STANDARD IN DISCIPLINE IN THE DEPARTMENT AFTER YOU PUBLICLY DISCIPLINED A LINE OFFICER FOR HIS MISCONDUCT TOWARD A GROUP OF STUDENTS WHO WERE STOPPED FOR JAYWALKING, BUT NEVER DISCIPLINED ANY COMMANDERS OVER THE MARDI GRAS INCIDENT. DO YOU BELIEVE THAT CRITICISM WAS JUSTIFIED?

ANSWER:

**Attached is a statement issued by me shortly after the Mardi Gras disturbance. Specifically regarding Mardi Gras 2001, neither the Incident Commander (a Precinct Captain and former SWAT commander) nor the Field Commander (an assistant chief, former Marine helicopter pilot in Vietnam) was disciplined because they did not violate**

department rules. They prepared for the incident, they planned for the incident, they were on-scene the entire time and they made decisions and issued orders based upon the best information available to them. Neither option: dealing with sporadic fights or firing tear gas and risking panic in an alcohol-fueled crowd on streets lined with plate glass storefronts, provided a right answer.

**QUESTION:**

5. IN 2007, THE MINORITY EXECUTIVE DIRECTORS COALITION, AN ALLIANCE OF 80 PUBLIC INTEREST ORGANIZATIONS, CALLED FOR YOUR RESIGNATION DUE TO YOUR HANDLING OF SEVERAL POLICE MISCONDUCT CLAIMS. THE PRINCIPAL GRIEVANCE STEMMED FROM YOUR REPEATED REVERSALS AND REDUCTIONS OF DISCIPLINARY RECOMMENDATIONS MADE BY THE SEATTLE POLICE DEPARTMENT'S OFFICE OF PROFESSIONAL ACCOUNTABILITY WITHOUT EXPLAINING IN WRITING YOUR REASONS FOR DOING SO.
- A. DO YOU BELIEVE THIS CRITICISM WAS FAIR? IN RETROSPECT, COULD YOU HAVE DONE BETTER TO RETAIN THE CONFIDENCE OF THE COMMUNITY YOU SERVED?

**ANSWER:**

The criticism was not fair. The president of the Urban League and the past president of the NAACP also held a joint press conference, along with other community members, in support of my leadership of the department. The high level of confidence for the Department I am responsible for is shown in the bi-annual citizen surveys, posted on the Department's Website. The surveys reflect the strategy used to improve public confidence and trust in the police and enhance community-police relations.

- B. HOW DID YOU RESPOND TO THIS STRONG CRITICISM? DID YOU TAKE STEPS TO CHANGE HOW YOU HANDLE MISCONDUCT CLAIMS?

The Police Chief, by law, is the person responsible for making discipline decisions. I implemented civilian oversight in the Department when I became Chief. Every oversight system needs to be examined and refined based on experience, changes in the law, and court decisions. The Mayor appointed a panel to review the system and a number of recommendations to improve it were made. The final result, however, did not alter the decision-making authority of the Chief which supports the manner in which I carried out those responsibilities over the last eight years.

**MARIJUANA**

## QUESTION:

6. ACCORDING TO THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML), THE SEATTLE POLICE DEPARTMENT DOES NOT INTERFERE WITH THE ANNUAL HEMPFFEST IN THE CITY—WHERE THOUSANDS OF PEOPLE OPENLY CONSUME CANNABIS IN THE PRESENCE OF POLICE OFFICERS AND OFFICERS DO NOT “HARASS” (IN THE WORDS OF THE ORGANIZATION) CITIZENS WHO POSSESS, CRAFT, AND SELL MARIJUANA PARAPHERNALIA.

A. DID YOU EVER DIRECT OFFICERS TO TOLERATE MARIJUANA USE IN THIS MANNER?

## ANSWER:

**I have not directed officers to tolerate open marijuana use at Hempfest. Hempfest has been in existence in Seattle since 1991, long before I became Chief of Police. A precinct Lieutenant oversees the event and directs the small number of officers (about twenty) on how to police the event. The event is policed similarly to the way law enforcement agencies across the country police rock concerts. Public safety and protection of people is the primary concern at Hempfest and other large-scale public events in the city. There have been virtually no problems involving violence, fights, disturbances, or injuries over the course of the Hempfest weekends.**

B. HAVE YOU DONE ANYTHING TO ENCOURAGE SUCH A POLICY OF NON-ENFORCEMENT?

## ANSWER:

**As stated above, I would not characterize the policing of Hempfest as a policy of non-enforcement. Police actions have been taken and arrests have been made at Hempfest. Seattle police officers continue to arrest people for marijuana possession.**

C. WAS YOUR POLICY REGARDING THE HEMPFFEST DIFFERENT PRIOR TO THE PASSAGE OF A 2003 REFERENDUM THAT MADE MARIJUANA PROSECUTION A LOW LAW ENFORCEMENT PRIORITY? IF YES, HOW SO?

## ANSWER:

**No.**

D. DO YOU BELIEVE THERE IS A DISTINCTION BETWEEN MAKING MARIJUANA PROSECUTIONS A LOW LAW ENFORCEMENT

PRIORITY AND PERMITTING OFFICERS TO IGNORE CRIMES  
COMMITTED IN PLAIN SIGHT?

ANSWER:

**The referendum had almost no effect on changing law enforcement practices in Seattle in terms of marijuana offense in Seattle. It should be made clear that the referendum, which I opposed, is focused on individual incidents and not on events such as Hempfest. Police actions have been taken and arrests have been made at Hempfest. Seattle police officers continue to arrest people for marijuana possession.**

- E. DO YOU AGREE THAT NOT ENFORCING A CRIME COMMITTED IN PLAIN SIGHT WHERE VIRTUALLY NO EFFORT IS REQUIRED TO FIND THE ACTIVITY SENDS THE MESSAGE THAT THERE IS AN ALMOST COMPLETE DISREGARD FOR SUCH LAWS AMONG THOSE CHARGED WITH LAW ENFORCEMENT?

ANSWER:

**Not enforcing a crime committed in plain sight would send an inconsistent message. However, the premise of this question, as related to Hempfest, misinterprets the event and the policing activities that occur during and surrounding the event.**

QUESTION:

7. THE LEADERSHIP OF GROUPS LIKE NORML AND THE SEATTLE HEMPFEFEST HAVE EXPRESSED SUPPORT FOR YOUR NOMINATION AS A STEP IN THE RIGHT DIRECTION. THAT IS AN UNUSUAL DEVELOPMENT FOR SOMEONE NOMINATED TO BE THE NATION'S DRUG CZAR. IN HIS STATEMENT ON YOUR NOMINATION, THE DEPUTY DIRECTOR OF NORML NOTED THAT "THERE ARE NOW FEWER MARIJUANA-RELATED ARRESTS IN SEATTLE THAN IN VIRTUALLY ANY OTHER MAJOR CITY IN THE UNITED STATES."<sup>1</sup>
- A. DO YOU BELIEVE THE U.S. SHOULD PLACE A LOW PRIORITY ON ENFORCEMENT OF MARIJUANA CRIMES?

ANSWER:

**No. For example, trafficking of marijuana is a serious offense and, I believe, that violators of the law should be held to account; I believe the government should continue to vigorously enforce all applicable laws. In addition, marijuana cultivation on Federal public lands poses a significant public safety threat and must remain an enforcement priority.**

<sup>1</sup> Statement of NORML Deputy Director Paul Armentano on the Kerlikowske nomination, Feb. 12, 2009.

- B. ARE THERE ANY OTHER CATEGORIES OF DRUG CRIMES THAT SHOULD BE OF LOWER PRIORITY THAN MARIJUANA CRIMES?

ANSWER:

**One of the reasons I opposed the referendum in Seattle is that I do not believe it is productive criminal justice or effective public policy to rank order criminal offenses. Nevertheless, I support directing limited resources to target drug trafficking.**

QUESTION:

8. ON MARCH 19, ATTORNEY GENERAL HOLDER STATED: "GIVEN THE LIMITED RESOURCES THAT WE HAVE, OUR FOCUS WILL BE ON THE PEOPLE, ORGANIZATIONS THAT ARE GROWING, CULTIVATING SUBSTANTIAL AMOUNTS OF MARIJUANA AND DOING SO IN A WAY THAT'S INCONSISTENT WITH FEDERAL AND STATE LAW."<sup>2</sup> IF CONFIRMED, WILL YOU DISCOURAGE THE PROSECUTION OF MARIJUANA DISTRIBUTORS IN JURISDICTIONS WHERE THEY VIOLATE FEDERAL BUT NOT STATE LAW?

ANSWER:

**Not being a member of the Administration I have not had an opportunity to confer with the Attorney General about this. All law enforcement agencies, including federal entities, direct their finite resources to target the greatest threats. However, I believe that violators of the law should be held accountable and federal laws should be enforced.**

#### NEEDLE EXCHANGE

QUESTION:

9. SEATTLE HAS ONE OF THE NATION'S LARGEST NEEDLE EXCHANGE PROGRAMS. KRIS NYROP, FORMER DIRECTOR OF SEATTLE'S NEEDLE EXCHANGE GROUP STREET OUTREACH SERVICES, SAYS THAT "IT HAS BEEN A LAISSEZ-FAIRE THING AND THE POLICE BASICALLY LEAVE NEEDLE EXCHANGES ALONE."<sup>3</sup>

<sup>2</sup> Attorney General Signals Shift in Marijuana Policy, States News Service, Mar. 19, 2009.

<sup>3</sup> The Stranger blog, Feb. 18, 2009, at <http://www.thestranger.com/seattle/good-luck-and-good-riddance/Content?oid=1118926>.

A. DOES THAT STATEMENT FAIRLY REFLECT YOUR POSITION TOWARD NEEDLE EXCHANGE PROGRAMS AS CHIEF OF POLICE IN SEATTLE?

ANSWER:

**Needle exchange programs have been in existence in Seattle for many years. When I was police commissioner in Buffalo there was also a needle exchange program. From a law enforcement perspective, they are not a cause of significant public safety problems.**

B. WHAT DIFFERENT POLICY (IF ANY) WOULD YOU PROPOSE FOR THE NATION WITH RESPECT TO NEEDLE EXCHANGES?

ANSWER:

**The Administration embraces a comprehensive approach for drug abuse prevention, treatment, and care, including efforts to reduce the transmission of HIV/AIDS and other blood-borne diseases. I do as well.**

**Needle exchange programs have been proven to reduce the transmission of blood borne diseases. A number of studies conducted in the U.S. have shown needle exchange programs do not increase drug use. I understand that research has shown these programs, when implemented in the context of a comprehensive program that offers other services such as: referral to counseling, healthcare, drug treatment, HIV/AIDS prevention, counseling and testing, are effective at connecting addicted users to drug treatment.**

**If confirmed, I will certainly strongly consider the current research on the subject.**

**My answer should not be interpreted to mean I support drug legalization, instruction in the "safe" use of drugs, or the provision of paraphernalia that facilitates drug use but does not reduce disease transmission.**

QUESTIONS FOR R.GIL KERLIKOWSKE  
FROM SENATOR HATCH

MARIJUANA/LEGALIZATION

**QUESTION:**

1. TRADITIONALLY, MOST OF THE MARIJUANA AVAILABLE ON U.S. STREETS HAS BEEN TRAFFICKED OVER THE BORDER FROM MEXICO AND SMALLER QUANTITIES FROM CANADA. RECENTLY, HOWEVER, DRUG TRAFFICKING ORGANIZATIONS ARE EXPANDING CULTIVATION OPERATIONS INTO THE UNITED STATES, REDUCING RISKY BORDER CROSSINGS AND INCREASING PROFIT MARGINS.

THIS DANGEROUS TREND MEANS THAT VIOLENT MEXICAN DRUG TRAFFICKING ORGANIZATIONS SET UP ENVIRONMENTALLY DESTRUCTIVE GROW OPERATIONS ON PUBLIC LANDS, AND AS CANADA-BASED ASIAN CRIMINAL ORGANIZATIONS SET UP HAZARDOUS INDOOR GROW OPERATIONS IN AMERICAN COMMUNITIES IN OUR NORTHWEST.

THE DRUG ITSELF HAS BECOME FAR MORE DANGEROUS AS WELL, WITH THE AVERAGE POTENCY OF THC UP MORE THAN 150 PERCENT SINCE 1983.

TWO WEEKS AGO, THE PRESIDENT WAS ASKED IN A VIRTUAL TOWN HALL MEETING ABOUT THE LEGALIZATION OF MARIJUANA. HE PROVIDED, IN MY OPINION, A WEAK RESPONSE SAYING THAT LEGALIZATION OF MARIJUANA "WOULDN'T GROW THE ECONOMY." BACK IN JANUARY 2004, HOWEVER, HE FLATLY OPPOSED MARIJUANA LEGALIZATION. I DO NOT KNOW HOW ANYONE COULD EVALUATE LEGALIZING DRUGS BASED ON ECONOMICS.

WHAT ARE YOUR THOUGHTS ON THE LEGALIZATION OF MARIJUANA?

**ANSWER:**

**Marijuana is a dangerous drug and is listed as Schedule 1 in the Controlled Substances Act. The President opposes legalization, as do I.**

SOUTHWEST BORDER/ MEXICO

**QUESTION:**

2. LAW ENFORCEMENT AT ALL LEVELS IS RESPONDING TO THE THREAT OF MEXICAN CARTEL VIOLENCE AND INCREASING THEIR COOPERATION ON THE BORDER WITH MEXICO. THAT IS THE POINT OF ENTRY FOR MUCH OF THE MARIJUANA, COCAINE, METHAMPHETAMINE, AND HEROIN AVAILABLE ON U.S. STREETS.

THE MEXICAN GOVERNMENT HAS MOUNTED AN UNPRECEDENTED EFFORT TO COMBAT THE DRUG TRAFFICKING ORGANIZATIONS THAT EXPLOIT OUR SHARED BORDER.

TO TARGET ILLEGAL WEAPONS THAT FUEL VIOLENCE ON THE SOUTHWEST BORDER, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES INITIATED PROJECT GUNRUNNER.

THIS EFFORT DEDICATES SPECIAL AGENTS, INDUSTRY OPERATIONS INVESTIGATORS, AND INTELLIGENCE RESEARCH SPECIALISTS, AS WELL AS FACILITATES THE SHARING OF ETRACE TECHNOLOGY FOR TRACING OF CRIME GUNS IN ORDER TO REVEAL SMUGGLING TRENDS AND GENERATE CRUCIAL INVESTIGATIVE LEADS. ICE IS WORKING WITH THE MEXICAN GOVERNMENT TO STEM ARMS TRAFFICKING THROUGH OPERATION ARMAS CRUZADAS.

AS PART OF THIS INITIATIVE, DHS AND MEXICAN AGENCIES PARTNER IN UNPRECEDENTED BI-LATERAL INTERDICTION, INVESTIGATION, AND INTELLIGENCE-SHARING ACTIVITIES TO IDENTIFY, DISRUPT, AND DISMANTLE CROSS-BORDER ARMS SMUGGLING NETWORKS.

IF CONFIRMED AS THE DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY, WHAT STRATEGIES WILL YOU EMPLOY TO ADDRESS THE THREATS OF DRUG TRAFFICKING ORGANIZATIONS FROM MEXICO INTO YOUR NATIONAL DRUG CONTROL STRATEGY?

**ANSWER:**

**Upon confirmation, I would work very aggressively to support the details of the President's initiatives to protect and secure the border and assist Mexico in combating drug-related violence. Secretary Napolitano has indicated that ONDCP should play a greater role in working with DHS on this problem and I look forward to a partnership with DHS. Reviewing policies and programs to ensure our border activities are well implemented would be a high priority for me if I am confirmed. I believe one strength I can bring to the Office of National Drug Control Policy is my close relationship with local law enforcement over many years. The chiefs in Houston, Dallas, San Antonio, Austin, Tucson, Phoenix and San Diego are all members of the Major Cities Chiefs Association, where I currently serve as president. I believe state and local law enforcement can play a larger role and their practical expertise can be used to a greater degree against the challenges on our Southwest border. And, as Secretary Clinton pointed out, U.S. consumption of illegal drugs is an important contributing factor to the violence in Mexico. If confirmed, I will also work with my colleagues in the prevention and treatment communities to reduce the demand for drugs in the U.S. and abroad.**

**HIDTA**

**QUESTION:**

3. FEDERAL LAW AUTHORIZES THE ONDCP DIRECTOR TO DESIGNATE AREAS WITHIN THE UNITED STATES WHICH EXHIBIT SERIOUS DRUG TRAFFICKING PROBLEMS AND HARMFULLY IMPACT OTHER AREAS OF THE COUNTRY AS HIGH INTENSITY DRUG TRAFFICKING AREAS. THAT DESIGNATION BRINGS ADDITIONAL FEDERAL RESOURCES.

THIS APPROACH INVOLVES LAW ENFORCEMENT ORGANIZATIONS WITHIN THE HIGH INTENSITY AREAS, CONSULTATION WITH CABINET DEPARTMENTS, AND HEADS OF NATIONAL DRUG CONTROL PROGRAM AGENCIES, AS WELL AS GOVERNORS. HIGH INTENSITY AREAS CURRENTLY EXIST IN ALL FIFTY STATES, INCLUDING FIVE ALONG THE SOUTHWEST BORDER. THESE EFFORTS HAVE IDENTIFIED 5700 DRUG TRAFFICKING ORGANIZATIONS AND 89 PERCENT OF ITS ACTIVITIES ARE DIRECTED AT MARIJUANA AND COCAINE INVESTIGATIONS.

JUST FOUR YEARS AGO, SOME PROPOSED TAKING CONTROL OF THIS IMPORTANT PROGRAM AWAY FROM THE DRUG CZAR'S OFFICE.

WITH YOUR EXPERIENCE AND CAREER IN LAW ENFORCEMENT, WHAT ARE YOUR THOUGHTS ON KEEPING THIS LAW ENFORCEMENT PROGRAM UNDER THE CONTROL OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY?

**ANSWER:**

**The High Intensity Drug Trafficking Areas are an effective mechanism to bring state, local, and Federal resources together to reduce drug trafficking. They also provide a forum for the prevention and treatment sector to interact with criminal justice decision-makers.**

**I currently serve on the Executive Board of the Northwest HIDTA and believe the HIDTA Program must continue to be a part of ONDCP. I think it is important for the HIDTA Program to remain under the control of ONDCP for the very reasons it was originally placed there. Management of the HIDTA Program at ONDCP facilitates the coordination and collaboration among the various Federal, state and local agencies which must work together to address drug trafficking threats.**

**PRESCRIPTION DRUGS**

**QUESTION:**

4. MY HOME STATE OF UTAH IS #1 IN THE COUNTRY FOR PRESCRIPTION DRUG ABUSE UNDER AGE 25. PARENTS UNWITTINGLY BECOME PASSIVE PUSHERS BY LEAVING ADDICTIVE PRESCRIPTION DRUGS, SUCH AS THE PAINKILLERS OXYCONTIN AND VICODIN, AROUND THE HOUSE. A RECENT OFFICE OF NATIONAL DRUG CONTROL POLICY SURVEY INDICATED THAT TWO-THIRDS OF TEENS WHO KNOW A PRESCRIPTION DRUG ABUSER SAY THE DRUGS COME FROM HOME, FRIENDS, OR CLASSMATES.

TEENS WHO ABUSE PRESCRIPTION OR OTC DRUGS MAY BE ABUSING OTHER SUBSTANCES AS WELL. FOR THE FIRST TIME, MORE TEENS CAN GET PRESCRIPTION DRUGS MORE EASILY THAN ALCOHOL.

I HAVE MET WITH TEENS FROM UTAH WHO ARE IN RECOVERY, KIDS WHO ENDED UP IN THE EMERGENCY ROOM AFTER BINGING ON DRUGS AND ALCOHOL. THE STATE OF UTAH HAS DEVELOPED A VIGOROUS PRESCRIPTION DRUG EDUCATION CAMPAIGN TO ADDRESS THIS FORM OF ABUSE.

THE OFFICE OF NATIONAL DRUG CONTROL POLICY RUNS AN EXCELLENT MEDIA CAMPAIGN CALLED ABOVE THE INFLUENCE TO EDUCATE TEENS ABOUT DRUG AND ALCOHOL USE.

AS DIRECTOR, HOW WOULD YOU DIRECT THE STRATEGY TO BRING THIS LARGELY UNRECOGNIZED DRUG ISSUE TO THE FOREFRONT?

**ANSWER:**

**I agree with you that the illicit use of prescription drugs is a growing problem in our country. Educating youth and parents about the dangers of abusing these drugs is critically important to reducing this threat.**

**Beyond the education of the public, there are numerous, complex issues related to production, distribution, and disposal which require the expertise of DEA, EPA, HHS, private industry, and others to develop an intelligent approach to limiting diversion and abuse of prescription drugs. If confirmed as the Director of National Drug Control Policy, I will use my position to ensure all of these agencies and parties come together so the Administration can develop effective and realistic strategies to deal with this issue.**

**ONDCP's Media Campaign should use empirical data to determine the drugs which are most problematic among teens. Therefore, while prescription drug abuse should not be the Campaign's exclusive focus, it should be an integral part of the Campaign, at present, to be relevant and responsive to current teen use patterns.**

**When we see a rise in teen use of any particular drug, we need to address that problem using all of the tools that we have available, reflecting a balanced strategy that includes prevention, treatment, and law enforcement.**

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR R. GIL KERLIKOWSKE TO  
BE DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY  
APRIL 1, 2009

GENERAL

QUESTION:

- (1) WHAT DO YOU BELIEVE IS THE ROLE OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP)?

ANSWER:

The position I seek your confirmation to perform will provide me with some unique authorities, which have been established by the Congress. Among others, I would be required to:

- Assist the President in the establishment of policies, goals, objectives, and priorities for the National Drug Control Program;
- Make recommendations to the President regarding the changes in the organization, management, and budgets of National Drug Control Program agencies;
- Consult with and seek the support of State, local, and tribal officials and governments with respect to the formulation and implementation of National Drug Control Policy and their relationships with the National Drug Control Program agencies and
- Provide budget recommendations that are consistent with the priorities of the President under the National Drug Control Strategy, to the heads of departments and agencies with responsibilities under the National Drug Control Program.

These, in my mind, are the most critical and cross-cutting of the authorities of the office. I have stated on the record before that the drug problems that we face in this country are not problems that we can arrest our way out of. In order to be successful, we must employ evidence-based public health policies for the prevention and treatment of drug abuse in addition to a bold but carefully-designed enforcement strategy. The field of public health relies upon sound science to drive its interventions.

It is the role of ONDCP to create a process to gather all available data, hear from all stakeholders, and to assess the current landscape to ensure that the entire Federal approach to the drug issue is wholesome, sound, flexible, and evidence-based.

For the National Drug Control Strategy to be an effective tool, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

In addition to the development of the Strategy, it would also be my responsibility to coordinate and oversee its implementation. The unique position inside the Executive Office of the President gives ONDCP the ability to constantly monitor the Strategy's implementation and make adjustments as necessary.

QUESTION:

(2) WHAT KIND OF LEADERSHIP WILL YOU PROVIDE AT ONDCP?

**ANSWER:**

**Upon confirmation I will be a visible and accessible leader who will value input, debate, and discussion from career personnel.**

**I will provide direction and support for the Agency and work diligently to restore ONDCP to a prominent role.**

**QUESTION:**

(2) WHAT QUALIFICATIONS DO YOU HAVE TO EFFECTIVELY RUN A FEDERAL AGENCY?

**ANSWER:**

**I have led the Seattle Police Department for nine years, an agency of 2,000 employees with a budget of \$235million. Crime in Seattle is at a 40-year low. I held an SES Career Service position as the Deputy Director of the Office of Community Oriented Policing Services (COPS) where I was responsible for \$6 Billion in Federal assets. Previously I led the Buffalo Police Department for almost five years. I was a visiting fellow for one year to the National Institute of Justice (DOJ) and I have served on numerous federal panels and advisory committees. Such career experience uniquely positions me to run the ONDCP.**

**QUESTION:**

(4) WHAT QUALIFICATIONS DO YOU HAVE TO FORMULATE AND IMPLEMENT AN EFFECTIVE NATIONAL DRUG CONTROL POLICY?

**ANSWER:**

**I bring 36 years of experience as a police officer dealing with drug problems in five different law enforcement agencies and localities. I was a detective in a narcotics unit and commanded a narcotics unit. I serve on the Board for the Northwest HIDTA. I have been the President of the Police Executive Research Forum, a group of police executives, and I have been elected twice as president of the Major Cities Chiefs Association (the 56 largest city and county law enforcement agencies in the U.S. and the seven largest Canadian cities). I have lectured throughout the United States and in many foreign countries on law enforcement issues.**

**QUESTION:**

1) WHAT DO YOU SEE AS THE BIGGEST CHALLENGE FOR THE NEW DIRECTOR AT ONDCP?

**ANSWER:**

**I believe it is paramount for the Director to restore ONDCP to the primary role of policy development and coordination for all of the federal efforts related to drug control. It will be incumbent upon me to utilize the position to bring this issue to the public in an understandable and meaningful way.**

**QUESTION:**

**(6) WHAT DO YOU SEE AS YOUR MOST SIGNIFICANT ACCOMPLISHMENT?**

**ANSWER:**

**Leaving Buffalo and Seattle as significantly safer cities than when I started. Specifically, crime in Seattle is at a forty year low.**

**QUESTION:**

**(7) IF CONFIRMED, WHAT IS YOUR PLAN FOR ONDCP TO REDUCE THE DEMAND FOR NARCOTICS IN THE UNITED STATES?**

**ANSWER:**

**Preventing drug abuse and addiction as well as facilitating improvements in treatment capacity and effectiveness is critical to reducing drug-related crime in the United States and other countries. The nominee for Deputy Director is a recognized researcher and administrator in these areas and I would rely heavily on him for advice in this area. One key to improvement is to eliminate or reduce the silos which exist among these groups, from neighborhood-based prevention programs, to Drug Courts, to treatment facilities and for them to realize and recognize that by leveraging resources and collaborating in meaningful ways that greater goals in these areas can be achieved.**

**QUESTION:**

**(8) IN THE PAST FEW YEARS, MANY OF ONDCP'S RELATIONSHIPS WITH OTHER FEDERAL AGENCIES AND NONPROFITS HAVE ERODED.**

**A) IF CONFIRMED, HOW DO YOU PLAN TO REVIVE AND IMPROVE THESE RELATIONSHIPS?**

**ANSWER:**

**I have long recognized that to be successful as a police chief you have to rely on and work collaboratively with, other governmental and non-governmental entities. Establishing working relationships and trust is critical. Fortunately, I have a well-documented reputation for establishing such relationships and partnerships. If confirmed,**

**establishing a robust inter-agency process federally and reaching out to re-establish valid working relationships with non-governmental entities and stakeholders will be a priority.**

- B) DO YOU ENVISION ONDCP'S ROLE AS AN OVERSEER OF OTHER PROGRAMS, OR AS A COLLABORATOR WORKING COOPERATIVELY WITH OTHER AGENCIES TOWARD COMMON GOALS?

**ANSWER:**

**Meeting with agency heads and helping them understand our role and demonstrating willingness to work together is important. Congress has given the ONDCP powerful authorities which can be triggered to ensure that federal components work toward the President's drug strategy. However, it is also important to recognize that if partnerships are formed and clear goals are articulated that those components will work very hard to ensure that they meet the President's directives in a collaborative manner.**

**QUESTION:**

(9) VICE PRESIDENT BIDEN, WHO HELPED WRITE THE LAW THAT CREATED ONDCP, ARGUED AT THAT TIME THAT ONDCP NEEDED TO BE A CABINET-LEVEL POSITION BECAUSE IT WAS NECESSARY TO GIVE THE OFFICE THE VISIBILITY DESERVED. HOWEVER, IT WAS RECENTLY ANNOUNCED THAT PRESIDENT OBAMA WILL BE LOWERING THE OFFICE'S DESIGNATION BELOW THE CABINET LEVEL.

- A) IS THIS A SIGNAL THE OBAMA ADMINISTRATION IS DEEMPHASIZING THE IMPORTANCE OF CONFRONTING THE NATION'S DRUG PROBLEMS?

**ANSWER:**

**No. Whether a position is Cabinet-level or not is less important than whether the director will have a seat at the table when important decisions are being made.**

**I have been assured that I will have access to and support from the President and the Vice President and that is what is critical to ensuring success.**

- B) IF CONFIRMED, DO YOU FEEL THAT YOUR ABILITY TO PLAN A COMPREHENSIVE COUNTER-DRUG STRATEGY WILL BE HINDERED BY LACK OF ACCESS TO THE PRESIDENT? WHY OR WHY NOT.

**ANSWER:**

**Should I be confirmed by the Senate, I have been assured that I will have direct and unfiltered access to both the President and the Vice President on issues of international and domestic drug control policy. I am confident that ONDCP, working within the Executive**

**Office of the President, can effectively and efficiently lead our nation's efforts against illegal drugs.**

**SOUTHWEST BORDER/ MEXICO**

**QUESTION:**

(10) VIOLENCE IN MEXICO RELATED TO DRUG CARTELS HAS ESCALATED. IN 2008, MORE THAN 6,000 PEOPLE DIED IN DRUG-RELATED VIOLENCE IN MEXICO. THIS VIOLENCE HAS THE POTENTIAL TO SPILL ACROSS THE BORDER INTO THE U.S.

THE SECRETARY OF HOMELAND SECURITY AND THE ATTORNEY GENERAL RECENTLY UNVEILED A STRATEGY TO REDUCE CARTEL VIOLENCE AND SMUGGLING ALONG THE SOUTHWEST BORDER. THIS STRATEGY WOULD DOUBLE THE BORDER ENFORCEMENT SECURITY TASK FORCE (BEST) AGENTS AND TRIPLE ANALYSTS ALONG THE BORDER. ADDITIONALLY, THE BUREAU OF ALCOHOL, FIREARMS, TOBACCO, AND EXPLOSIVES WILL RELOCATE 100 AGENTS TO FORM GUNRUNNER IMPACT TEAMS (GRITS) AT THE BORDER. THIS INCREASE IN MANPOWER FROM VARIOUS AGENCIES WILL REQUIRE A NEW LEVEL OF COORDINATION AND COOPERATION AMONG FEDERAL LAW ENFORCEMENT PARTNERS IF IT IS TO BE SUCCESSFUL.

- A) IF CONFIRMED, WHAT ROLE WILL THE OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP) PLAY COORDINATING EFFORTS TO STOP TRAFFICKING AND VIOLENCE CAUSED BY MEXICAN DTOS?

**ANSWER:**

**ONDCP will partner with Federal, state, and local agencies in numerous ways. For example, as the agency charged with coordinating our Nation's National Drug Control Strategy, I will review policies and programs to ensure our border activities are well implemented by agencies with different or overlapping missions. The ONDCP also has budget authorities to ensure departments and agencies dedicate sufficient resources to priority anti-drug missions, such as addressing border drug trafficking and related southbound weapons and bulk currency smuggling. In addition, as the EOP office which directs the National HIDTA Program, I will work to maximize collaboration between state and local agencies and the Federal government.**

- B) DO YOU BELIEVE THAT ONDCP SHOULD HAVE A ROLE IN PLANNING AND TASKING LAW ENFORCEMENT OPERATIONS TO COMBAT MEXICAN DTOS? WHY OR WHY NOT?

**ANSWER:**

**No. As a policy agency ONDCP should not be involved in planning law enforcement operations. ONDCP does play an important policy coordination role that seeks to ensure drug control agencies are effectively and efficiently combating the threat posed by Mexican cartels in a manner consistent with the National Drug Control Strategy.**

- C) DO YOU BELIEVE THAT MEXICO SHOULD BEGIN CONDUCTING IN BOUND SEARCHES OF VEHICLES TO SEARCH FOR ILLEGAL CONTRABAND LEAVING THE U.S.? WHY OR WHY NOT?

**ANSWER:**

**I strongly support a focus on southbound flow of bulk currency and weapons and have been very pleased to learn of Secretary Napolitano's initiatives in this area. Any effort by the Government of Mexico to supplement our own interdiction efforts of southbound flow by increased efforts on their side of the border would be extremely helpful. As in all border interdiction operations, law enforcement authorities must seek to conduct the vital work of cutting off the cartels in a manner which minimizes any negative impact on legitimate trade. However, the days when we or our Mexican partners allow southbound flow out of the U.S. and into Mexico unimpeded must come to an end. Last week the Seattle Police Department sent an officer and an explosive detective K-9 to the S.W. Border at the request of DHS. Other local agencies with these assets have also stepped up to the plate to assist. The border problems do not stop at the border.**

- D) GIVEN THE NEW INITIATIVES INSTITUTED BY THE DEPARTMENT OF JUSTICE AND DEPARTMENT OF HOMELAND SECURITY, DOES THE SOUTHWEST BORDER COUNTERNARCOTICS STRATEGY NEED TO BE AMENDED TO ENSURE THAT ANY GAINS THAT OCCUR AS A RESULT OF THE RECENT INCREASE IN LAW ENFORCEMENT ARE NOT LOST? WHY OR WHY NOT. IF CONFIRMED, WHAT ROLE WOULD ONDCP PLAY IF SUCH AN AMENDED STRATEGY WERE DRAFTED?

**ANSWER:**

**My understanding is that an updated National Southwest Border Counter-Narcotics Strategy is under development by ONDCP, in collaboration with DHS and DOJ, as directed by a pre-existing statutory requirement. If confirmed, I will work to ensure all of the recent initiatives are taken into account in the new strategy.**

**QUESTION:**

**(11) LAST FALL, CONGRESS PASSED A COUNTERNARCOTICS SUPPORT PACKAGE FOR MEXICO KNOWN AS THE MERIDA INITIATIVE. THE MERIDA INITIATIVE PROVIDES FUNDING FOR EQUIPMENT, TRAINING, AND TECHNICAL ASSISTANCE TO MEXICO TO HELP ADDRESS CROSS-BORDER DRUG TRAFFICKING AND**

ORGANIZED CRIME. HOWEVER, MUCH OF THE EQUIPMENT AND ASSISTANCE HAVE BEEN DELAYED, AT THE SAME TIME THAT THE VIOLENCE IN MEXICO HAS ESCALATED.

- A) WHAT ARE YOUR GOALS FOR THE MERIDA INITIATIVE, AND HOW WILL YOU WORK WITH THE OTHER AGENCIES TO IMPROVE COORDINATION OF OUR LIMITED RESOURCES?

**ANSWER:**

**ONDCP is charged by statute to coordinate and oversee implementation of the National Drug Control Policy. If confirmed as Director, the President and Vice President will expect me to ensure that the multiple agencies contributing to our policy implementation are working productively and in harmony. The Secretary of DHS has asked that ONDCP play a great role in the border issues because of the clear connection between illegal drugs and the violence occurring in Mexico and along the Southwest border. I would work quickly with DOJ, DHS, State, DoD, and others to assist in carrying out the President's directive on assisting Mexico in combating drugs and in securing and protecting our border. The Merida Initiative should disrupt the powerful international drug trafficking organizations that prey on the people of Mexico and the United States, and in that context dramatically reduce the level of criminal violence and the availability of illegal drugs.**

#### **MARIJUANA**

**QUESTION:**

(12) IN 2003, SEATTLE PASSED INITIATIVE 75, WHICH DIRECTED THE POLICE TO CONSIDER SIMPLE POSSESSION OF MARIJUANA A LOW PRIORITY. AT THAT TIME, YOU INDICATED THAT THE SEATTLE POLICE DEPARTMENT WOULD PLACE MARIJUANA ARRESTS AS A LOWER PRIORITY THAN ARRESTS FOR OTHER DRUG CRIMES. YOU DID NOT PUBLICLY FIGHT AGAINST INITIATIVE 75 AND APPEARED TO ACQUIESCE TO THE POLICY.

- A) IF YOU ARE CONFIRMED AS DIRECTOR OF ONDCP, WILL YOU AGAIN PUT MARIJUANA AT THE BOTTOM OF YOUR LIST OF PRIORITIES? WHY OR WHY NOT?

**ANSWER:**

**I publicly opposed the initiative. However, all law enforcement agencies and, to my knowledge, prosecutors, deploy resources based on strategic threats. That does not mean enforcing marijuana laws is, or will be, at the bottom of my list of priorities.**

B) IF CONFIRMED, WILL YOU PUBLICLY OPPOSE EFFORTS TO DECRIMINALIZE, LEGALIZE, OR OTHERWISE LOWER MARIJUANA CRIMES ON THE LIST OF COUNTER NARCOTICS PRIORITIES? WHY OR WHY NOT?

**ANSWER:**

**Yes, I will publically oppose the legalization of marijuana.**

C) DO YOU SUPPORT LEGALIZATION OF MARIJUANA? DO YOU SUPPORT EFFORTS TO LEGALIZE ANY CURRENTLY SCHEDULED NARCOTIC? IF SO, PLEASE PROVIDE A LIST AND A DETAILED EXPLANATION.

**ANSWER:**

**No. I agree with the President and do not support the legalization of marijuana.**

D) DO YOU BELIEVE THAT MARIJUANA IS A GATEWAY DRUG? WHY OR WHY NOT?

**ANSWER:**

**I believe that far too many young people in this country use marijuana. Often, marijuana is the first illicit drug that young people use. I support efforts to educate young people about the dangers of illicit drugs, including marijuana.**

E) DO YOU BELIEVE THAT MARIJUANA SHOULD BE ALLOWED FOR MEDICINAL PURPOSES?

**ANSWER:**

**What constitutes safe and effective medicine should continue to be based upon the Food and Drug Administration's review of the appropriate science. Medical evidence does not support the medical efficacy of marijuana being smoked for medicinal purposes.**

F) DO YOU BELIEVE STATE LAWS ALLOWING THE CULTIVATION AND USE OF MARIJUANA CAN BE RECONCILED WITH FEDERAL LAW PROHIBITING SUCH PRACTICES?

**ANSWER:**

**As I understand it, they can and they must. In the Controlled Substances Act Congress created a dual Federal/State enforcement system under which both the Federal government and State governments are able to simultaneously exercise their vital and distinct interests in protecting their citizens from the ravages of illicit drug use and drug**

trafficking. The CSA's dual Federal/State enforcement system is similar to dual systems existing in many other areas of law in which a particular criminal act may trigger both State and Federal prosecution.

G) DO YOU SUPPORT THE SUPREME COURT DECISION IN *GONZALES V. RAICH*, 545 U.S. 1 (2005)? WHY OR WHY NOT? DO YOU AGREE WITH THE OUTCOME? WHY OR WHY NOT?

**ANSWER:**

**As I understand it, the Supreme Court's decision in *Gonzales v. Raich* is the current law of our land. As a result, whether as a law enforcement officer or a Federal official, I am duty bound to honor it and so I do until such time as the supreme law of our land on this subject changes.**

H) WILL YOU ENCOURAGE LAW ENFORCEMENT TO AGGRESSIVELY PROSECUTE MARIJUANA OFFENSES? WHY OR WHY NOT?

**ANSWER:**

**Based on media reports I am aware that the Federal Government's enforcement policy regarding marijuana is in the process of being thoroughly reviewed and revised. I know that some people feel strongly that marijuana helps them when other medications don't work. I also know that there is no current consensus in the medical profession regarding the medical benefits of smoked marijuana. I also know that some people have fraudulently attempted to misuse medical marijuana permits in some states to illegally distribute the drug to people who are not sick, exposing our young people to this dangerous drug and violating the Federal Controlled Substances Act. If confirmed as Director of National Drug Control Policy, I will work closely with Attorney General Holder, DEA and other Federal stakeholders to thoroughly review Federal law, science and medicine and thoughtfully balance the many competing considerations to refine the Administration's marijuana enforcement policy.**

**QUESTION:**

**(13) THE FINANCING OF DRUG CARTELS AND TERRORIST ORGANIZATIONS REMAINS A TOP PRIORITY. I BELIEVE THAT MORE WORK NEEDS TO BE DONE TO REFORM OUR NATION'S ANTI-MONEY LAUNDERING LAWS TO ENSURE WE CUT OFF THE LIFE BLOOD OF CRIMINALS, DTOS, AND TERRORIST ORGANIZATIONS—THEIR FINANCING. WE NEED WIDE RANGING REFORMS TO CURB ABUSES OF OUR FINANCIAL SYSTEM THAT HIDE AND TRANSFER MONEY FROM ILL GOTTEN GAINS. I PLAN TO REINTRODUCE COMPREHENSIVE LEGISLATION TO TARGET THE WEAKNESSES IN OUR CURRENT ANTI-MONEY LAUNDERING LAWS. THIS LEGISLATION WILL RESTRUCTURE OUR ANTI-MONEY LAUNDERING LAWS TO**

STOP NEW TRENDS SUCH AS BULK CASH SMUGGLING AND USE OF MONETARY INSTRUMENTS IN BLANK OR BEARER FORM. IT ALSO PROHIBITS UNLICENSED MONEY TRANSMITTING BUSINESSES, AND BRINGS STORED VALUE INSTRUMENTS WITHIN THE MONEY LAUNDERING STATUTES.

- A) DO YOU BELIEVE THAT EFFORTS TO COMBAT ILLEGAL MONEY LAUNDERING OPERATIONS AND BULK CASH SMUGGLING ARE INTEGRAL TO EFFORTS TO COMBAT DTOS? WHY OR WHY NOT?

**ANSWER:**

**I have long believed that detecting, understanding and attacking the flow of money to violent drug trafficking organizations is essential to combating DTOs. In fact, "following the money" is a necessary tool to penetrate the cartels and garner valuable investigatory information about the cartel leadership.**

- B) IF YOU ARE CONFIRMED, HOW WILL YOU DIRECT ONDCP TO ADDRESS MONEY LAUNDERING?

**ANSWER:**

**If I am confirmed by the Senate, I will review current anti-money laundering policies and activities in consultation with the Departments of Treasury, Justice and Homeland Security, and will work to maximize the focus of our Federal, state, and local agencies on the importance of addressing bulk currency smuggling and other forms of money laundering. As a long-term local law enforcement official and strong advocate for intelligence-driven policing, I believe it is essential that state and local police agencies ensure any seizure of cash turns into an intelligence gathering operation in order to help us understand and take down the cartels.**

- C) WILL YOU PLEDGE TO WORK COOPERATIVELY WITH CONGRESS TO ENSURE THAT OUR ANTI-MONEY LAUNDERING LAWS ARE STRENGTHENED?

**ANSWER:**

**I will most emphatically be committed to working with the Congress, and my colleagues at DOJ, DHS, and the Department of the Treasury to ensure that our Nation's money laundering laws provide sufficient authorities for this vitally important work.**

**QUESTION:**

(14) IN THE MIDST OF THIS ECONOMIC DOWNTURN, OUR COUNTRY WILL FACE DIFFICULT BUDGET DECISIONS.

- A) WHAT PROGRAMS AT ONDCP YOU WOULD FIGHT TO KEEP FUNDED?

ANSWER:

The programs with which I am familiar are the Drug Free Communities Support Program, the High Intensity Drug Trafficking Area Program, and the National Youth Anti-Drug Media Campaign. I believe that these are important programs but that they are certainly subject to review and evaluation to determine if changes are warranted and to determine that they are deserving of proposed funding levels.

B) WHAT PROGRAMS WOULD YOU CUT OR DEEMPHASIZE?

ANSWER:

I am not currently part of the Administration and will have to evaluate this upon confirmation. I recognize the importance of having Federal programs as tools of the President's Drug Control Strategy.

AS THE DIRECTOR OF ONDCP, YOU WOULD HAVE A BUDGET CERTIFICATION POWER, WITH WHICH YOU COULD REFUSE TO CERTIFY THE BUDGET REQUEST PROVIDED TO YOU BY EVERY AGENCY IN THE NATIONAL DRUG CONTROL PROGRAM STRATEGY.

C) IF CONFIRMED, HOW WILL YOU USE THE BUDGET CERTIFICATION POWER?

ANSWER:

The Congress has given the Director of National Drug Control Policy numerous budget authorities which I will employ to their full extent of the Statute if I am confirmed. As the Bureaus and Departments submit their drug control budget requests, the ONDCP will be fully engaged in the summer and fall budget review and certification process. My intention is to have a robust dialogue with my colleagues throughout the interagency so that budgets fully resource the President's Drug Control Strategy. My philosophy of attaining their support up front from my colleagues early in the budget process will hopefully ensure that the goals and objectives of the Strategy will be reflected in their budget requests, and that decertification decisions will be unnecessary.

#### METHAMPHETAMINE

##### QUESTION:

(15) SINCE CONGRESS PASSED THE COMBAT METH ACT PROGRESS HAS BEEN MADE IN LIMITING DOMESTIC METHAMPHETAMINE PRODUCTION. HOWEVER, THE DRUG ENFORCEMENT ADMINISTRATION (DEA) ESTIMATES THAT OVER 80% OF THE METH IN THE U.S. NOW COMES ACROSS THE BORDER FROM MEXICO. THE NATIONAL DRUG INTELLIGENCE CENTER (NDIC) HAS STATED THAT RECENT ACTIONS BY THE MEXICAN GOVERNMENT TO REDUCE METH PRECURSOR CHEMICALS HAVE RESULTED IN A DECREASE IN THE AMOUNT OF METH COMING INTO THE U.S. AS A RESULT, THE NDIC BELIEVES THESE ACTIONS WILL RESULT IN AN INCREASE IN DOMESTIC METH PRODUCTION.

THE NATIONAL METHAMPHETAMINE CHEMICAL INITIATIVE GATHERS TOGETHER REPRESENTATIVES FROM LAW ENFORCEMENT COMMUNITIES ACROSS THE COUNTRY TO COORDINATE A PROACTIVE APPROACH TO REDUCING METH'S PREVALENCE. THE PROGRAM FACILITATES THE SHARING OF INNOVATIONS IN THE FIGHT AGAINST METH AMONG LAW ENFORCEMENT COMMUNITIES IN DIFFERENT AREAS, BOTH RURAL AND URBAN.

A) IF CONFIRMED, WOULD YOU AWARD ANY DISCRETIONARY FUNDS TO THIS PROGRAM? WHY OR WHY NOT?

**ANSWER:**

**From my understanding, the National Methamphetamine Chemical Initiative has been a very useful exercise, and has provided much needed information from the field to policy makers, in real-time. I do anticipate that I would support this Initiative once I have received a more formal briefing.**

B) IF CONFIRMED, HOW WOULD YOU ENSURE THAT REGIONAL DRUG TRENDS—SUCH AS METHAMPHETAMINE EPIDEMICS IN THE MIDWEST—GET NATIONAL ATTENTION FROM ONDCP AND ARE SIMPLY NOT IGNORED?

**ANSWER:**

**During my confirmation hearing, and in my written testimony, I have gone on the record to let Congress know that it is my intent to have drug policy under my tenure be led by data. To accomplish this, there must be a robust monitoring system in place. With such a system, we will know better how to respond to the ever-changing drug situation and will have the information required to guide the mission-essential coordination and collaboration efforts of the office.**

**Upon confirmation, I will assess the data that is and is not available to ONDCP and its Federal partners. Any gaps in these data collection systems will be assessed to determine if they are mission critical. Those that are, will be identified in the National Drug Control Strategy and the accompanying Budget.**

**Under my leadership, I can assure you that drug policy and the response to threats will be driven by an honest assessment of credible and reliable data.**

C) WHAT IS YOUR PLAN TO EXPAND COUNTERNARCOTICS RESOURCES IN RURAL COMMUNITIES ACROSS THE COUNTRY?

**ANSWER:**

**I understand the true constraints in capacity and resources that are felt in rural communities. These are real and will need to be taken into consideration. I am not yet in a position to offer specific steps that I will take with regards to rural communities. This is**

something that will require me, if confirmed, to consult with my employees at ONDCP, across the Federal agencies, State and Local, and Congress, to get a true handle on what resources are needed, and where they are needed, before I offer a specific plan to expand those resources.

**PRESCRIPTION DRUGS**

**QUESTION:**

(16) THE MONITORING THE FUTURE SURVEY HAS FOUND THAT MOST DRUG USE AMONG YOUTH HAS CONTINUED IN A GRADUAL DECLINE THROUGH 2008. HOWEVER, THAT SAME SURVEY NOTED THAT THE ABUSE OF PRESCRIPTION MEDICATIONS, INCLUDING NARCOTICS, OXYCONTIN, VICODIN, TRANQUILIZERS, AND SEDATIVES, HAS REMAINED STEADY AT OR NEAR PEAK USE LEVELS.

- A) IF CONFIRMED, HOW WOULD YOU ADDRESS THE RISE IN PRESCRIPTION DRUG ABUSE AMONG YOUTH ON A NATIONAL SCALE?

**ANSWER:**

**I agree with you that prescription drug use is a growing and serious problem in our country and the data appears to support that conclusion.**

**With this issue in particular, given where people are getting these drugs, education will be key; I believe that once people understand where the drugs are coming from, they will begin to modify their behavior and reduce the availability of prescription drugs to potential abusers.**

**Beyond the education of the public, there are numerous, complex issues related to production, distribution, and disposal that will require the expertise of DEA, FDA, EPA, private industry, and others to develop an intelligent approach to limiting the current easy availability, and ultimately, to reduce the rates of prescription drug abuse. If confirmed as the Director of ONDCP, I will use my position to ensure that all of these agencies and parties come together so that the Administration can develop effective and realistic strategies to deal with this very real issue.**

- B) THE SURVEY FOUND THAT STUDENTS OBTAIN PRESCRIPTION DRUGS FROM DIFFERENT SOURCES COMPARED WITH TRADITIONAL STREET DRUGS. IF CONFIRMED, WHAT IS YOUR PLAN TO COORDINATE A COMPREHENSIVE STRATEGY TO ADDRESS BOTH THE SOURCES OF TRADITIONAL STREET DRUGS AND THE SOURCES OF PRESCRIPTION DRUGS?

**ANSWER:**

**These drugs require different approaches, given that prescription drugs have a valid place in the market place.**

I will attack these problems using the authorities that Congress has bestowed upon the Office I seek. They state that the Director of ONDCP shall:

- consult with and assist State and local governments with respect to the formulation and implementation of National Drug Control Policy and their relations with the National Drug Control Program agencies.
- seek the support and commitment of State, local, and tribal officials in the formulation and implementation of the National Drug Control Strategy

For the National Drug Control Strategy to be an effective tool, and for it to develop realistic and achievable goals, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

C) HOW DO YOU PLAN TO INFORM AND CHANGE THE PUBLIC'S PERCEPTION OF PRESCRIPTION DRUG ABUSE AS THE DIRECTOR OF ONDCP?

ANSWER:

One certain tool that will be at my disposal is the National Youth Anti-Drug Media Campaign. This campaign has the ability to educate youth, but also parents, family members, friends, mentors and the general public, and to shape their perceptions. I would certainly use that as a vehicle to positively change the public's perception on this issue.

I will also have the power of the position to educate the public through numerous mass communication outlets such as television, radio, and internet. I will make full use of my position to bring this issue into the fore.

D) IF CONFIRMED, HOW WOULD YOU SEEK TO CHANGE THE PERCEPTIONS OF YOUTH THAT PRESCRIPTION AND OVER-THE-COUNTER DRUGS ARE SAFE TO USE?

ANSWER:

As I stated above, the National Youth Anti-Drug Media Campaign will be a tool at my disposal to seek to change youth perceptions. This campaign is specifically created and targeted to educate our Nation's youth, and to shape their perceptions regarding drug abuse. I would certainly use that as a vehicle to positively change the perception of youth on this issue.

I will also have the power of the position to educate the youth and their parents through numerous mass communication outlets such as television, radio, and internet. I will make full use of my position to bring this issue into the forefront of our youth's consciousness.

**COLOMBIA****QUESTION:**

(17) THE SITUATION IN COLOMBIA HAS IMPROVED DRAMATICALLY SINCE 1999 WHEN THE PLAN COLOMBIA PROGRAM WAS FIRST PROPOSED. HOWEVER, NARCO-TERRORIST GROUPS, SUCH AS THE FARC, CONTINUE TO USE THE PROCEEDS FROM COCAINE TO CAUSE VIOLENCE AND INSTABILITY. PLAN COLOMBIA PROGRAMS FOCUSED ON ECONOMIC GROWTH, REFORM OF THE JUSTICE SYSTEM, DEMOCRACY AND SOCIAL DEVELOPMENT, AND ENSURING PEACE AND SECURITY, AND THE GOVERNMENT OF COLOMBIA IS SHOWING PROGRESS IN THOSE AREAS.

- A) IF CONFIRMED, WHAT STEPS WILL YOU TAKE AT ONDCP TO ENSURE THAT THE INTERDICTION AND ERADICATION PROGRAMS IN COLOMBIA CONTINUE TO RECEIVE ADEQUATE FUNDING?

**ANSWER:**

**Our support to Colombia over the last decade has paid huge dividends to the security and prosperity of the Colombian people, strengthened Colombian democratic institutions and respect for human rights, and reduced the flow of cocaine and heroin out of Colombia. Though weakened, Colombian drug trafficking organizations and the FARC still threaten Colombian democracy and the rule of law. I will work with the Department of State and the US interagency to ensure sufficient counterdrug support to the Government of Colombia to consolidate the gains it has made over the last decade in improving governance and the economy and reducing drug production and violence.**

- B) HALF OF THE COCAINE PRODUCED IN COLOMBIA EACH YEAR IS TRANSITED THROUGH VENEZUELA. THE CHAVEZ GOVERNMENT DOES VERY LITTLE TO HALT COCAINE MOVEMENT AND HAS SIGNIFICANTLY REDUCED THE NUMBER OF DEA AGENTS ALLOWED INTO THE COUNTRY. IF CONFIRMED, HOW WILL YOU ADDRESS THE DRUG TRAFFICKING AND NARCO-TERRORISM PROBLEMS IN VENEZUELA?

**ANSWER:**

**Should I be confirmed, I will work closely with the Department of State, Defense, and the interagency to review our options in regions where lack of cooperation and performance seem to contribute to international production and trafficking of drugs. The United States must work closely with our friends and allies to encourage each member of the community of nations to fulfill their international commitment under numerous UN conventions to cooperate against the production and trafficking in illicit drugs.**

C) IN ADDITION TO COLOMBIA, THERE ARE OTHER COUNTRIES OF CONCERN FOR THE UNITED STATES WITHIN THE ANDEAN REGION. THE PRESIDENT OF BOLIVIA SUPPORTS AN INCREASE IN THE PRODUCTION OF WHAT HE CONSIDERS "LICIT" COCA AND HAS SIGNIFICANTLY REDUCED ERADICATION EFFORTS. WHAT IS YOUR STRATEGY FOR ADDRESSING THE INCREASE IN COCA CULTIVATION IN BOLIVIA, CONSIDERING THE EXPULSION OF AMBASSADOR GOLDBERG AND THE DEA CONTINGENCY LAST FALL?

**ANSWER:**

**Upon confirmation, I will work closely with the Department of State, Defense, and the interagency to review our options in regions where lack of cooperation and performance seem to contribute to international production and trafficking of drugs. The United States must work closely with our friends and allies to encourage each member of the community of nations to fulfill their international commitment under numerous UN conventions to cooperate against the production and trafficking in illicit drugs.**

D) THE UNITED STATES HAS SIGNIFICANTLY REDUCED THE DRUG INTERDICTION ASSETS IN THE EASTERN CARIBBEAN AND ELSEWHERE IN THE TRANSIT ZONE, BUT DRUG TRAFFICKING ORGANIZATION ACTIVITIES IN THESE AREAS CONTINUE TO GROW. IF CONFIRMED, HOW WILL YOU WORK WITH THE OTHER AGENCIES TO IMPROVE THE COORDINATION OF OUR LIMITED RESOURCES?

**ANSWER:**

**Should I be confirmed, I will work very closely with my colleagues to review the interagency drug interdiction coordination machinery, including the Interdiction Committee and the United States Interdiction Coordinator, to ensure drug interdiction program budgets, resources, and activities are fully coordinated.**

#### AFGHANISTAN

**QUESTION:**

(18) BILLIONS OF DOLLARS GENERATED BY POPPY GROWING IN AFGHANISTAN AND ARE BEING USED TO FUND TERRORISM THAT THREATENS TO DESTABILIZE THE AFGHAN SOCIETY AND GOVERNMENT. PRESIDENT OBAMA HAS PLEDGED TO SEND MORE TROOPS TO AFGHANISTAN IN AN ATTEMPT TO SECURE THE REGION.

A) DO YOU HAVE A COMPREHENSIVE PLAN FOR REDUCING THE GROWTH AND CULTIVATION OF POPPIES IN AFGHANISTAN?

ANSWER:

**Poppy production in Afghanistan produces little heroin that is consumed in the United States. Supporting the Afghan government's attempts to eliminate poppy production is important because the illegal drug industry contributes substantial funding to the Taliban and other terrorist networks. I would work closely with Ambassador Holbrooke and the other leading architects of our Afghanistan-Pakistan policy to better understand how counter-drug tools can best be integrated into the larger international objective of a safe and stable Afghanistan and Pakistan.**

B) IF CONFIRMED, WHAT ROLE WILL ONDCP PLAY IN REDUCING POPPY PROTECTION IN AFGHANISTAN?

ANSWER:

**If confirmed I would expect ONDCP to coordinate the production of a clear counter-drug strategy in Afghanistan and work in the interagency community to see that it is properly resourced and implemented.**

#### SENTENCING

##### **QUESTION:**

(19) CONGRESS HAS OFFERED SEVERAL BILLS THAT WOULD REVISE THE CURRENT SENTENCING STRUCTURE FOR CONVICTIONS FOR CRIMES RELATED TO BOTH CRACK AND POWDER COCAINE. WHILE THESE IDEAS REMAIN IN PROPOSAL FORM, THE U.S. SENTENCING COMMISSION HAS UNDERTAKEN AN EFFORT TO REDUCE THE DISPARITY IN SENTENCES FOR CONVICTIONS OF CRACK AND POWDER COCAINE OFFENSES.

A) DO YOU SUPPORT ANY PROPOSAL TO REDUCE A SENTENCING DISPARITY BETWEEN CRACK AND POWDER COCAINE OFFENSES? IF SO, WHICH PROPOSAL WOULD YOU ENDORSE?

ANSWER:

**I share the view of President Obama and Vice President Biden that the current disparity under Federal law between crack and powder sentencing guidelines is wrong and should be eliminated. I have not reviewed any particular proposals, but agree with the U.S. Sentencing Commission that the current law should be amended to reflect parity in the drug quantity threshold amounts for sentencing purposes**

B) DO YOU SUPPORT EFFORTS TO REPEAL MANDATORY MINIMUM SENTENCES FOR SIMPLE POSSESSION OF CRACK COCAINE? WHY OR WHY NOT?

ANSWER:

**Yes. Under federal law, crack cocaine is the only drug that a non-violent first-time offender can receive a mandatory minimum sentence for possessing. The provision in the Drug Abuse Act of 1986 that created this penalty for simple possession should be repealed.**

(C) DO YOU SUPPORT MANDATORY MINIMUM SENTENCES FOR ANY DRUG CRIMES? WHY OR WHY NOT?

ANSWER:

**There are more than 150 mandatory minimum provisions in Federal criminal statutes. I believe mandatory minimum sentences may be less effective than discretionary sentencing and drug treatment in reducing drug-related crime. I support a review of the criminal statutes that contain minimum mandatory sentences to determine if a smarter criminal justice policy can be implemented to more effectively reduce crime.**

**MEDIA CAMPAIGN**

**QUESTION:**

(20) THE PREVIOUS ADMINISTRATION DEVOTED A LOT OF OUR NATION'S RESOURCES TO THE NATIONAL YOUTH ANTI-DRUG MEDIA CAMPAIGN (MEDIA CAMPAIGN).

IN FEBRUARY 2005, A RESEARCH COMPANY HIRED BY THE NATIONAL INSTITUTE ON DRUG ABUSE REPORTED THAT THE GOVERNMENT'S AD CAMPAIGN AIMED AT DISSUADING TEENS FROM USING MARIJUANA, A CAMPAIGN THAT COST \$1.4 BILLION BETWEEN 1998 AND 2006, FAILED. AFTER ITS OWN EXAMINATION OF THE CAMPAIGN IN 2006, THE GAO AGREED. AFTER THE FEBRUARY 2005 REPORT WAS RECEIVED, THE OFFICE CONTINUED THE AD CAMPAIGN, SPENDING \$220 MILLION ON THE ANTI-MARIJUANA ADS IN FISCAL YEARS 2005 AND 2006. IN RESPONSE, CONGRESS STRIPPED THE MEDIA CAMPAIGN'S BUDGET DOWN FROM \$100 MILLION IN 2007 TO \$60 MILLION IN 2008.

A) DO YOU BELIEVE THE MEDIA CAMPAIGN IS EFFECTIVE? WHY OR WHY NOT?

ANSWER:

**The Media Campaign is an important part of our current national effort to prevent drug use among young people. While I have not fully evaluated the prior studies of and**

reports on the Campaign, is my understanding that the work cited only evaluated the Campaign through the Spring of 2004. I am told that improvements have been made since that time and the Campaign has been demonstrating results. I have been told that a more comprehensive and robust evaluation of the Media Campaign is about to be conducted. I will monitor this process very closely to make sure that taxpayer funds are being used in the most effective way.

B) IF CONFIRMED, HOW WILL YOU IMPROVE THE CAMPAIGN?

ANSWER:

The Media Campaign would be a high priority for me, if confirmed. Youth are media-oriented and a variety of resources and media outlets are needed to combat the continuing message they receive from society that says drugs are not dangerous or that drugs are something they should do if they wish to "fit in." This is especially a problem with the troublesome trend of teen abuse of prescription drugs, in part because both parents and youth seem to underestimate the risk of prescription drug abuse and because parents do not seem to be talking to their teens about the issue.

**PREVENTION**

QUESTION:

(21) STUDIES SHOW THAT IF A YOUNG PERSON AVOIDS EXPERIMENTING WITH DRUGS BEFORE THE AGE OF 20, CHANCES ARE THAT PERSON WILL NEVER EXPERIMENT WITH DRUGS.

A) WHERE DO YOU PUT PREVENTION AS A PRIORITY IN ANY COUNTERNARCOTICS STRATEGY?

ANSWER:

Prevention is critical, and must receive at least equal attention provided to treatment and market disruption. I can assure you that, if confirmed, under my watch, there will be a renewed focus on evidence-based approaches to reduce this country's demand for drugs, through prevention.

B) ONE PREVENTION PROGRAM THAT HAS PROVEN ITS EFFECTIVENESS IS THE DRUG FREE COMMUNITIES (DFC) PROGRAM, WHICH I HELPED TO CREATE. THIS PROGRAM IS ADMINISTERED BY THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA) AND OVERSEEN BY ONDCP. IF CONFIRMED, DO YOU PLAN TO DEVOTE ADEQUATE RESOURCES AND ATTENTION TO THIS PROGRAM AND OTHER EFFECTIVE PREVENTION PROGRAMS?

ANSWER:

**Absolutely. I know that the DFC Program has been evaluated and has been shown to be effective, and therefore deserves continued support. Approaches that have shown themselves to be effective (evidence-based) will be given top priority in the development of the National Drug Control Strategy and the National Drug Control Budget.**

- C) THE DFC PROGRAM WAS DESIGNED TO PROVIDE AN EASY APPLICATION PROCESS FOR APPLICANTS. HOWEVER, A NUMBER OF MY CONSTITUENTS HAVE TOLD ME THE PROCESS IS BECOMING MORE DIFFICULT TO FOLLOW. IF CONFIRMED, WILL YOU BE COMMITTED TO SIMPLIFYING THE DFC APPLICATION PROCESS, AS ORIGINALLY INTENDED? WHY OR WHY NOT?

**ANSWER:**

**I am a strong believer in grass roots organizations as a mechanism to prevent drug abuse and addiction, and ensuring our youth get effective drug prevention messages is critical. Having served as Deputy Director of COPS, I am very familiar with the grant process, particularly in how Federal funds can be channeled directly to local organizations. As written into law, the application process was very straightforward and uncomplicated, and it is clear that the intent was to ensure people who had never received Federal funding before could easily apply and compete for this funding, even without a grant writer. If confirmed, I will make sure that the process remains simple and transparent for all who apply.**

- D) WILL YOU ENSURE APPLICANTS HAVE ACCESS TO A FAIR, TRANSPARENT, AND TIMELY APPEALS PROCESS AFTER THEY HAVE RECEIVED AN ADVERSE DECISION?

**I would be a strong advocate for this program. That would include providing assistance to first time grantees and ensuring that, if denied, ONDCP would ensure a satisfactory answer and a fair appeal process. It is critical that the DFC program, as well as any Federal program, is administered with the highest level of integrity. I understand there was a problem during the previous Administration with the appeals process, and that it has been taken care of to the satisfaction of the members of the Senate Caucus on International Crime. A transparent appeals process is now in place, grantees are provided details of this process; I believe that this process has been posted on the ONDCP Website. If confirmed, I am committed to ensuring all of the programs under my jurisdiction are handled with the highest level of integrity.**

**QUESTION:**

(22) THE DEA AND LOCAL LAW ENFORCEMENT ARE ALSO ENCOUNTERING THE PRESENCE OF CANDY FLAVORED METH ON THE STREETS IN AT LEAST 12 STATES. METH COOKS FLAVOR HIGHLY ADDICTIVE AND DESTRUCTIVE DRUGS, MAKING IT MORE APPEALING TO USERS, INCLUDING CHILDREN UNDER THE AGE OF 18. CURRENT LAW ENHANCES THE PENALTY FOR DRUG DEALERS WHO SELL DRUGS TO CHILDREN, BUT NO LAW IS IN PLACE THAT WOULD ENHANCE THE PENALTIES FOR THOSE WHO FLAVOR OR DISGUISE DRUGS TO MAKE THEM MORE ATTRACTIVE TO CHILDREN.

- A) DO YOU SUPPORT EFFORTS TO INCREASE FEDERAL CRIMINAL PENALTIES FOR THOSE WHO MANUFACTURE, FLAVOR, OR DISGUISE DRUGS IN ORDER TO MAKE THEM MORE APPEALING TO CHILDREN UNDER THE AGE OF 18? WHY OR WHY NOT?

**ANSWER:**

Purposeful manufacturing or marketing techniques which make any dangerous substance more attractive to our Nation's youth are abhorrent. If confirmed to the position I seek, I would certainly work closely with states as well as the Department of Justice to determine what the most appropriate response to such activity may be. From where I sit now, I cannot commit to the perspective that a new Federal law that is specifically focused on increased Federal criminal penalties is necessarily the most effective tool that could be employed, though it may very well be. This is an issue which would require some time on the job for me to develop rational and effective policy responses. These responses may include seeking a change in Federal law, in which case I would work closely with you and your staff to offer any proposed changes which may be necessary.

**STERIODS****QUESTION:**

(23) THE PRESENCE OF PERFORMANCE-ENHANCING DRUGS IN PROFESSIONAL SPORTS AND ENTERTAINMENT CONTINUES TO HAVE A DETRIMENTAL IMPACT ON AMERICA'S YOUTH AND THE INTEGRITY OF SPORTS. THE DAILY, ONGOING REVELATIONS OF STAR ATHLETES WHO HAVE USED DESTRUCTIVE SUBSTANCES TO CHEAT THEIR WAY TO THE TOP RAISES CONCERNS ABOUT THE IMPACT THESE STORIES AND ATHLETES HAVE UPON IMPRESSIONABLE YOUTH. FOR INSTANCE, THE MOST RECENT NSDUH FOUND THAT 2.2% OF HIGH SCHOOL SENIORS HAVE ADMITTED TO USING STEROIDS AT LEAST ONCE IN THE LAST YEAR.

- A) IF CONFIRMED, WHAT WILL YOU DO AT ONDCP TO DISCOURAGE YOUNG ATHLETES FROM TURNING TO STEROIDS?

**ANSWER:**

I agree that the use of steroids and performance-enhancing drugs poses a number of public health and drug control challenges. The use of drugs for doping purposes creates a number of serious health risks for the athlete. Equally important, doping sends the wrong message to young people about drug use and the importance of competing in sport, at any level, with integrity and in conformance with rules and laws.

The U.S. Government has taken significant steps to combat performance-enhancing drug use in sport. I understand that we help fund (through nearly a \$10 million Federal grant) a vibrant and highly regarded independent anti-doping agency (USADA), which oversees the drug testing for Olympic sport in the U.S. The United States also plays an influential role within World Anti-Doping Agency, which harmonizes and coordinates anti-doping for Olympic Movement internationally. Additionally, the U.S. Government is a party to a United Nations international convention to combat drug use in sport. The convention, which Vice President Biden played a leadership role in shepherding through the Senate last year, strives to coordinate governmental efforts worldwide to address the problem of drugs in sport, with a particular emphasis on youth education, research, and prevention efforts.

*NOMINATION OF GIL KERLIKOWSKA TO BE DIRECTOR OF NATIONAL DRUG  
CONTROL POLICY*  
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
**QUESTIONS OF SENATOR TOM COBURN, M.D.**

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**MARIJUANA**

**QUESTION:**

- 1) DO YOU BELIEVE THAT MARIJUANA SHOULD REMAIN LISTED AS A SCHEDULE I DRUG IN THE CONTROLLED SUBSTANCES ACT?

**ANSWER:**

Yes

**QUESTION:**

- 2) DO YOU SUPPORT THE USE OF SMOKED MARIJUANA FOR MEDICAL PURPOSES?

**ANSWER:**

**What constitutes safe and effective medicine should continue to be based upon the Food and Drug Administration's review of the appropriate science. From what I have read, there is no consensus reflected in existing medical evidence with respect to the medicinal benefits of smoking marijuana.**

**QUESTION:**

- 3) AS YOU KNOW, THE FDA IS RESPONSIBLE FOR APPROVING DRUGS AS SAFE AND EFFECTIVE FOR THEIR INTENDED USES. ALTHOUGH IT HAS NOT APPROVED MARIJUANA FOR ANY MEDICAL USE, SOME STATES HAVE PASSED THEIR OWN LAWS ALLOWING SUCH USE IN LIMITED CIRCUMSTANCES. IN YOUR OPINION, IS IT EITHER WISE OR SAFE FOR STATES TO ESSENTIALLY BYPASS THE FDA AND PERMIT USE OF A DRUG THAT HAS NOT BEEN APPROVED BY THAT AGENCY?

**ANSWER:**

**I support the inclusion of marijuana as a Schedule I substance under the Federal Controlled Substance Act. At the same time, I understand and respect the ability of states, under the longstanding principles of federalism, to make state policy decisions within the scope of their authority and jurisdiction.**

**QUESTION:**

- 4) DO YOU HAVE ANY PREDISPOSITIONS OR PERSONAL CONFLICTS OF INTEREST THAT MIGHT INTERFERE WITH YOUR ABILITY TO STRINGENTLY ENFORCE THE NATION'S TRADITIONAL DRUG CONTROL POLICIES, PARTICULARLY WITH RESPECT TO MARIJUANA?

**ANSWER:**

No.

**IMMIGRATION****QUESTION:**

- 5) IN JUNE OF 2001, UNDER YOUR AUTHORITY AS POLICE CHIEF, THE SEATTLE POLICE DEPARTMENT ISSUED A DIRECTIVE ORDERING OFFICERS NOT TO ASK AN INDIVIDUAL ABOUT HIS OR HER IMMIGRATION STATUS OR TAKE ACTION DUE TO IMMIGRATION STATUS. YOU STATED OF THE POLICY: "WE DIDN'T WANT TO BE PERCEIVED AS A BRANCH OF THE IMMIGRATION AND NATURALIZATION SERVICE... OUR MISSION IS TO PROTECT PEOPLE AND NOT FRIGHTEN PEOPLE." WHILE TRUST IN LAW ENFORCEMENT IS IMPORTANT, THE DIRECTIVE YOU ORDERED HAS BEEN USED BY "SANCTUARY CITIES" TO PROTECT ILLEGAL IMMIGRANTS RESIDING IN OUR NATION IN DIRECT VIOLATION OF FEDERAL LAW.
- AS DRUG CZAR, WOULD YOU SUPPORT IMPLEMENTING SIMILAR POLICIES AT THE FEDERAL LEVEL?

**ANSWER:**

**I will support the Administration's immigration policies. In 2001, I supported Seattle's existing immigration policy which was established before I became Chief of Police. Please note that Seattle's immigration policy is consistent with the policy adopted by the Major Cities Chiefs Association.**

- WHAT IS YOUR POSITION ON CONTINUING DRUG-ENFORCEMENT FUNDING AND OTHER FEDERAL FUNDS TO "SANCTUARY CITIES" THAT REFUSE TO ENFORCE FEDERAL IMMIGRATION LAWS?

**ANSWER:**

**I will uphold what I believe to be the primary duty bestowed upon the Director of National Drug Control Policy, which is to develop and implement a national drug control**

strategy designed to reduce the demand and supply for illicit drug use in the United States. My decisions concerning funding will be based solely on the facts and circumstances relevant and necessary to fulfill the Director's primary duty.

**SOUTHWEST BORDER/ MEXICO**

**QUESTION:**

- 6) IN 2007, THE BUSH ADMINISTRATION ANNOUNCED THE MERIDA INITIATIVE— A MULTI-BILLION DOLLAR INTERNATIONAL COUNTERDRUG AND JUDICIAL-SYSTEM-BUILDING INITIATIVE BETWEEN THE UNITED STATES AND MEXICO AND CENTRAL AMERICAN COUNTRIES. ALTHOUGH THE ADMINISTRATION DESIGNATED THE STATE DEPARTMENT AS THE LEAD FEDERAL AGENCY, MANY PROGRAM RESPONSIBILITIES ARE WITHIN DOJ. I HAVE GREAT CONCERN THAT THERE ARE STILL NO PROGRAM METRICS BY WHICH TO EVALUATE THE INITIATIVE'S SUCCESS.
- WHAT WILL YOU DO AS DRUG CZAR TO ENSURE THAT DOJ COMPONENTS OF THE INITIATIVE ARE SUCCESSFUL?

**ANSWER:**

**I would work closely with all of the agencies with a role in implementation to ensure the initiative's goals are clearly and consistently defined in terms of results. I would continue close coordination with these agencies and Mexico and the other Merida Initiative partners in the fight against drugs throughout the life of the initiative, to ensure goals are being measured and met.**

**QUESTION:**

- 7) AS YOU KNOW, INCREASING VIOLENCE IN MEXICO OVER THE PAST YEAR AND A HALF CAUSED BY DRUG-CARTELS HAS CLAIMED MORE THAN 7,000 LIVES AND CURRENTLY THREATENS U.S. HOMELAND SECURITY. DEPUTY ATTORNEY GENERAL DAVID OGDEN RECENTLY TESTIFIED BEFORE CONGRESS ON DOJ'S FIVE-PRONG STRATEGY TO IDENTIFY, DISRUPT, AND DISMANTLE THE MEXICAN DRUG CARTELS, INCLUDING THE FOLLOWING STEPS: EMPLOYING EXTENSIVE AND COORDINATED INTELLIGENCE CAPABILITIES; ENSURING THE INVESTIGATION, EXTRADITION, PROSECUTION, AND PUNISHMENT OF KEY CARTEL LEADERS; PURSUING INVESTIGATIONS AND PROSECUTIONS RELATED TO THE SMUGGLING OF GUNS, CASH, AND CONTRABAND FOR DRUG-MAKING FACILITIES FROM THE UNITED STATES INTO MEXICO; USING TRADITIONAL LAW ENFORCEMENT APPROACHES TO

ADDRESS SPILLOVER EFFECTS OF CARTEL VIOLENCE IN THE UNITED STATES;  
AND PROSECUTING CRIMINALS RESPONSIBLE FOR THE SMUGGLING,  
KIDNAPPING AND VIOLENCE, IN FEDERAL COURT.

FURTHERMORE, DOJ MUST COORDINATE WITH A NUMBER OF FEDERAL  
AGENCIES WITHIN DHS, SUCH AS IMMIGRATION AND CUSTOMS  
ENFORCEMENT (ICE) AND CUSTOMS AND BORDER PROTECTION (CBP), TO  
ENSURE AN EFFECTIVE COUNTER-NARCOTICS STRATEGY. WHAT WILL YOU  
DO AS DRUG CZAR TO ENSURE YOU ARE EFFECTIVELY ADVANCING THE  
STRATEGY ALREADY OUTLINED BY DOJ AND COORDINATING WITH ICE AND  
CBP?

**ANSWER:**

**If the Senate confirms me as Director of National Drug Control Policy I will make combating the Mexican drug cartels a top priority. Upon taking office I will meet with my counterparts at DOJ and DHS to receive an update on our Southwest border initiatives and to review our strategy and its implementation. As you know, the Mexican cartels are not just impacting the border areas, but our entire country, since they control the drug trade in over 230 U.S. cities. My 36 years of experience in law enforcement will enable me to not only work to ensure close coordination among Federal agencies, but also to make sure the knowledge, talent, and energy of our state and local law enforcement agencies are brought into the effort against the Mexican cartels.**

Gil Kerlikowske  
Chief of Police  
Seattle Police Department

Every individual who saw what happened in our city at the "Fat Tuesday" event was sickened. Now, as every community does after a terrible event, we want to blame someone or something; the chief of police, the mayor, club owners, Seattle "culture;" the list is endless.

Violent, criminal acts led to one death, and many injuries. The violence that erupted in Seattle was not exclusive to Seattle. It also struck Mardi Gras celebrations coast-to-coast in Philadelphia, Austin, and Fresno (CA). Those communities also experienced property destruction and injuries (including two people stabbed in Fresno) and they too are now in the process of trying to understand what occurred. This makes what happened in Seattle no less terrible, but it broadens our understanding of the nature of the event. Stop for one minute to listen to the facts and understand what occurred.

As a result of the violence and rioting we experienced on Friday and Saturday nights, I brought in a record number of officers to oversee Tuesday's event. They were pre-positioned early in the evening and for the first several hours there was mostly celebration. Then, as the crowd in the street exploded in size, the attitude shifted. This party crowd quickly devolved into a mob, with some of its members bent on violence.

The police commanders at the scene knew that they might have to order the crowd to disperse. They also knew, based on experience, that the crowd would do no such thing and that we would need to follow through with other tactics. Crowd estimates at midnight, always difficult to establish accurately, were thought to be 3,500 on the streets, and another 3,500 in surrounding venues. With that many people on a narrow street lined with glass windows, we made the decision to hold off for a short time before we dispersed the crowd. We did this for only one reason: the safety of the people in the streets. In my professional estimation, and that of the commanders in charge, acting earlier would turn a crowd into a panicked mob, resulting in people being trampled and injured. Then, just as the crowd was beginning to thin, a sharp, sudden escalation in violent acts called for new tactics and immediate action to disperse the crowd.

Let's also set the record straight on two points. First, those who say I held back officers attempting to get into the crowd because of my concern that they would be hurt are completely wrong. I place officers at risk everyday and I have, in my career, had to tell the families of three police officers that their loved one was killed in the line of duty. It was clear to me that sending in officers any earlier would have been ineffective, and would have escalated the violence and mayhem that did occur.

Second, the misconception that the race or ethnic background of a law-breaker is given one second of consideration as to whether or not we are going to arrest someone. A violent criminal is a criminal, period.

What is most important, right now, is to focus our immediate attention on apprehending those who are responsible for this tragedy: the people responsible for violence. We have already received overwhelming public support that has led to several arrests. I have also invited police representatives from the other three cities affected by Mardi Gras violence to Seattle to discuss what happened and to develop strategies to deal with public events. We need a long-term fix. All of us need to take responsibility for understanding and dealing with an emerging culture of violence by young people.

**Responses to Senator Specter's Written Questions for Ronald Weich,  
Nominee to be Assistant Attorney General, Office of Legislative Affairs**

1. A 1995 Congressional Research Service report summarized the broad scope of Congressional authority to conduct oversight on the Department of Justice as follows:

[A] review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats, demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry. All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.

In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar "sensitive" materials. Congressional Research Report, "Investigative Oversight: An Introduction to the Practice and Procedure of Congressional Inquiry", pp. 23-24 (April 7, 1995).

- a. Do you agree with the Congressional Research Service's analysis of the scope of Congressional authority to investigate the Department of Justice pursuant to its oversight function?

**I have read the 1995 Congressional Research Service report and agree with its general conclusion that Congress has broad authority to conduct oversight of Executive Branch agencies, including the Justice Department. Moreover, as a longtime Senate staff member, I personally appreciate Congress' interest in obtaining timely, accurate information from the Department in furtherance of such oversight.**

- b. If not, with which part(s) do you disagree?

**It is my understanding that the Justice Department has historically declined to accept certain aspects of the CRS analysis related to the interaction of Congress'**

**oversight responsibilities and the Justice Department's law enforcement and litigation responsibilities in individual cases. Nonetheless, if confirmed I will work to accommodate the Judiciary Committee's need for information consistent with the Department's responsibilities, and will seek to resolve any disputes between the branches in an amicable and constructive fashion so that Congress can carry out its oversight responsibilities.**

2. If confirmed as Assistant Attorney General for Legislative Affairs, one of your primary responsibilities will be to facilitate Congressional oversight of the Department of Justice. What specifically will you do to expedite the flow of information between the Department of Justice and Congress?

- a. Will you pledge to promptly respond to requests for information and documents from either the majority or the minority?

**If confirmed, I will work with others in the Department to respond promptly to all Congressional requests for information and documents.**

- b. What specific steps will you take to ensure that this Committee and/or individual Members receive the information they need?

**I will familiarize myself with the systems currently in place to track requests and will explore adjustments to improve the timeliness of the Department's responses to Congressional requests.**

- c. Will you commit to making line prosecutors and various agents available to answer questions from Committee Members?

**I am not in a position to make this commitment because I am not currently serving at the Department. It is my understanding that the Department has historically made available Senate-confirmed officials such as the Attorney General, the Deputy Attorney General, the Associate Attorney General and Assistant Attorneys General to answer questions from Members of Congress in order to shield line attorneys and agents from political influence. If confirmed, I will work to accommodate the Committee's oversight needs, consistent with the Department's responsibilities.**

- d. What are some of the goals you would like to accomplish during your tenure in the Office of Legislative Affairs, if confirmed?

**If confirmed, I would seek to strengthen the relationship between Congress and the Justice Department so that they work in partnership for the benefit of the American people. I would work to ensure that the views and concerns of Members of Congress are made known to Department of Justice officials. Similarly, I would work to ensure that the views and policies of the Justice Department are communicated effectively to Members of Congress.**

3. While serving as counsel for Senator Kennedy, you wrote an article entitled, "The Battle Against Mandatory Minimums: A Report from the Front Lines," 9 Federal Sentencing Reporter 94 (1996). A footnote states that the views expressed therein were your own. In that article, you opined that mandatory minimum sentences are bad public policy and that the Justice Department should instead "work to build congressional and judicial support for the sentencing guideline system." You also recount Senator Kennedy's opposition to mandatory minimums even for recidivist child abusers, child pornographers, and illegal alien smugglers. In many cases, you say, Senator Kennedy sought to replace mandatory minimums with enhanced guidelines over the opposition of other senators, including Senators Hatch and Feinstein, who argued that "judges don't always follow the guidelines." You also described efforts to modify or halt legislation containing mandatory minimums for certain drug dealers (including methamphetamine and Rohyphynol (the "date rape" drug)) and youth gang members.
- a. Since you published this article, the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004), rendered the sentencing guidelines advisory. How have your views changed, if at all, since the Supreme Court's decisions in these cases?

**At the outset, please note that if confirmed I intend to recuse myself from legislation concerning mandatory minimums because my wife – who I married three years after I wrote the article you have referenced – is president of an organization that advocates against mandatory sentencing. I have already consulted with Department of Justice ethics officials to establish a recusal protocol for such matters.**

**Nonetheless it remains my personal view that mandatory sentencing laws are unnecessary and unwise. I came to this view during my service as Special Counsel to the U.S. Sentencing Commission from 1987 to 1989. The Commission itself has long adhered to this position, as have many leading criminal law scholars and federal judges. The late Chief Justice William Rehnquist, for example, was a critic of mandatory sentencing laws.**

**The basis for my personal opposition to mandatory sentencing laws is stated in my 2004 testimony before this Committee in the aftermath of the Blakely decision:**

**"Both mandatory minimums and sentencing guidelines limit judicial discretion, but guidelines do so in a more balanced and sophisticated fashion. Guidelines take account of far more sentencing factors than mandatory minimums, which are typically triggered by a single factor like the quantity of drugs sold or the use of a gun. Also the departure mechanism in a guidelines system preserves needed judicial discretion; mandatory minimums, in contrast, can only be avoided by the actions of the prosecutor through charging decisions, plea practices and cooperation agreements. For this reason mandatory sentencing laws, more so than sentencing guidelines, transfer sentencing power from the judge to the prosecutor."**

It is true, as you have suggested, that the Blakely and Booker decisions have changed the landscape of federal sentencing law. Yet Sentencing Commission statistics demonstrate that judges are largely complying with the now-advisory sentencing guidelines. Moreover, Congress can always consider proposals to make the guidelines enforceable again by simplifying them and putting key sentencing factors to the jury in order to comply with the Sixth Amendment principle articulated in Blakely and Booker. In my personal view, that would be preferable to a regime of mandatory sentencing.

- b. One of the arguments in favor of mandatory minimums was that they sought to cure disparity between sentences for the same crime in different parts of the country. Do you have concerns about these disparities? If so, how would you address these concerns?

I am deeply concerned about unwarranted sentencing disparities. In my time at the Sentencing Commission I worked to strengthen the federal sentencing guidelines in order to limit such disparities, and in the numerous articles I have published in this field I have condemned sentencing disparities based on race or other factors. I personally believe, however, that mandatory minimums promote rather than cure such disparities. I associate myself with the views of Senator Kennedy, who was a leading proponent of mandatory sentencing laws in the 1970's because he believed they would reduce racial disparity, but who later came to oppose mandatory minimums because he concluded that sentencing guidelines, rather than mandatory minimums, are the right tool to address unwarranted disparities.

- c. How would you address Senators Hatch and Feinstein's concerns that "judges don't always follow the guidelines"?

Under the Sentencing Reform Act of 1984, which was still in full force in 1996 when I wrote the article in question, judges were legally required to impose a sentence within the range established by the Sentencing Commission unless they identified a valid departure factor. Any departure from the guidelines was subject to appellate review. Even after Blakely and Booker, Sentencing Commission statistics demonstrate that judges are largely complying with the now-advisory sentencing guidelines.

- d. In the same article, you state that the United States Sentencing Commission suffered a "grievous blow when it courageously but unsuccessfully took on the politically explosive issue of the disparity between crack cocaine sentences and powdered cocaine sentences." Please set forth your position on that issue.

If confirmed, I expect to recuse myself from working on crack-powder disparity legislation because my wife's organization advocates a position on that issue. My personal view, informed by detailed empirical analysis from the Sentencing Commission, is that the 100-to-1 ratio in current law is unjustified.

4. In The Bush Administration Takes Aim: Civil Rights Under Attack, a report prepared by you for the Leadership Conference on Civil Rights, you are harshly critical of proponents of states' rights in the area of civil rights legislation stating: "[t]here is indeed a legitimate role for states as sovereign bodies and policy laboratories in our system of federalism, but when it comes to discrimination there is no room for experimentation." However, in your testimony before this Committee in July 2004 regarding "*Blakely v. Washington* and the Future of the Federal Sentencing Guidelines," you contend that the states are a "source of criminal justice expertise [that] deserve[] an amplified voice in the process of developing long-term post-*Blakely* reforms."
- a. Please explain why you believe states can be trusted to make determinations as to civil rights in one arena and not another.

**The report you reference was issued by the Leadership Conference on Civil Rights in its own name, not in my name. I was retained by that organization to draft the report based on positions advocated by the organization rather than my own personal views. That said, the sentence you have quoted seems to me accurate. It acknowledges the role of states as sovereign bodies and policy laboratories in our federal system, but suggests that such state-by-state experimentation is constrained by the Equal Protection Clause of the 14<sup>th</sup> Amendment.**

**I also stand by my 2004 testimony (which does express my own personal views) promoting the role of states as a source of criminal justice expertise. I see nothing inconsistent between that proposition and the proposition that states may not violate the Equal Protection Clause.**

5. In a report that you authored for the Leadership Conference on Civil Rights entitled "Justice on Trial: Racial Disparities in the American Criminal Justice System," you state:

many of the discriminatory practices that characterize the criminal justice system – from racial profiling to the crack/powder sentencing divide – may well constitute violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which condemns laws and practices that have invidious discriminatory impact, regardless of intent. The United States has declined to make the CERD self-executing, which means that in the absence of legislation granting the rights conferred by the Convention, CERD is without legal effect in the United States. The combination of the United States' reluctance to confer the rights guaranteed by CERD on its own citizens, combined with its failure to eradicate practices which violate the guarantees therein, surely damage our government's credibility when it seeks to lead the charge against racism and intolerance abroad.

You also argue that felony disenfranchisement laws violate international law, specifically Article 25 of the International Covenant on Civil and Political Rights.

- a. Do you believe that United States criminal laws should be changed to conform to principles of international law?

**This report, like the report referenced in the previous question, was issued by the Leadership Conference on Civil Rights in its own name, not in my name or my coauthor's name. Again, we were retained by that organization to draft the report based on positions advocated by the organization rather than our own personal views. My own view is that the United States is not obligated to change its criminal laws to conform to principles of international law.**

6. According to your questionnaire, as a lobbyist you represented the National Pawnbrokers Association "on bankruptcy and firearms issues." Please describe the "bankruptcy and firearms issues" to which you refer in your questionnaire.

**I worked on two separate issues for the National Pawnbrokers Association. First, the Association sought an amendment to federal law to resolve conflicting case law concerning the status of pawned property in bankruptcy proceedings. On behalf of the Association, I argued that such property should be deemed to be the property of the pawnbroker rather than included in the estate of the bankrupt individual.**

**Second, I assisted the Association in arguing that the retrieval of a pawned firearm from a pawn shop should not occasion a background check under federal law because the gun owner never abandoned legal ownership of the firearm. A contrary interpretation of law by the Bureau of Alcohol, Tobacco and Firearms had caused many gun owners to refrain from pawning their firearms between hunting seasons, a common practice in some parts of the country.**

7. It is imperative that Justice Department officials, including Assistant Attorneys General, have the independence and integrity to stand up to the Attorney General and/or the President if they disagree with the Administration's position on a particular issue. You have spent a substantial portion of your career working for Democrats in the legislative branch and lobbying and/or advocating for certain politically-charged issues.

- a. Do you think that your prior work will have any influence on your ability to disagree with the Administration?

**I have always provided candid private advice to the Senators for whom I have worked and the clients who retained me in private practice. My prior work has given me a breadth of experience and perspective that will enable me to "stand up to" the Attorney General and other high ranking officials in private if I disagree with them.**

**At the same time, I believe that after differing views are aired in private, a lawyer must be prepared to represent the position of his or her clients in any public setting. If confirmed as an Assistant Attorney General, my client would be the Department of Justice. Even if I personally disagree with a decision by the Attorney General, I am confident I can represent the Department's views effectively before Congress.**

- b. Can you provide any examples from your previous work experience in which you disagreed with the position of your employer or a client?

**I have occasionally disagreed with positions taken by Senators for whom I have worked and clients who retained me in private practice. For example, it is well-known that Senator Reid is “pro-life” whereas I am “pro-choice” on the issue of reproductive rights. I disagreed with some of the votes cast by him and other Senators for whom I have worked. Also, I did not personally agree with every position contained in the policy reports I drafted for clients in private practice.**

**Responses to Senator Grassley's Written Questions for Ron Weich,  
to be Assistant Attorney General for the Office of Legislative Affairs  
of the United States Department of Justice.**

**April 8, 2009**

Timeliness of Responses to Congressional Inquiries:

Unanswered and non-responsive Congressional requests for information and questions from Senate hearings have continued to plague the Department of Justice. For example, just last month FBI Director Mueller testified that questions from FBI Oversight hearings remain outstanding despite the fact that the FBI submitted answers to those questions to the Justice Department for "clearance". Director Mueller testified that the FBI submitted answers from the March 2008 hearing to the Department in June 2008, and from the September 2008 hearing in December 2008. Notwithstanding the FBI's submissions, the Department of Justice has not provided these answers to the Committee. Further, letters often take months, if not years, to come back to Congress and even then, they are often in incomplete and unanswered form.

1. Will you pledge to work with Congress to ensure that answers to Congressional correspondence, including Committee hearing questions, and investigative document requests are answered and returned in a timely fashion?

**Yes. As a longtime Senate staff member I have a great appreciation for Congress's need for timely responses from executive branch agencies. If confirmed, I look forward to working with the Senate Judiciary Committee and other Committees and intend to respond to requests in a timely fashion.**

2. Will you pledge to ensure that answers are responsive and complete?

**Yes. If confirmed, I will work to ensure that answers are responsive and complete.**

3. If confirmed, will you clear out the backlog of outstanding requests?

**Since I am not serving at the Department of Justice I am unaware of the circumstances surrounding outstanding requests, but if confirmed I will work hard to address your concerns about such requests.**

4. If you are confirmed, what is your plan to reduce the immediate backlog of outstanding Congressional requests?

**If confirmed, I will promptly review the systems in place and explore adjustments to improve the timeliness of the Department's responses to**

**Congressional requests. Specifically, I will work to expedite responses to currently outstanding requests.**

5. Please describe in detail your plan to speed up the clearance process at the Department to ensure that questions, from both the Department and subordinate agencies, are answered thoroughly and delivered in a timely fashion.

**Since I am not serving at the Department I am not familiar with the clearance process. If confirmed, I will promptly review that process and explore adjustments to improve the timeliness of the Department's responses to Congressional requests.**

6. Will you commit to informing the Committee and individual members when you experience a delay from the Office of Management and Budget related to clearing responses for release?

**If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.**

7. Will you commit to informing Congress when the Department receives answers to Committee requests from subordinate agencies, such as the FBI, to ensure members understand where responses are in the chain of correspondence?

**If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.**

Congressional Oversight:

1. Do you believe that Congress has a constitutional duty to conduct oversight of the Executive Branch? Why or why not?

**Yes. As a longtime Senate staff member I have a great appreciation for Congress' responsibility to conduct oversight of the Executive Branch. Committees of Congress need information about agency activities in order to fulfill their legislative duties. In my view, congressional oversight can enhance executive branch activities.**

2. Do you believe that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests? Why or why not?

**I agree that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests, subject to the constitutional and statutory responsibilities of the Executive Branch. Congress itself has limited the Department's authority to disclose certain information such as grand jury testimony, and of course no member of Congress would want the Department to**

**disclose information that could compromise an ongoing investigation or litigation. But in general, the Justice Department should seek to accommodate the oversight needs of Congressional committees in a manner consistent with the Department's responsibilities.**

3. What, if any, impediments do you envision limiting your ability to ensure timely and accurate responses to any and all congressional requests? If citing any form of privilege, please provide updated case law citations to support any claims of privilege.

**Since I am not serving at the Department I do not know what impediments, if any, may limit my ability to ensure timely and accurate responses to Congressional requests, but I will work with others in the Department to overcome any such impediments to the extent possible.**

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 Letter Opinion was titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." The Opinion 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.

Courts have also held views contrary to that of the Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". See *Devine v. United States*, 202 F.3d 547, 551 (2<sup>nd</sup> Cir. 2000).

Despite the plain language and the court interpretations, this opinion is used as a shield to prevent disclosure of information to Ranking Members. It erroneously relies upon the "longstanding executive branch practice on this question," and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion. I believe this opinion is a hindrance to the American people who have a right to know what goes on in the Government.

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

**I am not an expert in the Privacy Act and am not familiar with the OLC opinion you have referenced. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.**

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?

**I have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.**

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 am not an expert on the Privacy Act and have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.**

4. Will you pledge to provide documents and information to Ranking Minority Members regardless of this interpretation?

**If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.**

**Responses to Questions of Senator Tom Coburn, M.D.**

*Nomination of Ron Weich to be Assistant Attorney General, Office of Legislative Affairs  
United States Senate Committee on the Judiciary*

April 8, 2009

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- 1) As Assistant Attorney General in the Office of Legislative Affairs, will you commit to responding in a timely fashion to inquiries from minority members and staff?

**Yes. I intend to respond in a timely and respectful manner to all congressional inquiries, including those from minority members and staff.**

- 2) As Assistant Attorney General in the Office of Legislative Affairs, will you help facilitate a more timely delivery of DOJ Views Letters, in advance of Senate consideration of a measure?

**Yes. I intend to facilitate the timely delivery of DOJ Views Letters and other materials that aid Congress in carrying out its duties.**

- 3) As Assistant Attorney General in the Office of Legislative Affairs, will you commit to continuing with all minority staff the same courteous, candid interactions you have always conducted with my staff in the Senate?

**Yes. I very much appreciate the cordial professional relationship I have developed with your staff in the years I have worked for Senator Reid. I will certainly work to continue that relationship and will seek to replicate it with other members of the minority staff.**

It has been reported that you served as a member of President Obama's "transition team" and that you ushered Eric Holder through his nomination process. Please clarify the following related items:

- 4) Did you serve as a member of President Obama's "transition team"? If so, what did your duties entail? Were you compensated for your service? If so, by whom?

**Yes, I served as a member of the congressional affairs staff of the Presidential Transition. In this role I facilitated communication between Congress and several policy and agency review teams within the Transition. In addition, I assisted several nominees including, Attorney General nominee Eric Holder, during the Senate confirmation process. I was not compensated for this work separately from my regular compensation as a member of Senator Reid's staff.**

**My role with the Transition was approved first orally and then in writing by the Senate Ethics Committee. I attach a letter dated January 16, 2009 from Ethics Committee Chief Counsel John Sassaman describing and approving of the role that I played, which Mr. Sassaman describes as consistent with prior practice.**

- 5) In what capacity did you usher Eric Holder through his nomination process? (i.e., transition team, Senate staff, private lawyer, etc.) What did your duties entail? Were you compensated for your service? If so, by whom?

**With the approval of the Senate Ethics Committee, I assisted Mr. Holder as a member of the congressional affairs staff of the Presidential Transition. I accompanied him to meetings with Senators, developed materials in support of his confirmation and helped Mr. Holder prepare for his confirmation hearing. I was not compensated for this work separately from my regular compensation as a member of Senator Reid's staff.**

- 6) During your service as a member of the transition team (if you served in such a role), were you also serving as Senate staff?

**Yes, with the approval of the Senate Ethics Committee I continued to serve as a member of Senator Reid's staff during my service as a member of the Transition staff.**

- 7) During the time that you escorted Eric Holder through his nomination process, were you also serving as Senate staff?

**Yes, with the approval of the Senate Ethics Committee I continued to serve as a member of Senator Reid's staff during the time I assisted Mr. Holder.**

- 8) At any point, have you done work on behalf of the executive branch, the transition team, or a nominee during regular Senate office hours? If so, how much time do you estimate was spent working on these matters?

**Yes, with the approval of the Senate Ethics Committee I divided my time between my Senate office and the Office of the President-Elect. I estimate that, in the aggregate, I spent approximately 50% of regular Senate office hours on transition-related activities.**

- 9) Did you use any Senate resources (i.e., phones, computers, email, etc) while working on behalf of either the transition team or executive branch nominees, such as Eric Holder?

**Yes, with the approval of the Senate Ethics Committee I utilized Senate resources on behalf of the Transition Office and also utilized Transition Office resources on behalf of the Senate. Mr. Sassaman's letter contemplates that I "would engage in these activities from both offices."**

- 10) Due to your activities on behalf of either the transition team or then-nominee Eric Holder, has your Senate salary been reduced, or have you been removed from the Senate payroll for any period of time?

**No.**

- 11) During the time that you escorted Eric Holder through his nomination process, did you advise any member of the Senate on Mr. Holder's nomination? If so, do you feel that you were able to give objective advice, given your work on behalf of the nominee?

**No. I explicitly recused myself from staffing Senator Reid on the Holder nomination. Other members of Senator Reid's staff advised him with respect to this nomination. Nor did I advise other members of the Senate about the Holder nomination. When I spoke to other members of the Senate or their staff about the nomination, I made a point of explaining that I was representing the Presidential Transition and not Senator Reid.**

- 12) As Senate staff, is providing objective evaluations and advice about nominees part of your official duties?

**Yes, although as noted above I recused myself from advising Senator Reid or any other Senator with respect to the Holder nomination.**

- 13) At any point during your service on behalf of the transition team and/or Eric Holder, was the possibility of your nomination to serve at the Department of Justice ever discussed with any member of the executive branch, including Mr. Holder? If so, with whom? If so, did those discussions influence any advice you may have given on the Senate's consideration of the nomination?

**Yes, I discussed the possibility of serving at the Department of Justice with Mr. Holder and with Transition officials during the period of time I served in the Transition Office. As noted above, I recused myself from advising Senator Reid or any other Senator with respect to the Holder nomination.**

- 14) On February 23, 2000, you testified before this Committee, and on July 21, 1999, before the Subcommittee on the Constitution of the House Committee on the Judiciary, regarding the "Unborn Victims of Violence Act." You stated that the purpose of that bill was "to score rhetorical points in the never-ending struggle over abortion rights." You also described the bill as "purely symbolic: to bestow statutory personhood on fetuses, even those that are not viable." You further testified that the bill itself "is just one more step in the anti-abortion movement's methodical strategy to humanize fetuses, marginalize women, demonize abortion providers, and make the image of abortion less palatable to the American people." At the beginning of your testimony, you stated that the views you expressed were "strictly [your] own."
- a. Are the views you represented at the above-referenced hearings still your personal views?

**I was invited by members of the House and Senate Judiciary Committees to testify about this legislation as an expert on criminal law and federal sentencing law, having earlier served as a state prosecutor and as Special Counsel to the U.S. Sentencing Commission. The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. This testimony does represent my personal views. However Congress eventually passed the bill and if confirmed I will support enforcement of the statute.**

- b. In your opinion, if a woman is injured and a miscarriage results, is there a separate victim?

**Yes, I believe a fetus can be a victim and my testimony did not argue otherwise. In fact, I referenced the well established common law doctrine that “fetal death subsequent to birth due to fetal injuries may be prosecuted as homicide,” and I cited favorably a case (U.S. v. Spencer, 839 F.2d 1341 (9<sup>th</sup> Cir. 1988)) in which such a homicide prosecution was upheld. I also stated in my testimony: “There is no dispute that causing harm to a fetus during commission of a federal felony should generally result in enhanced punishment, and courts have uniformly held that such enhancements are available under the current sentencing guidelines.” My testimony simply contended that a new federal criminal law was not necessary to prosecute or punish those who harm fetuses.**

- c. In your opinion, at what stage of pregnancy, if any, should a fetus be considered a separate victim?

**There is no doubt that an injury to the fetus is a separate and additional harm when a pregnant woman is assaulted. Under common law, an assault on a pregnant woman that results in the death of a viable fetus constitutes homicide. See, Annotation, Homicide Based on Killing of Unborn Child, 64 A.L.R. 5<sup>th</sup> 671 (1998). And, as expressed in my testimony, I believe that an assault resulting in injury to a pre-viable fetus also warrants additional punishment.**

- d. When do you believe a fetus becomes a “person,” for purposes of federal law? More specifically, when do you believe a fetus becomes a “person” for purposes of being recognized as a victim of a federal crime?

**In enacting the Unborn Victims of Violence Act, Congress recognized that fetuses at any stage of development may be victims of a crime. I did not dispute this proposition in my testimony. I merely contended that a new federal criminal law was not necessary to prosecute or punish those who harm fetuses. Congress concluded otherwise. If confirmed I will support enforcement of the statute.**

- e. In your opinion, is there a separate victim where there is intent to cause a miscarriage?

**I believe a fetus can be a victim whether or not the defendant intends to cause a miscarriage.**

- f. Please explain what you mean by “humanize fetuses.”

**The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. I therefore concluded in my testimony that the purpose of the bill was “symbolic: to bestow statutory personhood on fetuses, even those that are not viable.”**

**That said, the phrase strikes me now, ten years later, as unnecessarily provocative. I regret my use of that phrase.**

- g. National polls have shown strong support for recognizing two victims when there is a criminal assault on a pregnant woman, even among those who identify themselves as pro-choice, and especially among women. How, then, does the Unborn Victims of Violence Act “marginalize women”?

**The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. I expressed concern that the bill’s focus on the fetus had the effect of marginalizing the pregnant woman who was assaulted.**

**Again, I regret my use of unnecessarily provocative language in the course of presenting my views on criminal law aspects of the bill.**

- g. Consider the recent case of Lisa Montgomery, who brutally murdered a pregnant woman, then delivered her unborn child with a kitchen knife and took the kidnapped baby across state lines. A federal grand jury indicted Montgomery under S.C. Section 1201, the federal kidnapping law. The defense argued that the law did not apply because the baby, Victoria Jo Stinnett, was not a “person” until birth, and therefore not a “person” at the time that Montgomery murdered her mother. The Justice Department argued, and the district court ruled, that Victoria Jo Stinnett enjoyed “person” status prior to birth for federal criminal law purposes, based in part on enactment of the Unborn Victims of Violence Act of 2004, a law that you strongly opposed in your 1999 and 2000 testimony. Montgomery was convicted. She is now appealing to the Eighth Circuit, arguing that 18 U.S.C. Section 1201 cannot be applied because Victoria Jo Stinnett was not a “person” at the time that her mother was murdered. Do you believe that the Justice Department should continue to argue the position that it took in the district court, that Victoria Joe Stinnett was indeed a person for purposes of the statute, as illuminated by enactment of the UVVA?

**I am not familiar with the facts or legal arguments involved in the Montgomery case beyond what I have heard and read in press reports. I certainly agree that a defendant convicted of brutally murdering a pregnant woman deserves substantial punishment. I expect that such punishment would be imposed with or without the Unborn Victim of Violence Act. I have**

**no cause to question the Justice Department's arguments in the course of this prosecution.**

- i. As you know, the Department of Justice is charged with enforcing the Unborn Victims of Violence Act (UVVA). I understand that the first UVVA prosecution is under way in New Mexico. The defendant in that case is Frederick Beach, who is accused of beating a 29-year-old to death with a baseball bat, resulting in the death of her unborn child. Given your past opposition, do you nevertheless believe the Department should vigorously defend the statute in this case? In general, do you commit to support the legislative integrity of the statute and its vigorous enforcement by the Department?

**Yes, I believe the Justice Department should vigorously defend laws enacted by Congress unless there is no reasonable argument to be made in support of its constitutionality. I am personally unaware of any argument that this law is unconstitutional. If confirmed as the Assistant Attorney General for Legislative Affairs, I will support enforcement of the statute.**

- j. In your 1999 and 2000, you attacked the proposed Unborn Victims of Violence Act on both policy grounds, and as in tension with Supreme Court cases such as *Roe v. Wade*. Nevertheless, the law was enacted in 2004, with strong bipartisan support. Moreover, a total of 35 states now have laws that recognize unborn children as homicide victims in at least some circumstances. The supreme courts of multiple states (including California, Minnesota, Pennsylvania, Texas, and Wisconsin) have rejected arguments that these laws conflict with *Roe v. Wade* or its progeny; no state supreme court has held otherwise. The constitutionality of fetal homicide laws has also been defended by many prominent defenders of *Roe v. Wade*, including Walter Dellinger and Richard Parker. Do you believe that the Justice Department should vigorously defend the constitutionality of the UVVA in any case in which the issue may arise?

**My testimony did not argue that the bill in question was unconstitutional under *Roe v. Wade*. Rather, I argued that the purpose of the bill was to undermine public support for *Roe v. Wade* by treating an assault on a fetus as separate from an assault on the pregnant woman carrying the fetus. I agree that the Justice Department should defend the constitutionality of this statute, just as it defends the constitutionality of any statute enacted by Congress unless there is no reasonable argument to be made in support of its constitutionality. As noted above, I am unaware of any argument that this law is unconstitutional.**

- 15) I am concerned about the over-federalization of criminal law. Although it may sometimes require unpopular decisions, I believe both the executive and legislative branches should avoid contributing to this problem. Under what circumstances do you

believe it is appropriate to add offenses to the federal criminal code? What criteria do you use to determine whether proposed new crimes are appropriate?

**I personally share your concern. In my personal view, Congress should enact new federal criminal laws only when there is a demonstrated need and constitutional basis for federal involvement.**

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## United States Senate

SELECT COMMITTEE ON ETHICS  
 HART SENATE OFFICE BUILDING, ROOM 220  
 SECOND AND CONSTITUTION AVENUE, NE  
 WASHINGTON, DC 20510-6425

January 14, 2009

Mr. Ronald Weich  
 Office of the Majority Leader  
 United States Senate  
 Washington, DC 20510

Dear Mr. Weich:

This responds to your recent letter seeking Committee approval for you to work with the Transition Team of President-Elect Obama. You currently serve as Chief Counsel to Senator Harry Reid. You have been asked to work with the Transition team on legal and legislative issues facing the Department of Justice.

The Committee understands that you would serve in essence as a legislative coordinator and would work with the transition team to guide Presidential appointees to the Department of Justice through the Senate confirmation process. You would not receive compensation from the Office of the President-Elect and would divide your time between your Senate office and the Office of the President-Elect, and would engage in these activities from both offices. The Committee understands that Senator Reid has approved your proposed work with the Transition Team.

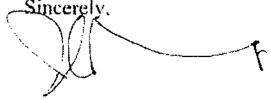
The Committee has previously approved Senate employees, from both Senators' personal staff and the staff of committees, serving as "legislative coordinators" to work with the Transition Team of a President-Elect. The Senate employees performed the same functions as Senate staff ordinarily performs when they work with an administration's officials in developing bills and legislation. This included the assessment of existing government programs, analysis of alternative programs and policies, and the development of recommendations for new or amended statutory provisions. Preparation of legislative authorization and appropriations bills, and the underlying studies, were also included. All of those functions were related to the legislative ramifications of the transition team's work. Additionally, the Senate employees worked under the direction and authority of their Senators, did not receive compensation from the Office of the President-Elect, and engaged in those activities, both from their offices in the Senate and at the facilities of the Office of the President-Elect.

The Committee noted that since the function the Senate employee was to perform for the transition team was an integral part of their Senate duties, no rule of the Senate precluded Senate staff participation with the consent of their supervisor.

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It appears that prior rulings of the Committee provide sufficient precedent for you to work with the Transition Team of President-Elect Obama as a "legislative coordinator" under the conditions set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Sassaman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John C. Sassaman  
Chief Counsel and Staff Director

1193

SUBMISSIONS FOR THE RECORD

County of Los Angeles

Sheriff's Department Headquarters

4700 Ramona Boulevard

Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF



March 20, 2009

The Honorable Patrick J. Leahy  
United States Senate  
433 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

**RECOMMENDATION OF SEATTLE POLICE DEPARTMENT  
CHIEF GIL KERLIKOWSKE FOR APPOINTMENT AS DIRECTOR OF  
THE OFFICE OF NATIONAL DRUG CONTROL POLICY**

As Sheriff of Los Angeles County, I am writing to express my strong support for the nomination of Seattle Police Department Chief Gil Kerlikowske to Director of the Office of National Drug Control Policy.

The position of Director of the Office of National Drug Control Policy requires that the individual not only be abreast of all drug enforcement issues, but must be willing to undertake the management of this agency. Chief Kerlikowske's diverse background and experience make him the ideal candidate to serve in this important role. His thirty-six year career in law enforcement includes serving as Chief of Police for the City of Seattle Police Department, and being the former deputy director of the U.S. Department of Justice, Office of Community Oriented Policing Services.

Throughout his distinguished career, Chief Kerlikowske has served in positions in which he has gained critical knowledge in drug enforcement and education. Chief Kerlikowske has the experience and proven organizational management results to lead this vital agency in its efforts to establish policies, priorities and objectives for the nation's drug control program. Currently, he is serving as president of the Major Cities Police Chiefs' Association and is respected throughout the nation for his leadership.

*A Tradition of Service*

1194

The Honorable Patrick J. Leahy

-2-

March 20, 2009

I respectfully urge you to consider Chief Gil Kerlikowske for appointment as Director of the Office of National Drug Control Policy and thank you for your kind consideration of my request.

Sincerely,

  
LEROY D. BACA  
SHERIFF

*P.S. I am a member of the Major Cities Chiefs Association. Dil and I recently gathered our executives together to exchange our best practices in Washington. He is a terrific thinker and leader!*

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



[< Return To Hearing](#)

Statement of

## The Honorable Evan Bayh

United States Senator  
Indiana  
April 1, 2009

### STATEMENT OF SENATOR BAYH

Chairman Leahy, Ranking Member Specter, and other distinguished members of the Judiciary Committee, thank you for the opportunity today to introduce an individual for whom I have great respect and admiration, Judge David Hamilton.

Before I speak to Judge Hamilton's qualifications, I would like to comment briefly on the judicial nominations process generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. During the last Congress, I was proud to work with Senator Lugar to recommend Judge John Tindler as a bipartisan, consensus nominee for the Seventh Circuit Court of Appeals. Judge Tindler was nominated by President Bush and unanimously confirmed by the United States Senate by a vote of 93-0. It was my hope that Judge Tindler's confirmation would serve as an example of the benefits of nominating qualified, non-ideological jurists to the federal bench.

In selecting Judge Hamilton as his first judicial nominee, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator Lugar to recommend Judge Hamilton to President Obama, and I hope that going forward other Senators will adopt the "Hoosier approach" of working together to select consensus nominees.

On the merits, Judge Hamilton is an accomplished jurist who is well qualified to be elevated to the Seventh Circuit Court of Appeals. He has served with distinction as a United States District Judge for almost 15 years, during which time he has presided over approximately 8,000 cases. Since January 2008, he has served as the Chief Judge for the Southern District of Indiana, where he has been widely praised for his effective leadership style. Throughout his career, Judge Hamilton has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully.

In recommending Judge Hamilton, I have the benefit of being able to speak from personal experience, as I had the opportunity to work closely with him while I was Governor of Indiana. In his role as Counsel to the Governor, Judge Hamilton helped me to craft bipartisan solutions to some of the most pressing problems facing our state. In particular, he helped to favorably resolve several major lawsuits that threatened our state budget and drafted a tough new ethics policy to ensure that our state government was operating openly and honestly. In addition to his insightful legal analysis, I could always count on David for his sound judgment and the common-sense Hoosier values he learned growing up in southern Indiana.

During his service in state government, Judge Hamilton also developed a deep appreciation for the separation of powers and the appropriate role of the different branches of government. If confirmed, Judge Hamilton will bring to the Seventh Circuit a unique understanding of the important role of the States in our federal system and will be ever mindful of the appropriate role of the Federal judiciary. He understands that the appropriate role for a judge is to interpret our laws, not to write them.

On a personal note, I have known Judge Hamilton for over 20 years. I know him to be a devoted husband to his wife, Inge, and loving father to his two daughters, Janet and Devney. He is the nephew of former

[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&witness\\_id=6760](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&witness_id=6760) 4/16/2009

Congressman Lee Hamilton and the embodiment of good judicial temperament, intellect, and even-handedness. I have high confidence that, if confirmed, Judge Hamilton will be a superb addition to the Seventh Circuit Court of Appeals, and I am pleased to give him my highest recommendation.

Mr. Chairman and Ranking Member Specter, it is my distinct pleasure to present for this committee's consideration Chief Judge David Hamilton.

[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit\\_id=6760](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit_id=6760) 6/16/2009



**NATIONAL FEDERATION  
FOR JUST COMMUNITIES™  
of WNY**

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Buffalo, NY 14202  
Tel: 716.853.9596  
Fax: 716.852.0046  
www.nfjcwny.org

March 18, 2009

The Honorable Patrick Leahy  
United States Senate  
433 Russell  
Senate Office Building  
Washington, DC 20510

Dear Senator Leahy,

It is with great pleasure that I am writing you on behalf of Seattle Police Chief Gil Kerlikowske's nomination as Chief of the Office of National Drug Control Policy.

I have known Chief Kerlikowske for over fourteen years and can testify that I know he is a man of honor, vision, and strength. During his tenure as the Chief of the Buffalo Police Department, I had the opportunity and good fortune to work closely with him, including professionally on Diversity Projects with the Police Department, and on Community Issues, as well as on the Board of Directors of the National Federation for Just Communities of WNY (previously known as The National Conference for Community and Justice of WNY).

His concern for the people of Buffalo was always his highest priority, but he also demonstrated a concern for our country and maintained a strong connection with the law enforcement community throughout the United States. He is a committed and hardworking American leader; a role model for all.

His inclusive and strong style of leadership was respected by the men and women with whom he worked and by the community he served. He was focused, clear and energetic. Among the many new programs he initiated were diversity workshops that he mandated for his entire department. As a partner in this work, I can attest to Gil Kerlikowske's dedication to improving intergroup relations, community policing, and dealing with bias, bigotry, and racism in our society.

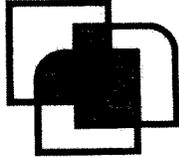
He always knew what needed to be accomplished and accordingly initiated, planned and implemented projects and policy with diplomacy and success. His innovative spirit was responsible for change and growth within the department and with his collaborative efforts with other agencies and organizations. He is a leader, who not only is open to change, he encourages that same openness in others.

*A Just Community Begins With Me*

*The National Federation for Just Communities of Western New York (NFJC) is a human relations organization dedicated to overcoming racism, bias, and discrimination by building understanding, respect and trust through education, advocacy, and community involvement.*

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The Chief is an active listener, responsive and a proactive leader. In addition, he is intelligent, well versed and a scholar interested in research and evaluation.

Personally, I have always found him to be a very nice person; a gentleman and a good and decent man. Most of all, Gil Kerlikowske is a man of integrity and strength, well suited for this position.

Our country will be well served when he is appointed to the position of Chief of the National Drug Control Policy.

If you have any further questions regarding this recommendation, please contact me at [REDACTED].

Sincerely,

Lana D. Benatovich  
President  
The National Federation for Just Communities of WNY, Inc.

March 31, 2009

Honorable Patrick Leahy  
Chairman  
Senate Judiciary Committee  
Dirksen Senate Office Building  
Room 224  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

We write in strong support of the nomination of Ronald H. Weich to the position of Assistant Attorney General, Office of Legislative Affairs (OLA) at the Department of Justice. Collectively we have many years of service in the Office to which Mr. Weich has been nominated. We understand and have great respect for the strong and effective leadership that OLA demands, given its crucial role in being responsive to the needs of Congress, and of this Committee in particular.

Mr. Weich is extremely well-suited for this job. First, his work in the U.S. Senate has given him deep knowledge of and respect for the U.S. Congress. He understands the needs of the First Branch and will be an advocate within the Department for those interests. He also understands law enforcement from the viewpoint of a line attorney given his early career as a prosecutor. These experiences, in addition to his tenure in the private sector, have honed Mr. Weich's exceptional capacity for calm, reasoned, and smart advocacy. As important, he has the temperament and demeanor to take on one of the most demanding posts at the Department of Justice, and will do so with an unfailing respect for those with whom he serves because of these exceptional qualities.

Each of the signatories to this letter has experience working with Congress on difficult and complex policy issues on behalf of an administration's Department of Justice. We know that, to do its job, Congress relies on information provided by the Justice Department on a range of issues. Mr. Weich is sensitive to the institutional needs of Congress and will be a constructive partner in the legislative process. Mr. Weich has consistently demonstrated good judgment, collegiality and legal acumen which will enable him to lead the DoJ's legislative efforts.

Page 2

We enthusiastically support Mr. Weich for the position of Assistant Attorney General, Office of Legislative Affairs. We are confident that, once confirmed, he will manage the Office well, serve as a talented addition to the new Administration, and work cooperatively and constructively with the Senate Judiciary Committee and the full Congress on solutions to some very complex challenges.

Sincerely,

Brian A. Benczkowski

Dennis Burke

Andy Fois

Ann Harkins

Will Moschella

Robert Raben

Pat Wald



Midtown Community Court | Red Hook Community Justice Center | Brooklyn Treatment Court | Brooklyn Domestic Violence Courts | Bronx Domestic Violence Courts | Red Hook Youth Court | Manhattan Family Treatment Court | Crown Heights Community Mediation Center | Harlem Community Justice Center | Harlem Parole Reentry Court | Harlem Youth Court | Brooklyn Mental Health Court | Bronx Juvenile Accountability Court | Queens Community Cleanup | Youth Justice Board | Bronx Community Solutions | Queens Engagement Strategies for Teens | Far Rockaway Youth Court | Center for Courts and the Community | Upstate Office, Syracuse

Greg Berman, director  
 520 Eighth Avenue New York, New York 10018 212.397.3050 fax 212.397.0985 www.courtinnovation.org

March 18, 2009

The Honorable Patrick Leahy  
 Chairman, Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

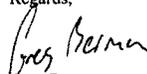
Dear Senator Leahy,

We are writing to enthusiastically endorse Gil Kerlikowske for the position of Director of the Office of National Drug Control Policy. We encountered Chief Kerlikowske during research for a book we are writing on the trial and error process of criminal justice innovation. At the time, we were looking for a national leader who exemplified the virtues of patience and reflection that we believe are critical to achieving lasting innovation. To our surprise, one name kept coming up in our interviews with scholars and other criminal justice practitioners around the country: Chief Kerlikowske. In our subsequent conversations with him, these recommendations were borne out. Chief Kerlikowske possesses a rare combination of management acumen, intellectual curiosity and a willingness to bring broad coalitions together to embrace new solutions to old problems.

It's fair to say that we were thrilled when we heard that Chief Kerlikowske had been nominated to head ONDCP. He's the perfect man for the job. We cannot think of anyone else with the kind of credibility that he has with both the law enforcement and drug treatment community.

Chief Kerlikowske's nomination is also welcome news for our institution. The winner of the Innovations in American Government Award from the Ford Foundation and Harvard University, the Center for Court Innovation is a nonprofit think tank dedicated to justice system reform. Founded in 1993, the Center was created to help the justice system respond more effectively to difficult problems like addiction, delinquency, child neglect, and domestic violence. The Center has made a significant investment in drug courts, working with the New York State court system to help create more than 170 drug courts in New York, as well as with the U.S. Department of Justice to disseminate lessons learned from its drug court experiments to a national audience. We look forward to working with Chief Kerlikowske in advancing ONDCP's mission.

Please let us know if you need any more help or information.

Regards,  
  
 Greg Berman

  
 Aubrey Fox

# Carnegie Mellon

**Alfred Blumstein**  
University Professor and  
J. Erik Jonsson Professor of  
Urban Systems and Operations Research

**H. John Heinz III School  
of Public Policy and Management**  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, Pennsylvania 15213-3890  
(412) 268-8269  
Fax: (412) 268-2175

March 23, 2009

Senator Patrick Leahy  
Chair, Senate Judiciary Committee  
433 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Leahy:

I think we can all probably agree that many of the appointments made by Pres. Obama have been excellent. One of the more difficult appointments to make was director of the Office of National Drug Control Policy. In the past that position has been filled by individuals strong and methodology and/or ideology but weak on background and pragmatism. My sense of his current nomination of Chief Gil Kerlikowske is particularly inspired because he has a rich and appropriate background and he is an individual who will be very pragmatic in dealing with the complex problems posed by drug abuse in the United States.

Having served as a police chief in two very different major cities, Buffalo and Seattle, and two smaller cities in Florida, Chief Kerlikowske has a rich understanding of the problems of drug abuse as well as many of the costs and the limited benefits attained through our current policies. The situation in Seattle, for example, reflects the rich mix of standard enforcement along with a variety of associated approaches intended to diminish the abuse as well as the consequences of the abuse.

His 36 years of law enforcement experience and his multiple stints as a police chief gains him an impressive credibility in the policing community. His recognition in that community is certainly reflected in his election as President of the Police Executive Research Forum (PERF) and of the Major Cities Chiefs Association and by the many awards he has received as a role model for modern sophisticated police leadership.

His recognition and appreciation comes not only from the policing world. He has been called upon by the US Department of Justice, is chairman of the board of Fight Crime: Invest in Kids, and serves as an adjunct faculty member in various academic institutions. His skills and interests are obviously broad ranging and appreciated in a wide variety of relevant communities.

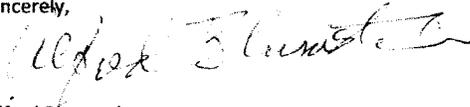
I have served on a variety of committees with Chief Kerlikowske and have found him to be most impressive in his wisdom, his sophistication in dealing with complex issues, and his pragmatism

1203

in sorting through complexities such as those that pervade the drug-abuse problem. I have no doubt that that judgment about him is shared widely. That judgment was also reflected in his appointment as the deputy director of the COPS program in the Justice Department, where I know he served with distinction.

It should be clear that I consider Gil Kerlikowske a truly outstanding candidate to provide solid leadership to the Office of National Drug Control Policy (ONDCP). I strongly support the appointment and urge his easy confirmation.

Sincerely,



Alfred Blumstein

1204

**MERRICK J. BOBB**

e-mail: [REDACTED]

March 19, 2009

Hon. Patrick J. Leahy  
433 Russell Senate Office Building  
Washington, DC 20510

By US mail and e-mail to [REDACTED] ov

Dear Senator Leahy:

I write to express my strong support for the nomination of Gil Kerlikowske as Director of the Office of Drug Control Policy.

I have known Chief Kerlikowske professionally and personally for more than 15 years and have always considered him one of the strongest voices for progressive, accountable, and effective policing in the United States. I first met Chief Kerlikowske in his capacity as Deputy Director of the COPS Office, in connection with DOJ's "best practices" projects on police oversight, use of force, and police ethics. He performed extraordinarily in that effort. I admire the Chief for his work in Seattle, where he has brought down the crime rate and took bold steps to increase police accountability and transparency by his appointment of a civilian to head the Seattle PD's Office of Professional Accountability—the Department's internal affairs unit. He is ideal for this job. The combination of high intellect, deep experience in drug policy, and sensitivity to both the supply and demand side of the drug problem presages the success of his leadership of this vital office.

I have long been involved in law enforcement. I served as a staff lawyer and as a Deputy General Counsel of Warren Christopher's commission to investigate the LAPD in the wake of the Rodney King incident. I was appointed as General Counsel of the Kolts investigation of the Los Angeles County Sheriff's Department (LASD) by the County's Board of Supervisors. Since 1993, I have served as the first police monitor in the country as Special Counsel to the Los Angeles County Board of Supervisors respecting the LASD. I frequently consulted with DOJ in its efforts to implement its Section 14141 authority with respect to patterns or practices of police misconduct.

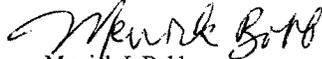
I currently am the Executive Director of the Police Assessment Resource Center (PARC) which PARC was formed in 2001 with the financial backing of the Ford Foundation. PARC has established a national presence as a leading authority on contemporary American policing. PARC is dedicated to the advancement of effective, respectful, accountable, and constitutional policing. PARC's work is also national in scope. Among

Hon. Patrick J. Leahy  
March 19, 2009  
Page 2

other assignments, the Bureau of Justice Assistance (BJA) made a major grant to PARC to formulate proposed national guidelines for monitors of law enforcement agencies. PARC was the recipient of a substantial subgrant from the COPS Office to the LAPD to develop proposed national standards for Internal Affairs Bureaus. PARC speaks authoritatively and with great credibility to a wide spectrum of persons interested in law enforcement, from its strongest critics to its ardent supporters. There is no other national voice providing a neutral, thoughtful perspective, and consistent and prolific commentary, on law enforcement while maintaining independence from any interest group or cause.

I write to you today in my personal capacity only, not in my role at PARC or as Special Counsel to Los Angeles County. I strongly urge your support of Chief Kerlikowske's nomination.

Yours very truly,

  
Merrick J. Bobb



**Office of the  
Special Narcotics Prosecutor  
for the City of New York**

Bridget G. Brennan, Special Narcotics Prosecutor

80 CENTRE STREET, SIXTH FLOOR  
NEW YORK, NY 10013  
212-815-0413, OFFICE  
212-815-0144, FAX

March 31, 2009

Honorable Patrick J. Leahy, Chairman  
Honorable Arlen Specter, Ranking Member  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Leahy and Specter:

I am writing to endorse the nomination of Ronald H. Weich to the position of Assistant Attorney General heading the Office of Legislative Affairs of the U.S. Department of Justice.

I have known Ronald Weich for more than 25 years, both as a colleague and as a personal friend. I first became acquainted with Ronald in 1983, when we started together as new Assistant District Attorneys in the New York County District Attorney's Office. Among the 50 bright, eager and talented attorneys hired by Robert M. Morgenthau that year from top law schools around the country, Ron stood out for his quick mind, legal acumen, and above all, for his dedication to justice.

Even as a new Assistant District Attorney, Ron distinguished himself with his comprehensive grasp of legal principles and sophisticated application of statutes to law enforcement issues. His approach was always thoughtful, thorough, practical, and fair minded. I marveled at Ron's ability to quickly process thorny legal issues in an objective and principled way.

During his time in the District Attorney's Office, Ron was highly regarded by law enforcement officers as a fearless advocate, and for his intelligence, work ethic, and ability to get things done. Ron also had an excellent reputation among judges, because, along with outstanding legal skills, he was always open to considering another perspective. None of Ron's former colleagues are surprised that he has had a distinguished career in positions of great responsibility, and that he has never strayed too far from public service.

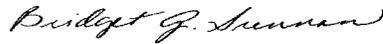
Through the years, I have often discussed with Ron the professional issues he has faced. I know that, in his role as Special Counsel to the U. S. Sentencing Commission, he made great contributions in efforts to reform sentencing law. During his extensive career as a high level member of the United States Senate staff, Ron contributed to the development and enactment of legislation that

aimed to ensure the just and fair administration of justice. He also played a primary role in the enactment of the Honest Leadership and Open Government Act of 2007, which provided clear guidelines in government ethics. While working for Senator Edward Kennedy, Ron worked tirelessly to enhance federal funding for research into the link between substance abuse and mental illness and to increase funding for drug treatment. My office has long recognized the connection between mental illness, drug addiction and criminal behavior; we were extremely grateful for his efforts to promote funding for the rehabilitation of criminal defendants who are mentally ill and drug addicted.

Several years ago, by happenstance, I had the great pleasure of testifying before the United States Sentencing Commission on the same day and on the same issue as Ron. His thoughtful analysis, deep sense of justice, and compassion were intact and as impressive as ever.

I recommend Ronald Weich for this critical position, not just on the basis of his exceptional abilities and extraordinary career, but for his sense of fairness and deep understanding of law enforcement issues. As the head of an agency dedicated to the investigation and prosecution of high level narcotics traffickers, I can unequivocally say that having someone with Ron's comprehensive vision leading the Legislative Affairs Office of the Justice Department will benefit law enforcement and the nation as a whole. Please feel free to contact me if you have any questions.

Sincerely,



Bridget G. Brennan  
Special Narcotics Prosecutor  
for the City of New York

 Brown Group International

March 24, 2009

The Honorable Patrick Leahy  
Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington D.C. 20510

Dear Chairman Leahy:

I am writing this letter in support of Gill Kerlikowske's nomination to serve as Director of the White House Office of National Drug Control Policy. Gill is uniquely qualified by both experience and dedication for this position.

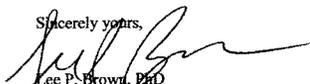
Gill has had a distinguished career in law enforcement. He has served in different parts of the country, which gives him a diverse perspective on the problems of law enforcement and drug abuse. He is well respected in the law enforcement community, as well as by the people in the communities where he has served. As you can see from his resume that has been submitted, he has been very active in both professional and community organizations.

As you know, I had the honor of serving as the nation's "Drug Czar" under President Bill Clinton. Based on that experience, I can attest to the fact that Gil, someone I have known professionally for years, not only understands the complexity of the problem, but also has the requisite experience and ability to bring people and organizations together to make a difference.

If confirmed, he would bring to the job a broad and wise perspective on how to direct this nation's efforts to reduce the use of illegal drugs.

I have no doubts that any trust bestowed upon him will not be betrayed. I urge you to support his nomination.

Sincerely yours,



Lee P. Brown, PhD  
Chairman and CEO

 1001 McKinney St., Suite 1650 • Houston, Texas 77002  
Tel: 832-366-1584 • Fax: 713-571-7311



OFFICE OF THE CITY COUNCIL · CITY OF SEATTLE

March 23, 2009  
Via Facsimile and Mail

The Honorable Patrick Leahy  
Chairman, Judiciary Committee  
United States Senate  
433 Russell Senate Office Building  
Washington DC 20510

The Honorable Arlen Specter  
Ranking Member, Judiciary Committee  
United States Senate  
711 Hart Senate Office Building  
Washington DC 20510

Re: **Nomination of Gil Kerlikowske, Director,  
Office of National Drug Control Policy**

Dear Senators Leahy and Specter,

I am writing to endorse the nomination of Gil Kerlikowske as director of the Office of National Drug Control Policy and to urge your confirmation of his appointment. I believe Chief Kerlikowske will bring a reasoned and street-wise voice to drug enforcement in our country, and a progressive approach to federal drug policy-making.

As Chief of the Seattle Police Department, Chief Kerlikowske instituted community policing practices that partner the police with citizens and neighborhood groups in solving problems, resulting in more sensible approaches to addressing drug activity and other crime. Chief Kerlikowske led the police force by personal example, respecting and supporting innovative, yet practical, services for those struggling with addictions, such as our needle exchange and methadone van programs, as well as a local housing project for chronic alcoholics.

Traditional drug enforcement methods aimed at first-time and casual users have not worked well. New approaches are needed. Chief Kerlikowske will lead this policy debate at the national level effectively and with reason. I enthusiastically, and without reservation, urge you and your colleagues to expeditiously confirm Chief Kerlikowske. Thank you for your consideration.

Respectfully,

Tim Burgess, Chair  
Public Safety, Human Services and  
Education Committee

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



< Return To Hearing

Statement of

## The Honorable Maria Cantwell

United States Senator  
Washington  
April 1, 2009

U.S. SENATOR MARIA CANTWELL  
WASHINGTON  
FOR IMMEDIATE RELEASE  
APRIL 1, 2009  
CONTACT: PRESS OFFICE  
(202) 224-8277

Cantwell: Chief Kerlikowske Demonstrates that in Order to Fight Drugs and Crime, We Must Break Down Walls

Chief Gil Kerlikowske Will Address Prevention, Treatment and Enforcement as Head of ONDCP

WASHINGTON, DC –Today, Senator Maria Cantwell (D-WA) introduced Seattle Police Chief Gil Kerlikowske during his nomination hearing before the Senate Judiciary Committee. Kerlikowske has been nominated by the Obama Administration to head the Office of National Drug Control Policy.

Senator Cantwell's opening statement, as prepared for delivery, is below:

"Chairman Leahy and Ranking Member Specter, thank you for holding this important hearing today.

"I'm very pleased to introduce Chief Gil Kerlikowske. And, I urge my colleagues to swiftly confirm him as the next Director of National Drug Control Policy.

"I have known Gil for almost a decade. In his 36 years in law enforcement, he has demonstrated that to fight drugs, we must break down the wall between prevention and treatment, and enforcement.

"One of the reasons he was hired in Seattle, was because of his expertise in community policing.

"He also has a unique ability to understand the long-term implications of what you do today.

"During his time as Deputy Directory of COPS, Gil launched critical programs like the COPS Meth Initiative, the COPS in Schools Program, and the Tribal Resources Grant Program.

"As a member of the High Intensity Drug Trafficking Area (HITDA) Executive Board, Gil was a vocal advocate for the resources needed to deal with the meth threat.

"Thanks to the hard work of Gil and his Washington state colleagues Washington State had a sharp decrease in domestic production.

"In 2001, Washington state had more than 1,400 clandestine lab seizures. In 2008, that number plummeted to only 26.

"As Chief of Seattle's Police Department for over 8 years, Gil has also been a leader in transforming the way

[http://judiciary.senate.gov/hearings/testimony.cfm?readerformat=t=1&id=3757&wit\\_id=243](http://judiciary.senate.gov/hearings/testimony.cfm?readerformat=t=1&id=3757&wit_id=243) 6/16/2009

we combat crime in the 21st Century.

"In 2004, he established a partnership between the Seattle Police Department and INTERPOL to help combat local crime with international ties such as human trafficking and drug smuggling operations.

"He will bring this kind of comprehensive approach to his work combating drug crimes working with federal, state, local and international partners.

"Today, we face an increasingly globalized threat from drug trafficking organizations that's going to take a new, collaborative, comprehensive approach. This is evidently clear by looking at the news stories coming out of Mexico daily.

"According to the U.S. Director of National Intelligence, Mexico is the major conduit for cocaine bound for the United States. And it is the chief foreign supplier of methamphetamine to the U.S. market.

"Criminal networks in Asia and Europe supply Mexican drug cartels with the pseudoephedrine (Sudo-Ephedrine) and other pre-cursor chemicals they need to mass produce meth.

"Even as federal, state, and local law enforcement shut down meth labs across my state and throughout our country, meth and other illegal drugs continue to flow across our borders to be distributed by local street gangs. Gil knows you need a comprehensive approach and must address BOTH supply AND demand.

"The Obama administration has recognized the need for decisive action. Just last week, Department of Homeland Security Secretary Napolitano announced that hundreds of federal agents and high-tech surveillance equipment will be sent to the Southwest to stop the flow of drugs and guns.

"I know Gil will work closely with Secretary Napolitano, Secretary of State Hillary Clinton, and Attorney General Eric Holder, as well as with local and state governments to meet these challenges head on.

"The U.S. can make a huge difference both at home and abroad. I saw this success firsthand when I visited Colombia in 2007 which has made great progress in fighting drug trafficking organizations with assistance from the United States.

"And, even though Colombia still faces serious challenges, the murder rate in Medellin is lower than Washington, D.C. today.

"Our experience in Colombia has shown it is going to take a comprehensive strategy involving stakeholders at every level, and partnerships around the world, to end the flow of drugs that have such a disastrous impact on our communities.

"I'm confident that Gil will bring the collaborative approach needed to succeed. He is the right man for the job and the cop we need on this beat.

"I very much look forward to working with him.

"Thank you."

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[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit\\_id=743](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit_id=743) 6/16/2009

1212



The City of  
**OKLAHOMA CITY**  
POLICE DEPARTMENT  
William Citty  
Chief of Police

April 12, 2009

The Honorable Patrick Leahy  
United States Senator  
433 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

I am writing you in support of Chief Gil Kerlikowske and his nomination for the Director of the Office of National Drug Policy.

I've known Gil five years since becoming a member of Major Cities Chiefs. It was clear from my first meeting with Major Cities Chiefs that Gil was well respected among his peers. After knowing him personally, I too came to respect him for a number of reasons, but most of all for his sincerity and dedication to law enforcement. I found him to be sincere and passionate about law enforcement's role to address issues and challenges facing our communities. It was obvious that Gil worked hard at keeping up with advancements in technology, changing laws, homeland security and innovations in law enforcement.

Gil has been in informal and formal leadership roles with Major Cities Chiefs and demonstrated an ability to unite individuals with diverse backgrounds, opinions and conflicting interests that include the local, state, federal and private sectors. Major Cities Chiefs has had a greater voice and impact in the areas of homeland security and federal legislation primarily due to his leadership.

Gil has the unique ability to balance a tough stance on crime, while understanding the importance of prevention and intervention. A philosophy that is critical to reducing the growing number of violent crimes associated with illegal drug use. Gil's integrity, respect, knowledge and passion will be an asset to the Office of National Drug Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "William Citty".

William Citty  
Chief of Police

pc: Senator Tom Coburn  
Senator Arlen Specter

701 Colcord Drive • Oklahoma City, OK 73102 • 405/297-1000



March 20, 2009

Senator Patrick Leahy  
433 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Leahy:

On behalf of Community Anti-Drug Coalitions of America (CADCA) and our more than 5,000 coalition members nationwide, I would like to express our strong support for Police Chief, Gil Kerlikowske's swift confirmation as Director of the Office of National Drug Control Policy (ONDCP). Throughout Chief Kerlikowske's 36 years of experience in law enforcement and drug policy issues, he has demonstrated the highest level of dedication, passion, and commitment to effectively addressing our nation's crime, substance abuse and addiction problems.

Chief Kerlikowske has served as the highest ranking law enforcement officer in four cities in the United States, and for the last nine years he was the Chief of Police in Seattle. In addition, he also served as President of the Major City Chiefs Association, and Deputy Director of the COPS program at the Department of Justice. As a result of his vast experience, Chief Kerlikowske understands that the national drug control strategy must be comprehensive and coordinated. He also recognizes that the perspectives of those closest to the ground - state and local law enforcement, prevention, treatment and recovery professionals - play a critical role in this strategy. CADCA and its members whole-heartedly support Chief Kerlikowske's nomination.

Chief Kerlikowske is singularly qualified to lead the nation's drug control efforts. He embodies all of the attributes needed to be both an effective manager and a visionary leader, and is a fierce defender of community policing principles that remove barriers between the criminal justice, and prevention and treatment community. I am confident that Chief Kerlikowske's law enforcement background at the federal and city levels make him uniquely qualified to serve as Director at ONDCP.

Chief Kerlikowske is universally respected by the law enforcement, prevention, and treatment fields as a result of his steadfast work ethic, honesty, and demeanor. CADCA fully supports Chief Kerlikowske's nomination and strongly urges you to see that he is favorably considered and promptly confirmed as the Director of the ONDCP. Thank you for considering our views on this important nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur T. Dean".

Arthur T. Dean  
Major General, U.S. Army, Retired  
Chairman and CEO

A handwritten signature in black ink, appearing to read "Sue Thau".

Sue Thau  
Public Policy Consultant

cc: Bruce Cohen

*Building Drug-Free Communities*

Community Anti-Drug Coalitions of America  
625 Slaters Lane, Suite 300, Alexandria, VA 22314  
P 703-706-0560 F 703-706-0565 1-800-54-CADCA cadca.org

1214

**JUSTICE CENTER**  
THE COUNCIL OF STATE GOVERNMENTS  
*Collaborative Approaches to Public Safety*

March 31, 2009

The Honorable Patrick Leahy  
Chairman, Senate Judiciary Committee  
United States Senate  
224 Dirksen Office Building  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member, Senate Judiciary Committee  
United States Senate  
152 Dirksen Office Building  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Council of State Governments Justice Center board of directors—leaders of a national organization that serves policymakers at the local, state, and federal levels from all branches of government to increase public safety and strengthen communities—we are writing to urge you to approve the nomination of Gil Kerlikowske to direct the Office of National Drug Control Policy (ONDCP). Chief Kerlikowske has been a national leader on drug issues and is committed to a balanced and common-sense approach to reducing related crimes and the destructive influence drugs have had on our communities and families. As a board member of Fight Crime: Invest in Kids and as chief in four cities, he has been dedicated to addressing juvenile drug issues. He knows on both a professional and personal level what it will take to achieve meaningful reform in this country. Chief Kerlikowske in all of his positions in law enforcement and as President of the Major Cities Chiefs Association has demonstrated that he can achieve consensus among diverse stakeholders and understands the value of the kind of true collaboration that can only come from years of successfully conducting community policing efforts.

As elected and appointed state officials, we know that it will take someone with vision, an ability to navigate partisan politics, a comprehensive understanding of the issues, and a successful management style to direct ONDCP. Chief Kerlikowske has demonstrated these abilities time and again. He understands that tough enforcement alone cannot solve our nation's problems related to illegal drugs and has proposed an approach that state leaders know is needed: one that includes treatment, prevention, and evidence-based practices. No one knows better than someone who has spent more than three decades on the front lines of policing how complex the set of factors are that affect drug abuse and crime. Chief Kerlikowske has stated that without a comprehensive approach that involves courts, law enforcement, border security, prisoner reentry, and other systems and initiatives working hand-in-hand, we cannot begin to address this country's drug problems. He is not only correct in how he has framed the complexity of the problems facing the next director, he knows how to address them.

We thank you for considering the views of state legislators, judicial leaders, and executive branch officials as you decide the appointment of the next ONDCP director.

Sincerely,

*Pat Colloton*

**Rep. Pat Colloton (R-KS)**  
Chair, Committee on Corrections and Juvenile Justice  
Justice Center Executive Committee Member

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100 WALL STREET, 20TH FLOOR • NEW YORK, NY 10005 • 212.482.2320 • 212.482.2344 (FAX) • WWW.JUSTICECENTER.CSG.ORG  
4630 MONTGOMERY AVE., SUITE 650 • BETHESDA, MD 20814 • 301.760.2401 • 240.497.0568 (FAX)  
504 W. 12TH STREET • AUSTIN, TX 78701 • 512-482-8298 • 512-474-5011 (FAX)

1215



*San José Police Department*

March 23, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Davis".

Robert L. Davis  
Chief of Police



201 W. Mission St. San José, CA 95110 www.sjpd.org

6

1216



Police Department

Edward A. Flynn  
Chief of Police

March 30, 2009

The Honorable Patrick Leahy, Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Senator Leahy:

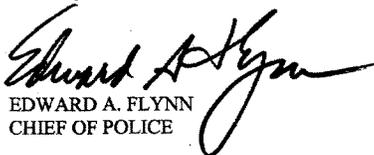
With this letter I express my support for Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). I am one of many law enforcement executives pleased that our President of the Major Cities Police Chiefs Association has been nominated to serve in this important position.

Chief Kerlikowske has the qualities and leadership needed for success at ONDCP. He has years of policing experience and is very familiar with our nation's struggle with drugs after serving in Florida police departments, as Commissioner of Police in Buffalo, and Chief of Police in Seattle. Following executive experience at the U.S. Department of Justice, he is also familiar with Washington and has proven his ability to accomplish the tasks at hand.

We need an ONDCP Director that is prepared and ready to address the violence and tragedy that results from drug abuse. America is facing serious issues in relation to drug control, prevention and treatment. I believe Gil Kerlikowske is qualified to address these challenges.

Law enforcement executives around the country have witnessed Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to support him in his new position. Please consider moving the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP. He understands the struggles of local law enforcement agencies in the fight against drugs, and will direct appropriate resources to assist in this nation-wide battle.

Sincerely,



EDWARD A. FLYNN  
CHIEF OF POLICE

Police Administration Building, 749 West State Street, Post Office Box 531, Milwaukee, Wisconsin 53201-0531 (414) 933-4444  
Web Site: <http://www.milwaukee.gov/police>

1217



GAVIN NEWSOM  
MAYOR

POLICE DEPARTMENT  
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE  
850 BRYANT STREET  
SAN FRANCISCO, CALIFORNIA 94103-1603



HEATHER J. FONG  
CHIEF OF POLICE

March 31, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Senators Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP, and qualities he has evidenced throughout his law enforcement career. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. I have great faith in Gil's ability to "get the job done" and he has my enthusiastic and unqualified support. I will conclude by saying that American law enforcement has always looked to both of you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

HEATHER J. FONG  
Chief of Police



1000 10th Avenue, Suite 1000  
Seattle, WA 98101-3200

Secret Chair  
**Robert W. Overall**  
PhaseW, Inc.

Immediate Past Board Chair  
**Justice Bobbe Bridge** (retired)  
Center for Children & Youth Justice

Directors  
**Aaron Alhadef**  
Ethos Enterprise

**Peter G. Boteman, Ph.D.**  
Microsoft

**Betty R. Carter**  
Community Advocate

**Susan L. Coskey**  
Seabold Group

**Mary M. Hammans, CPA**  
Community Advocate

**Renata Hasle**  
Community Advocate

**Brian Hoegler**  
Key Bank

**Brian Johnston, MD MPH**  
Harborview Medical Center

**Karen Jones**  
Riddell Williams

**Martha Jordan**  
Community Advocate

**Christopher Merrywell**  
Union Bank of California

**Stephen J. Robella**  
Community Advocate

**Barton Shilcock**  
Racing Company

**Mark Solomon**  
Seattle Police Department

**Hugh Straley, MD**  
Group Health Cooperative (retired)

**Deirdra Wager**  
Starbucks Coffee Company  
(retired)

**Melinda A. Giovego, Ph.D.**  
Executive Director

YouthCare Administrative Offices  
The Kenneth & Marleen Alhadef  
Home of Hope  
2500 NE 54th Street  
Seattle, WA 98105-3142  
Phone (206) 694-4500  
Fax: (206) 694-4509



March 23, 2009

The Honorable Senator Patrick Leahy, Chairman, Committee on the Judiciary  
433 Russell Senate Office Building  
Washington, DC 20510

The Honorable Senator Arlen Specter, Ranking Member.  
711 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Leahy and Senator Specter,

It is a privilege to recommend Seattle Police Chief Gil Kerlikowske for Director of the Office of National Drug Control Policy. While serving as Seattle's chief law enforcement officer for over eight years, he has changed the image and relationship of his department in our community. He truly believes that law enforcement must include community involvement and aim at root causes.

Issues such as youth gangs and youth violence, homelessness, mental health and substance abuse all contribute to crimes on our streets and Chief Kerlikowske has actively integrated awareness and use of community-based alternatives to arrest and punishment in policing related to such issues.

As the director of YouthCare, the largest youth services agency in this community - serving over 2000 runaway and homeless youth each year, I have seen this community approach first hand. His officers have been encouraged to help young people avoid jail by utilizing our services. He has deployed resources to develop partnerships and community ties that make law enforcement officers and officials active participants in diverting at-risk young people from paths that lead to incarceration. We have regular meetings at local precincts and are welcomed to be part of the discussions and honest dialogue. Officers take time to come into our center to introduce themselves as a positive face and welcome smile so that young people see them as a resource on Seattle's streets.

We know our police support by names not just badges. Prioritizing development of this kind of rapport and relationship building comes from leadership at the top - from someone who believes that social crimes happen for social reasons and that social responses are part of the solution. That helps us reduce the need for jails and helps us put lives on positive paths.

Chief Kerlikowske stood by YouthCare as an advocate in our pursuit of special funds to develop a new community treatment approach to helping young people victimized through prostitution. He stood with us when we lobbied the state

Since 1974 YouthCare has been a leader in serving homeless and runaway youth.

legislature to change the law to defer these cases to treatment where services were available. We stood together to put mental health providers into patrol cars with Seattle police officers to help mediate stressful encounters with the public. He understood that this resource could help defuse tensions during arrests or help bring appropriate services to the situations and avoid arrests all together. These innovative alternatives to an "us against them" mentality are part of why Seattle now enjoys its lowest crime rate in four decades.

Chief Kerlikowske also lives these principals and believes that community involvement is something we do in our personal lives as well. He served on YouthCare's Capital Campaign for the recently opened Orion Center which helped us build a state-of-the-art urban facility for runaway and homeless youth that provides education and employment solutions to youth and young adult homelessness. He and his wife have helped build Seattle and contribute as people to the welfare of our community. I speak often to officers under his leadership and they say this is a man who inspires and who understands; a compassionate man of the highest integrity.

The drug problem in America requires a new vision for solutions that extends beyond law enforcement. It requires a person who will look at the issue from many angles with fresh eyes and who will champion and put resources into community solutions. Chief Kerlikowske is such an individual. We will miss him on the Seattle streets. Thank you for the opportunity to speak on his behalf and please do not hesitate to call on me if you have any questions.

Sincerely yours,



Melinda Giovengo, Ph.D.  
Executive Director  
YouthCare



LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT  
DOUGLAS C. GILLESPIE, Sheriff

Partners with the Community

March 23, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

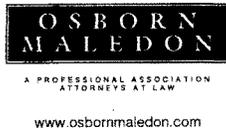
Douglas C. Gillespie, Sheriff

400 Stewart Avenue • Las Vegas, Nevada 89101-2984 • (702) 795-3111  
www.lvmopd.com • www.protectthecity.com



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The Phoenix Plaza  
21st Floor  
2929 North Central Avenue  
Phoenix, Arizona 85012-2793  
P.O. Box 36379  
Phoenix, Arizona 85067-6379  
Telephone 602.640.9000  
Facsimile 602.640.9050



Larry A. Hammond

Direct Line  
Direct Fax

March 24, 2009

Hon. Senator Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510

Hon. Senator Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510

RE: Gil Kerlikowske

Dear Senators Leahy and Specter:

I learned last week that the President has nominated Gil Kerlikowske for the position of Director, Office of National Drug Control Policy. I am writing you this letter to endorse this gifted nomination.

I first became acquainted with Gil Kerlikowske through my work and his with the American Judicature Society (AJS). We both worked along with former Attorney General Janet Reno to help develop greater focus on the need to improve, and in some cases reform, the criminal justice system. Gil has always been an important voice on this topic. Having been the Police Chief in Buffalo, New York and Seattle, Washington, he comes at all law enforcement and criminal justice issues with a hard-edged experience-based perspective. Yet he has always been the law enforcement official most likely to want to encourage open dialogue with all participants in the criminal justice arena. To that end, he has given of his time over and over again on questions having to do with the causes of wrongful convictions.

For instance, a couple of years ago, I asked him to come to Arizona to speak to our police chiefs about eyewitness identification. He readily agreed to do so and his remarks were powerful, focused and remembered to this day by police chiefs who I encounter here.

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Hon. Senator Patrick Leahy  
Hon. Senator Arlen Specter  
March 24, 2009  
Page -2-

Gil Kerlikowske has also served on the AJS National Advisory Council since its creation several years ago. He continues to be an important sounding board for the work of this organization. His resume will speak for itself but all of us who have worked with him would warmly endorse his nomination and hope that it will lead to a swift confirmation.

Thank you.

Sincerely,



Larry A. Hammond

LAH:djt  
2508093

1223



**City of Phoenix**  
OFFICE OF THE POLICE CHIEF

April 6, 2009

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Senator Specter:

Re: Nomination of Gil Kerlikowske as Director of the Office of National Drug Control Policy (ONDCP)

As head of the largest law enforcement agency in the state of Arizona, I offer my support for Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

JACK F. HARRIS  
Public Safety Manager  
Phoenix Police Department

620 West Washington Street, Phoenix, Arizona 85003 602-262-6747

1224

**B.L.E.A.W.**

**BLACK LAW ENFORCEMENT ASSOCIATION OF WASHINGTON INC.**  
P.O. Box 18493  
Seattle, WA 98118  
206-315-4669

28 March 2009

The Honorable Senator Patrick Leahy, Chair Senate Committee on the Judiciary  
433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Re: Endorsement of Chief of Police R. Gil Kerlikowske

Dear Senator Leahy:

On behalf of the Black Law Enforcement Association of Washington, I am writing to express our support of Chief R. Gil Kerlikowske for the position of Chief of the Office of National Drug Control Policy.

Chief R. Gil Kerlikowske service to the community and his influence in policing started long before his arrival to the Seattle Police Department. His decorated honors in the Army and his years of service with the St. Petersburg Police Department helped him to define his role in policing and his commitment to the communities he served.

There is no doubt policing has changed dramatically over the past 20 years and Chief Kerlikowske is a change agent making policing better. Through his hard work in many positions across the country Chief Kerlikowske's insight, commitment to community policing and professionalism has been embedded into the leadership across the country. For example as the Chief of Police for Fort Pierce and Port St. Lucie Florida, his departments received the Attorney General Crime Prevention Award. As Commissioner for the Buffalo, New York Police Department, even as the first outsider appointed in thirty years he was able to build bridges with entities that often didn't talk to each other. Chief Kerlikowske is known for his hard work, creative approaches to policing, his fairness and openness.

His appointment as the Deputy Director of the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) Program he provided local grants to police departments all across the United States. The position with COPS fit many of his basic principals he held true throughout his career. Chief Kerlikowske understands the foundation and fundamentals of policing. He wants the men and women of law enforcement to be safe and have the tools to address serious concerns many communities in crisis are facing. It was his diverse approaches to policing that prepared him for the major challenges in his future. This was never more prevalent than when he accepted the position as the Chief of the Seattle Police Department in August of 2000.

When he arrived in Seattle it was clear he wanted Seattle residents to know things would be different. He modeled his actions with his expectations and drew from his past experiences. He wanted everyone from his most senior officers, highest-ranking officer and all civilian personnel to know this was their department and they were important to how this department would develop through the years. He instructed his command staff to develop policies and

directives within the department that showed prevention and intervention were just as important as enforcement.

As Chief of the Seattle Police Department he worked with local leaders, grass root organizers, homeless advocates, ministers, numerous diverse community representatives, a variety of legal perspectives (ACLU, Defense Associations, corporate, civil, private), and included a countless number of other police agencies to address City of Seattle issues. He worked with members of the African American community to establish a less lethal option program to provide officers with alternatives to lethal force when the situation allows. Chief Kerlikowske's hiring and promoting of minority officers has not gone without notice. He went into the communities of color and actively recruited individuals to the Seattle Police Department. He also promoted officers of color and placed them in recognizable and strategic positions within the department. Every individual that is promoted, every position available within the department and each rank from detective to deputy chief were routinely analyzed by Chief Kerlikowske. It was common to see him engaged in settings that allowed him to meet frequently with diverse community members some of whom felt disenfranchised from the police department. Relying on his eleven Demographic Advisor Councils he was able to address issues quickly and directly. Chief Kerlikowske believed the Seattle Police Department should be transparent. He not only worked on the image of the department but he also addressed its professionalism. Chief Kerlikowske took great pride in getting the Seattle Police Department accredited. In 2006 he received the "James V. Cotter Award" from the Communications Assistance for Law Enforcement Act (CALEA) committee, marking the first time the Seattle Police Department has ever been nationally accredited.

Through the years Chief Kerlikowske has spearheaded initiatives and encouraged problem solving thinking to address crime issues. He will research, solicit and seek out ways to better address community concerns and to address crime. Chief Kerlikowske has been outspoken about alternatives to minority confinement and the use of social services to better address problem areas in the community. He supported a wide variety of programs such as Re-Investing In Youth, GOTS (Get Off the Streets) which is a program that provided treatment for offenders, the restoration of voting rights for convicted felons under specific conditions and working with King County Juvenile Detention to reduce the disproportionate minority confinement. His active oversight of the department and his participation in the community has resulted in City of Seattle being one of the safest major cities in the United States.

The Black Law Enforcement Association of Washington strongly supports the recommendation of Chief R. Gil Kerlikowske for this position as Chief of the Office of National Drug Control Policy knowing that his leadership and expertise will well serve the American people because of his sound principles of public safety and public health. He will demonstrate to criminal organizations threatening to undermine stability that he takes seriously the responsibility to reduce drug use in the United States.

Sincerely,



John F. Hayes Jr.  
President of B.L.E.A.W.



# CITY OF HOUSTON

Bill White, Mayor

Houston Police Department  
1200 Travis Houston, Texas 77002-6000 713/247-1000

CITY COUNCIL MEMBERS: Toni Lawrence Jarvis Johnson Anne Clutterback Wanda Adams Michael Sullivan M.J. Khan, P.E. Pam Holm  
James Rodriguez Peter Brown Sue Lovell Melissa Noriega Ronald C. Green Jolanda "Jo" Jones CITY CONTROLLER: Annise D. Parker

Harold L. Hurtt  
Chief of Police



The Honorable Patrick Leahy  
The Honorable Arlen Specter  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

  
Harold L. Hurtt  
Chief of Police

CC: Senator John Cornyn  
Committee on the Judiciary

hlh:ncb



1227



COLONEL DANIEL ISOM, CHIEF OF POLICE

Service, Integrity, Leadership And Fair Treatment To All.

## METROPOLITAN POLICE DEPARTMENT

CITY OF ST. LOUIS • 1200 CLARK AVENUE • ST. LOUIS, MISSOURI 63103

March 31, 2009

The Honorable Patrick Leahy  
Chairman,  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Isom', written over a white background.

Colonel Daniel Isom  
Chief of Police  
St. Louis Metropolitan Police Department



March 25, 2009

Senator Patrick Leahy  
 United States Senate  
 433 Russell Senate Office Building  
 Washington, DC 20510  
**Via Fax: 202-224-3479**

**RE: Drug Czar Nomination: Chief R. Gil Kerlikowske**

Dear Senator Leahy,

In the best interest of the kids throughout our nation, Boys & Girls Clubs of America highly recommends **Chief R. Gil Kerlikowske** as Drug Czar for the United States of America.

Chief Kerlikowske has not only dedicated over 36 years of his life to law enforcement throughout our nation, he has also been a Champion for our Youth as Chairman of the Board of **Fight Crime: Invest in kids**, which is a national organization that looks into the research and reasons on how to prevent kids from becoming criminals.

Most importantly, the Chief has fully understood that prevention is a critical component to the decrease in youth violence and crime and drug and alcohol abuse which directly supports the core values of Boys & Girls Clubs of America's life saving programs in character and leadership development, education and career development, health and life skills, the arts and Sports, Fitness and Recreation.

With genuine enthusiasm, on behalf of the 4.2 million children served by Boys & Girls Clubs nationwide, we wholeheartedly support Chief Kerlikowske's nomination as Drug Czar, as we have the faith, belief and trust in his leadership and abilities to serve our country in this vital role.

In the best interest of the kids,

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Richard Inukai'.

Richard Inukai  
 President

**Country Chrysler Jeep Dodge**

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1229

GLENN F. IVEY  
STATE'S ATTORNEY



J. PATRICIA WILSON SMOOT  
CARLOS ACOSTA  
DEPUTY STATE'S ATTORNEYS

State's Attorney for Prince George's County  
14735 Main Street, Suite M3403  
Upper Marlboro, Maryland 20772  
301-952-3500

March 30, 2009

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

Re: Nomination of Ronald H. Weich

Dear Chairman Leahy:

I am honored to support President Obama's nomination of Ronald H. Weich, Esq. for the position of Assistant Attorney General for Legislative Affairs.

I have known Mr. Weich for many years. I first worked with him during the Senate Whitewater Hearings when he served on the staff of Senator Edward Kennedy and I served on Senator Tom Daschle's leadership staff. Our paths continued to cross when he went to work for Senator Arlen Specter. In that time I developed great respect for his talents and abilities.

Mr. Weich has a rare combination of bipartisan legislative experience developed over twelve years of service on Senate committee and leadership staffs. Highly regarded by his colleagues, Mr. Weich's expertise reflects a strong understanding of congressional oversight, Senate rules and floor procedure.

His career includes work as a trial prosecutor in Manhattan, as a criminal defense attorney and as a civil practitioner. He has played a key role in the passage of very significant legislation, and worked with Justice Department officials in both Republican and Democratic Administrations on major issues. His combination of legal and political experience provides him the optimum ability to represent the needs and interests of the Department of Justice.

I strongly urge you to support Mr. Weich's nomination.

Sincerely,

Glenn F. Ivey

1230

EDWARD M. KENNEDY  
MASSACHUSETTS

United States Senate

WASHINGTON, DC 20510-2101

March 30, 2009

The Honorable Patrick Leahy  
Chairman, Senate Committee  
On the Judiciary  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Member, Senate Committee  
On the Judiciary  
Washington, D.C. 20510

Dear Pat, Arlen and Members of the Committee:

I write to enthusiastically endorse Ron Weich's nomination to be Assistant Attorney General for Legislative Affairs in the Department of Justice. You know Ron through his work for Arlen, followed by his impressive service on my Judiciary Committee staff when I was a member of the Committee, and his equally impressive service in recent years to our Majority Leader Harry Reid. I believe he's an exceptional choice for this position and I urge his prompt confirmation.

Ron served with distinction on my staff for nearly seven years, beginning in 1990 on the Labor and Human Resources Committee, as it was then known, and becoming my Chief Counsel on the Judiciary Committee in 1995. During his years with me, he had a major role in bringing the treatment of substance abuse and mental illness into the mainstream of medical issues, helping to develop and pass legislation consolidating the federal efforts in these areas in NIH, and also working to combat substance abuse.

Ron also worked to improve our justice system through his efforts on the 1994 crime bill, which significantly strengthened partnerships between local, state and federal law enforcement, as well as through his efforts to strengthen the Legal Services Corporation and his contributions on sentencing, racial justice and judicial nominations.

Letter to Senators Leahy and Specter

March 30, 2009

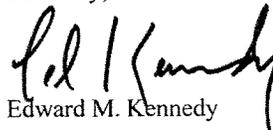
Page 2

In all he did, Ron consistently showed himself to be a lawyer of exceptional intelligence, skill and sound judgment. He has a remarkable ability, which he has demonstrated in his current position with Sen. Reid, to work extremely well with Members and staff on both sides of the aisle and to guide us toward creative solutions to seemingly intractable problems.

Ron's success in working with people of all political persuasions is a result of his unfailing professionalism, integrity and civility. He listens fairly to all sides of the issues and keeps the lines of communication open, but never loses his commitment to a fair and just result.

Ron's career in the law and in the Senate has given him a breadth of knowledge and experience that will serve him well as head of the Office of Legislative Affairs. He has thorough knowledge of Congress and a deep familiarity with the policy and legislative issues facing the Department of Justice, and I'm sure the Committee and all Members of Congress will benefit from Ron's service in this important position. I strongly urge the Committee to report his nomination favorably.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Kennedy", written in a cursive style.

Edward M. Kennedy

1232

**STATEMENT OF R. GIL KERLIKOWSKE  
NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY  
BEFORE THE COMMITTEE ON THE JUDICIARY  
OF THE  
UNITED STATES SENATE  
APRIL 1, 2009**

Mr. Chairman, Ranking Member Specter, and Members of the Committee, it is a great honor and privilege to be sitting before you today as the nominee for Director of National Drug Control Policy. I am deeply humbled by President Obama's request that I serve in a position of such importance. I wish to thank the members of the Committee and your staffs for providing me with the opportunity to meet with many of you over the past few weeks. Each of these meetings has been productive and informative, and if confirmed, I look forward to our forming closer relationships and engaging in richer discussions about the future course of the nation's drug control strategies.

I want to specifically thank Senator Murray and Senator Cantwell for their support today. As Chief of Police in Seattle, I relied on their assistance and leadership in helping me reduce crime rates in that city to record lows. I also want to thank my wife, Anna Laszlo, who is here with me today. She has supported my commitment to public service these many years. Additionally, while they are not here today, I must acknowledge the support of both my mother, Norma Shands, and of Anna's mother, Eva Laszlo. Anna and I, both only children, are deeply grateful to these two women for their commitment to us over the course of our lives and careers. I would also be remiss if I did not recognize Judge Thomas W. Shands, my step-father, who has since passed but would be very proud to see me appearing before you today. He was an inspiration to me while growing up as an individual who could hand down stiff sentences when necessary but also was in the forefront of campaigning for modern treatment for incarcerated juveniles.

I would also like to thank the many organizations and individuals who have offered their support for my nomination. I look forward to conducting expansive and open dialogue with all stakeholders as I develop a powerful and effective national drug strategy.

I have proudly spent the past 36 years of my life in law enforcement and public service. It has been my privilege to lead two of this country's largest police departments over a period of thirteen years. In my current role as the Chief of Police in Seattle, where I have led for nearly nine years, I have brought innovative solutions to the problems of drugs and crime, and their effect on society. A key element in my approach while in Seattle has involved enlisting the support of the entire community to reduce crime. While this approach is commonly referred to as, "community policing", I prefer it be recognized as "policing". The transparency and collaborative approach of this concept has ultimately led to the lowest drug use and serious crime rates in Seattle since 1967. My goal is to use similar principles in the development, articulation, and implementation of an effective, comprehensive, and coordinated national drug control strategy.

Let me assure you that I know President Obama is committed to developing and implementing a rigorous drug control agenda, while bringing ONDCP back to its original leadership position. I am also grateful for the strong support of Vice President Biden. Our Vice President has long been a leader in protecting communities and families from the harms of illegal drugs. His continued dedication to solving the drug problem will be a key resource for ONDCP's success.

Upon confirmation, I will immediately coordinate with my colleagues in the federal government, as well as our counterparts at the state and local level, to ensure that the national drug control strategy is:

- Balanced and comprehensive, based upon the best possible understanding of the drug threat, and incorporates a science-based approach to public policy;
- Vigorously implemented through development of a national drug budget that contains proven, effective programs; and
- Rigorously assessed and adapted to changing circumstances,

Essential to these efforts is restoration of the vitality of the Office of National Drug Control Policy by recommitting the agency to its policy leadership mission. ONDCP was created by the Congress—under the guidance of this Committee—to focus this nation's efforts toward solving

the drug problem by developing and implementing a balanced, comprehensive national drug control strategy. ONDCP will effectively build consensus on how best to use interdiction efforts, law enforcement, treatment, prevention, and sound research to achieve measurable results in reducing drug use and its consequences. Dialogue will be continuous. Debate will be inclusive of disparate ideas. Deliberation will be comprehensive and collaborative.

I will work diligently to ensure that our efforts are supported by a properly balanced federal drug control budget—one which logically implements research-based programs to support and implement that Strategy. There will be a renewed focus on evidence-based approaches to reduce demand for drugs, through prevention as well as treatment. Additionally, we must also work to create strong partnerships to reduce the overall impact of drug trafficking and use.

Increased cooperation with the international community must also be included in any comprehensive strategy. Our nation's demand for drugs often fuels drug production and trafficking, as well as violence and corruption, within other nations. Domestic drug use directly funds the terrible drug-related crime currently wracking Mexico and fuels illegal armed groups in Colombia. Our international drug control programs help strengthen law enforcement and judicial institutions, while providing alternative livelihoods for poor farmers.

While these international supply reduction programs play a vital role in improving security, supporting the rule of law, and denying terrorist and criminal safe havens around the world, the greatest contribution we can make toward stability would be to reduce our demand for illicit drugs.

Finally, under the assumption that if you can't measure it, you can't improve it, I will set a goal for the development of a strong, transparent monitoring system. While highly complex, performance evaluation of the national drug strategy is key to both validating and tracking the efficacy of the strategic goals and objectives established by the National Drug Control Strategy and the individual programs which are funded to support it. With a robust monitoring system in place, we will know better how to respond to the ever-changing international drug situation and will have the information required to guide the mission-essential coordination and collaboration

efforts of the office. We will be better able to report on our progress, justify the level of funding requested, and satisfy the interest of the citizens of this nation that their money is being well-spent and that their needs for a safer and more secure environment are being met.

I want to thank you again for the opportunity to appear before you today. It would indeed be an honor to serve this nation in its effort to reduce drug use and the problems it creates for every American and the international community. I look forward to answering any questions the Committee may have.



National Council on Crime and Delinquency  
1979 Broadway, Suite 500 • Oakland, CA 94612  
tel: 415/708-2600 • fax: 415/708-0511 • www.nccd.org

Senator Patrick Leahy  
433 Russell Senate Office Bldg  
United States Senate  
Washington, DC 20510

Dear Senator:

March 23, 2009

I am writing in enthusiastic support of the confirmation of Gil Kerlikowske as the Director of the Office of Drug Control Policy. I have known him for almost 15 years and can think of no one better suited to provide leadership in this crucial area.

My first dealings with Chief Kerlikowske were when he ran the police department in Fort Pierce, Florida. My organization, the National Council on Crime and Delinquency, had been selected by the U.S. Department of Justice to assist dozens of communities to implement data-driven, evidence-based responses to youth violence. We picked Fort Pierce as one of our early sites because of the reputation of Chief Kerlikowske as one of the most progressive law enforcement officials in America. Because of his leadership, our youth violence project was very successful.

I also worked with Chief Kerlikowske when he was a leader of the Police Executives Research Forum and when he worked for the COPS Office in Washington, D.C. He was a champion of community policing and always placed a high value of learning from the best research.

In Seattle, Chief Kerlikowske inherited a department that was known for enlightened policing but was surrounded by intense political and community controversy. He was able to advance the most positive aspects of the Seattle Police Department, while restoring public support and confidence in the Department. Chief Kerlikowske showed his skills at communicating with and working with the very diverse Seattle community.

I urge you to confirm him. He brings a great knowledge of many aspects of drug control policy. The key issue is balance, and Chief Kerlikowske knows how to harmonize the different resources of law enforcement, prevention, and intervention. We urgently need a leader at the Office of Drug Control Policy who can utilize the best science that we have to combat the addiction problem. We need an open minded person now more than ever—someone who can respectfully listen to many points of view and arrive at a consensus. Gil Kerlikowske is not an ideologue on one side of the drug policy debate. Moreover, his experience will assist in the complex coordination that must be managed by the Office of Drug Control Policy. His standing as a law enforcement leader will enhance the prestige of the National Office.

I can support his nomination without reservations. The National Council on Crime and Delinquency will work with him to achieve the successes that the nation so urgently needs.

Respectfully yours,

Barry Krisberg Ph.D.

1237



CITY OF DALLAS

**DAVID M. KUNKLE**  
CHIEF OF POLICE

April 1, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D.M. Kunkle'.

David M. Kunkle  
Chief of Police

DALLAS POLICE DEPARTMENT JACK EVANS POLICE HEADQUARTERS 1400 S. LAMAR STREET DALLAS, TEXAS 75215

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



[< Return To Hearing](#)

Statement of

## The Honorable Patrick Leahy

United States Senator  
Vermont  
April 1, 2009

Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
Hearing On Judicial and Executive Nominations  
April 1, 2009

Today, the Senate Judiciary Committee holds a hearing on President Obama's first judicial nominee, and for two more well-qualified nominees for senior leadership positions in the Executive Branch. Each of these nominees has spent their professional lives in public service.

This afternoon we will hear from Judge David Hamilton, a highly-qualified and experienced jurist nominated for the Court of Appeals for the Seventh Circuit. His nomination has the bipartisan support of his home state Senators. I thank Senator Lugar and Senator Bayh for their consideration of this nominee, and I am pleased to welcome them to the Senate Judiciary Committee.

I said when this nomination was announced on March 17 that after the partisan and divisive approach that President Bush took with judicial nominations, I appreciated President Obama's seriousness in making his selection, and his constructive engagement with both Senator Lugar and Senator Bayh, the Republican and Democratic home state Senators. The President is doing his part to remove these matters from partisan politics, and that's a healthy change for the Nation and for all three branches of government. I hope that the Republican members of this Committee will respect the views of Senator Lugar, the most senior Republican serving in the United States Senate, and treat this nomination accordingly. Judge Hamilton is a well-respected Federal judge not known for partisanship or an ideological agenda. He should be confirmed quickly with a strong bipartisan majority.

Judge Hamilton currently serves with distinction as the Chief Judge of the Southern District of Indiana. He had an outstanding record at Yale Law School and Haverford College. After law school, he clerked for Judge Richard Cudahy of the Seventh Circuit. He practiced law for eight years in Indiana with the law firm of Barnes & Thornburg before he entered public service as counsel to then-Governor of Indiana, and now Senator from Indiana, Evan Bayh. He has also taught law as an adjunct professor at the Indiana School of Law.

In 2007, Judge Hamilton was honored with the Indiana Lawyer's Distinguished Barrister Award, which recognizes members of the legal community for their exemplary leadership in the legal profession and devotion to the betterment of their communities. That same year, he was awarded the distinction of being named one of the 500 Leading Judges in America by Lawdragon Magazine for presiding over complex or high profile cases with aplomb. In 1991, Judge Hamilton received the Sagamore of the Wabash Award from the Governor of Indiana, the highest honor that the Governor of Indiana can bestow, for his distinguished service to the State of Indiana.

Mr. Hamilton's nomination has also earned support from across the political spectrum. The President of the Indianapolis Lawyers Chapter of the conservative Federalist Society, Geoffrey Slaughter, who two months ago invited Judge Hamilton to speak before the conservative group, called him "an excellent jurist with a first-rate intellect," and described his judicial philosophy as "well within the mainstream, between the 30-yard lines."

When President Obama first announced this nomination, he noted that "Judge Hamilton has a long and impressive record of service and a history of handing down fair and judicious decisions." In light of his

[http://judiciary.senate.gov/hearings/testimony.cfm?rendered\\_from=print&id=3757&wit\\_id=2629](http://judiciary.senate.gov/hearings/testimony.cfm?rendered_from=print&id=3757&wit_id=2629) 6/16/2009

superb record, broad support, and unanimous "well qualified" rating from the American Bar Association, it is no wonder Judge Hamilton's nomination for this important appellate seat has the support of both home state Senators.

I am glad President Obama has picked an experienced jurist and consensus candidate to be his first judicial nominee. I hope the leadership that Senator Lugar and Senator Bayh have shown in coming together to support Judge Hamilton's nomination is a good sign that we will have the bipartisan cooperation that President Obama has called for, that some of us are working hard to create, and that the American people have every right to demand. President Obama is off to a good start. I commend the White House for consulting with the distinguished Senators from Indiana – a Republican and a Democrat – to put forth a consensus nominee whose proven record and bipartisan support should lead to swift approval by this Committee and the Senate.

We will also hear from two more of President Obama's highly-qualified nominees for important posts in the Executive Branch.

Ron Weich is nominated to be Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice. In more than a decade on Capitol Hill, he has advised three Senators: Senator Specter, Senator Kennedy, and Majority Leader Reid. I want to put into the record a letter of support for Mr. Weich I received from Senator Kennedy, a former Chairman of this Committee and a Member for more than four decades. In addition, Mr. Weich has a distinguished record of public service as an Assistant District Attorney in Manhattan, and as a Special Counsel to the United States Sentencing Commission. He is an experienced Senate hand who has earned the respect of Senators on both sides of the aisle. We know him well as a former member of the staff of this Committee. I am confident he will be a welcome addition to the leadership at the Justice Department, and will make the Department more responsive to congressional concerns than we have seen over the last several years.

I thank Senator Specter for agreeing to add the nomination of R. Gil Kerlikowske to today's proceedings, as well. Chief Kerlikowske has 36 years of experience in law enforcement, including his current service as Chief of Police for the Seattle Police Department. He is the former Deputy Director of the Office of Community Oriented Policing Service at the Department of Justice, and is currently President of the Major Cities Police Chiefs Association. He is nominated to serve as the Director of National Drug Control Policy.

Chief Kerlikowske's nomination has received numerous letters of support, including strong endorsements from Republican and Democratic public officials, State and local law enforcement officials, the National Center for Victims of Crime, the United States Conference of Mayors, the Community Anti-Drug Coalition of America, the Washington Association of Sheriffs and Police, and the National Council on Crime and Delinquency.

Mary Lou Leary, the Executive Director of the National Center for Victims of Crime, describes Chief Kerlikowske as a "strong manager," who is "committed to crime prevention" and who "understands the connection between illegal drugs and crime." Arthur T. Dean, the Chairman and CEO of the Community Anti-Drug Coalition of America, wrote that Chief Kerlikowske understands that drug policy "must be comprehensive and coordinated" and "recognizes that the perspectives of those closest to the ground – state and local enforcement, prevention, treatment, and recovery professionals – play a critical role in this strategy."

As a former prosecutor, I have always advocated vigorous enforcement and punishment of those who commit serious crimes. But I also know that punishment alone will not solve the problems of drugs and violence in our rural communities. I am pleased that Mr. Kerlikowske supports combating drug use and crime with all the tools at our disposal, including enforcement, prevention, and treatment. His nomination comes at a crucial time given the concerns that many of us – Democrats and Republicans – share about drug policy. The situation along our southern border, and that in Afghanistan, are made all the more difficult by the illegal drug trade. In addition, if he is confirmed, Mr. Kerlikowske will play an important role in formulating a more rational and fair Federal sentencing policy. I look forward to working with Chief Kerlikowske.

It is unfortunate that there has been partisan criticism of our proceeding today. We are proceeding at a reasonable pace for the Committee's consideration of an experienced jurist whom the Senate has previously confirmed by unanimous consent. The fact is Judge Hamilton is rated unanimously well-qualified by the ABA. The fact is his nomination has the support of both home state Senators – a respected senior Republican, and a Democrat. The fact is we now have more than 65 vacancies on the Federal bench, and additional vacancies will arise. And the fact is we have only one judicial nomination before us at this time. There is no good reason in my view to delay, and every reason to proceed promptly.

[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit\\_id=2629](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit_id=2629) 6/16/2009

Some on the other side of the aisle may feel rushed because of the weeks they have spent working to delay consideration of President Obama's nominations to lead the Justice Department. We still have been unable to obtain a time agreement to consider the nomination of Professor Dawn Johnson to head the Office of Legal Counsel, for example, even though her nomination was reported favorably by this Committee two weeks ago on March 19.

I have considered Republican objections and concerns throughout the year and tried to be accommodating. I delayed hearings this year for the nominees to be Attorney General, Solicitor General, and the head of the Office of Legal Counsel. Our last confirmation hearing was on March 10, three weeks ago. Despite those accommodations, Senate Republicans have chosen to delay Committee, as well as Senate, consideration of nominees.

I understand that Senators could always use more time to prepare, and that this is a busy week. However, with a two-week Easter recess approaching, I did not want to delay this proceeding another two weeks. Last year, as he had earlier in President Bush's term, Senator Specter proposed a protocol for consideration of judicial nominations that called for hearings on judicial nominees within 30 days of nomination. The demand to delay this hearing on Judge Hamilton's nomination past the Easter recess would violate that very protocol. I trust that once they consider his qualifications, the Republican members of this Committee will work with us to consider the nomination promptly upon our return, and not needlessly delay proceeding as has been threatened.

In that regard, it was a bad sign that last month all 41 Senate Republicans signed a letter to President Obama threatening filibusters of his judicial nominees before they were even named. I trust that position is being reconsidered in light of the reality that President Obama has consulted with Senators. These threats of obstruction are not helpful.

I urge Republican Senators to work together with the President to fill vacancies on the Federal bench. Our demonstrated ability to work together to fill judicial vacancies will go a long way toward elevating public trust in our justice system, and ensuring that the American people receive equal justice under law.

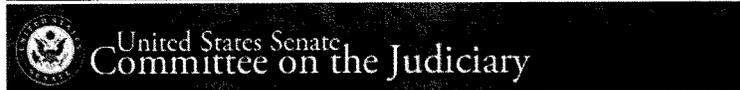
I believe this President's appreciation for the Constitution, the rule of law, and the role of the courts motivates him to nominate people, like Judge Hamilton, of the highest caliber and qualifications. Just as I have urged Senators to work with the President, I have urged the White House to work with the Senate. I am pleased to see that the President has proceeded expeditiously after consultation to nominate Judge Hamilton. He has also reformed the selection practice by restoring the peer review by the American Bar Association to the front end of the process. That is how every President since Dwight D. Eisenhower had proceeded. When President Bush unilaterally chose to exclude that professional peer review from the process, the result was significant delay because they could not begin their review until after the nomination was made. That meant weeks went by before a nomination was considered ready for a hearing. This hearing shows that restoring that process can result in prompt hearings to fill judicial vacancies.

All three of the nominees before us are exceptionally well qualified to fulfill the duties of the positions to which they have been nominated. I look forward to hearing from them today.

## ##

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Statement of

## The Honorable Richard Lugar

United States Senator  
Indiana  
April 1, 2009

Lugar Introduction of Judge David Hamilton  
Senate Judiciary Committee  
April 1, 2009, 2:30 pm

Thank you, Mr. Chairman, for this opportunity to join my friend and colleague from Indiana in introducing Judge David Hamilton, whom the President has nominated to serve on the United States Court of Appeals for the Seventh Circuit. Senator Bayh and I are proud that President Obama's first judicial nominee is from our State, and that he has chosen to elevate such an exceptionally talented jurist to the Federal appellate bench.

I first had the pleasure of introducing David Hamilton to this Committee almost 15 years ago, when he was nominated to the Federal district court. I said then that "the high quality of his education, legal experience, and character well prepare him for this position," and expressed my belief that "his keen intellect and strong legal background will make him a great judge." This confidence in David Hamilton's character and abilities was shared by all who knew him, regardless of political affiliation, throughout Indiana's legal and civic communities. Judge Hamilton's distinguished service on the United States District Court for the Southern District of Indiana, of which he is now the Chief Judge, has more than vindicated that faith.

I have known David since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was the soloist in the choir. Knowing first-hand his family's character and commitment to service, it has been no surprise to me that David's life has borne witness to the values learned in his youth.

David graduated with honors from Pennsylvania's Haverford College, won a Fulbright Scholarship to study in Germany at the University of Tuebingen, and then earned his law degree at Yale. After clerking for Seventh Circuit Judge Richard Cudahy, David joined the Indianapolis office of Barnes & Thornburg where he became a partner and acquired extensive litigation experience in the Indiana and Federal judicial systems. When our colleague Senator Bayh was elected Governor of Indiana, he asked David to serve as his Chief Legal Counsel. Among other achievements in that role, David supervised the overhaul of State ethics rules and guidelines, and coordinated judicial and prosecutorial appointments.

In the latter capacity, David worked closely with Judge John Tinder, then a Reagan-appointee to the district bench, whom President Bush recently appointed to the Seventh Circuit with the unanimous support of this Committee and the full Senate. When David was nominated to the district court, Judge Tinder wrote to me that David was "meticulous in asking the difficult questions of and about judicial nominees," and that his approach to these duties "typifies the deliberate and sensitive way in which he approaches matters in his professional life."

The same is true of David's approach to his judicial duties. Leading members of the Indiana bar testify to his brilliance and, as important, to his character, dedication and fairness. David Hamilton is the type of lawyer and the type of person one wants to see on the Federal bench. His colleagues on the Southern District of Indiana bench, a talented and exceptionally collegial group from both parties, unanimously endorse that

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conclusion.

Allow me to close with a few further thoughts. Members may recall, when I introduced now Chief Justice Roberts to this Committee in 2005, my concern that today's Federal judiciary is seen by many as another "political branch," with the confirmation process often accompanied by the same over-simplifications and distortions that are disturbing even in campaigns for offices that are in fact political. This phenomenon is most pronounced at the Supreme Court level, and traces to several causes that I will not try to address today. I mention it, however, to underscore my commitment to a different view of judicial nominations, which I believe comports with the proper role of the judiciary in our constitutional framework.

I do not view our Federal courts as the forum for resolving political disputes that the Legislative and Executive Branches cannot, or do not want to, resolve. Our Founders warned, in words quoted in my statement at the time of Chief Justice Roberts' nomination, against allowing "the pestilential breath of faction [to] poison the fountains of justice," which they knew "would stifle the voice both of law and of equity."

This is why I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will "vote" on particular issues of public moment or controversy. I have instead tried to evaluate judicial candidates on whether they have the requisite intellect, experience, character and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views. I support Judge Hamilton's nomination, and do so enthusiastically, because he is superbly qualified under both sets of criteria.

Finally, permit me to thank my colleague from Indiana on the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees from our State. The two most recent examples are his strong support for President Bush's nominations of Judge Tinder for the Seventh Circuit and of Judge William Lawrence for the Southern District of Indiana. I am confident Senator Bayh and I will continue to approach nominations by President Obama in the spirit that brings us before you today.

Thank you very much.

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1243



DEPARTMENT OF POLICE

Isiah Leggett  
*County Executive*

J. Thomas Manger  
*Chief of Police*

March 23, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on-the-job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

J. Thomas Manger  
Chief of Police

JTM:mam

Office of the Chief of Police

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www.montgomerycountymd.gov

1244



Personal

March 23, 2009

Hon. Patrick Leahy, Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy,

As a former National Drug Policy Director for five years, I want to express my strong support for Gil Kerlikowske for Director of the Office of National Drug Control Policy.

Gil Kerlikowske has demonstrated a comprehensive understanding of narcotics issues as Police Chief of Seattle. He served as the elected President of the Major Cities (Police) Chiefs Association, was named Outstanding Military Police Officer Honor Graduate in the U.S. Military Police in 1970, and worked as an undercover narcotics detective. He brings a wide level of experience to the issue. He has also served as Buffalo's Police Commissioner.

Gil understands how to work in coordination with the Justice Department, having been Deputy Director of the COPS Program. He has a natural team relationship with our new Attorney General Holder.

Since becoming Seattle Police Chief on 2000, Gil Kerlikowske brought the City's crime rate to a forty-year low. In addition, Chief Kerlikowske is known and highly respected internationally for his knowledge of crime and drugs. He has been an invited speaker at forums around the world. He brings a deep and wide knowledge of law enforcement and the international drug threat that will be of enormous assistance to Secretary of State Hillary Clinton.

Moreover, he is able to work with all areas of the drug issue from treatment to incarceration, understanding that it takes the entire framework of tools to break the chain of drug abuse and crime. He is a strong supporter of drug courts to expand treatment to nonviolent offenders and stop the cycle of recidivism that otherwise continues both crime and drugs.

Of recently added importance, Gil Kerlikowske will be helpful in curtailing the newly increased threat of numerous cross-border Mexican and other international drug cartels entering American cities, because he is experienced in undercover drug enforcement.

We must take action quickly to restore the priority to the drug issue that directly kills over 50,000 a year and is a very real threat to our citizens. Gil Kerlikowske knows

the need for action against drug abuse deaths at home and drug supply routes abroad. He will improve border operations and confront international suppliers. He will be an integral part of President Obama's national security team and will work well with Homeland Security Secretary Janet Napolitano, Secretary Clinton, Attorney General Holder, and the many other cabinet secretaries with anti-drug missions.

Strongly support prompt confirmation of Gil Kerlikowske as Director of the Office of National Drug Control Policy.

Sincerely,



Barry R. McCaffrey  
General, USA (Ret.)  
Director, Office of National Drug Control Policy  
1996-2001

Thanks for your continued  
dedicated public service.



City of Cleveland  
Frank G. Jackson, Mayor

Department of Public Safety  
Division of Police  
Michael McGrath, Chief  
1300 Ontario Street  
Cleveland, Ohio 44113-1648  
216/623-5005 • Fax: 216/623-5584

March 23, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

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Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Michael McGrath  
Chief of Police

MM/e

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1247

EDWIN MEESE III

31 March 2009

The Hon. Sen. Patrick J. Leahy  
Chairman, Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy:

It is a pleasure to recommend to the Senate Judiciary Committee the confirmation of Gil Kerlikowske as Director of the Office of National Drug Policy.

I have known Chief Kerlikowske for over 20 years, during which time he has held several highly responsible positions in the law enforcement profession. I first met him during his fellowship with the National Institute of Justice. I have followed his career since then, including his work as Chief of Police in Buffalo, New York, and most recently in Seattle, Washington.

In all of his activities, Gil Kerlikowske has been an outstanding leader of policing in the United States. He has demonstrated creativity and innovation and has been an inspiration to others who have worked with him and to many others throughout the U.S. who have witnessed his accomplishments.

Because of his experience, character, and personal qualifications, Chief Kerlikowske would be an outstanding leader for the nation's efforts to combat drug abuse and drug trafficking. As a former Attorney General of the United States, I enthusiastically support his confirmation. If further information is needed, please do not hesitate to contact me.

Thank you for your consideration of this recommendation.

Sincerely,



Edwin Meese III



CIRCUIT COURT OF THE STATE OF OREGON

KEITH MEISENHEIMER  
JUDGE

FOURTH JUDICIAL DISTRICT  
MULTNOMAH COUNTY COURTHOUSE  
1021 S.W. FOURTH AVENUE  
PORTLAND, OR 97204-1123

PHONE (503) 988-3985  
FAX (503) 276-0963

Senator Patrick Leahy  
United States Senate  
711 Russell Senate Office Building  
Washington, DC 20510  
Via Fax: 202- 224-3479

3/25/09

Re: Drug Czar Nomination: Chief R. Gil Kerlikowske

Dear Senator Leahy,

I write in support of the nomination of Chief R. Gil Kerlikowske as Drug Czar for the United States of America.

My support for Chief Kerlikowske arises from my experience of twenty three years as a prosecutor handling primarily major crimes of violence and crimes against children and nine years as a circuit court judge in Multnomah County, Oregon. Over the course of that career, I became firmly convinced that no matter how well the justice system responds to a crime, we can never make the victim whole. The burglary victim never again feels as safe in their own home, even if we get their property back. The child sex abuse victim has suffered a trauma and loss of trust we can address in counseling but can never erase. Prevention of crime is truly worth ten pounds of cure.

In this regard, Chief Kerlikowske's professional background is extraordinarily impressive. In addition to excelling at traditional aspects of law enforcement, his chairmanship of the board of directors of Fight Crime: Invest in Kids speaks volumes to his recognition that protecting the community begins with investing in proven programs which lower rates of delinquency and subsequent adult crime.

It is this kind of broad experience in law enforcement and creative thinking about approaches to attacking root causes I believe we urgently need in our next Drug Czar.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Meisenheimer".

Keith Meisenheimer  
Circuit Court Judge  
Co-Chair, Portland Boys and Girls Club



The Honorable Senator Patrick Leahy, Chairman  
 Honorable Senator Arlen Specter, Ranking Member  
 Committee on the Judiciary  
 United States Senate  
 Washington, D.C.

Dear Senators Leahy and Specter:

I write to support the nomination of Gil Kerlikowske as the Director of the White House Office of National Drug Control Policy. Chief Kerlikowske started his impressive law enforcement career in the Tampa Bay Area and received both his bachelor's and master's degrees in our Criminology program at the University of South Florida.

As a professor, social scientist and director of a top-ranked graduate program in Criminology, I am particularly impressed by Chief Kerlikowske's science-based approach to policy. An emphasis on research, reason and evidence to guide the nation's policies on drug control is critically important. There is a considerably body of social science literature on the causes, consequences and remedies for drug abuse. My longstanding familiarity with this literature extends back to my own dissertation research on heroin drug markets on the streets of Detroit. The research findings have too often been neglected because of the political, ideology-driven nature of the national discussion. Chief Kerlikowske can and will provide the link between science and practice in addressing the nation's drug problems. His evidence-based pragmatism has earned him the well deserved reputation among his peers for being "smart on crime." Although Kerlikowske has dedicated his life to the police profession, he has a healthy respect for the limits of law enforcement to solve the nation's drug problems. I expect him to identify and implement policies and practices that reflect the best ideas and experiences from multiple disciplines, social services, and the public health arena and beyond.

There is also a considerable social science literature on implementation; much of the research highlights the many and varied ways that good ideas *do not* come to fruition ("implementation failure"). To avoid implementation failure, the multi-faceted nature of this issue requires a strong and credible *leader* who can bring diverse viewpoints and perspectives together to identify the best prospects for success (and who can wean policy makers from their reliance on politics and ideology in this sphere). This issue also requires an effective *administrator* who can then implement those identified change efforts - someone who can *get things done*. In Chief Kerlikowske you get both a strong leader and effective administrator. He has manifested these important strengths in his capacity as chief in four cities, as the Deputy Director of the USDOJ Office of Community Oriented Policing Services, and as the President of the Major Cities Chiefs Association. Throughout his career, he has evidenced willingness, indeed eagerness, to listen to all perspectives. He has the ability to bring people with diverse viewpoints together to identify "what works" and then to motivate those partners to facilitate implementation.

I feel confident that I can speak on behalf of my peers in academic Criminology; we stand ready to assist Chief Kerlikowske in identifying and implementing multi-disciplinary, research-based policies and programs to address the serious national issue of drug abuse. We are heartened by this choice and the prospect for change that it represents.

Sincerely,

Tom Mieczkowski, Ph.D.  
 Professor and Chair

DEPARTMENT OF CRIMINOLOGY • COLLEGE OF ARTS AND SCIENCES  
 University of South Florida • 4202 E. Fowler Avenue / SOC107 • Tampa, Florida 33620-8100  
 (813) 974-2815 • FAX (813) 974-2803 • <http://www.cas.usf.edu/criminology>



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Tucson, Arizona 85701-4917

March 30, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Chairman Leahy:

I am writing to offer my support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). As a law enforcement executive, I am proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this very important position.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. Law enforcement agencies across the nation have always looked to you for leadership. Once again, we are asking for your assistance by moving the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Please feel free to contact my office should you need additional information in support of this very important nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Kermit Miller".

Kermit Miller  
Chief of Police

KM:ck

**POLICE****CHARLOTTE-MECKLENBURG POLICE DEPARTMENT**

March 30, 2009

The Honorable Patrick Leahy  
 Chairman  
 Committee on the Judiciary  
 U.S. Senate  
 Washington, DC 20510

The Honorable Arlen Specter  
 Ranking Member  
 Committee on the Judiciary  
 U.S. Senate  
 Washington, DC 20510

Dear Messrs. Leahy and Specter:

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Sincerely,

Rodney D. Monroe  
 Chief of Police

***Building Partnerships To Prevent The Next Crime.***

*Police Department • 601 East Trade Street • Charlotte, N.C. 28202-2940*

1252

**DISTRICT ATTORNEY**  
OF THE  
**COUNTY OF NEW YORK**  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000



**ROBERT M. MORGENTHAU**  
DISTRICT ATTORNEY

March 27, 2009

Honorable Patrick J. Leahy, Chairman  
Honorable Arlen Specter, Ranking Member  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Leahy and Specter:

I write to support the nomination by the President of Ronald Weich, Esq., as the Assistant Attorney General for Legislative Affairs in the Department of Justice. Based on his work in this Office and his record of federal service in the years since then, I am confident that Mr. Weich would prove to be a conscientious and effective Assistant Attorney General.

Mr. Weich served as an Assistant District Attorney in this Office from 1983 to 1987, and I am fully familiar with his work during that period. I have followed his legal career since he entered federal service in late 1987, including the years he served as a counsel to your Committee. In both New York and Washington, Mr. Weich has maintained a reputation for probity, diligence and sound judgment.

In the District Attorney's Office Mr. Weich was assigned to the Trial Bureau, where he led the investigation and prosecution of hundreds of criminal cases, ranging from misdemeanors to violent felonies. Under our system of vertical prosecution, Mr. Weich was responsible for each case from start to finish, including arraignment, presentation of the case to the grand jury, motion practice, plea bargaining and trial. Records from this Office indicate that Mr. Weich tried approximately 20 cases to verdict in his years as a prosecutor. He was known as a careful and fair-minded advocate who always sought the just result. He was admired by his colleagues, his adversaries and the judges in our courts for his skill and temperament.

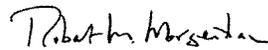
After leaving my Office, Mr. Weich remained in government service for many years. He served as Special Counsel to the United States Sentencing Commission just as the federal guidelines were taking effect, and played a key role in the development of sentencing law in those years. He then worked in the U.S. Senate on a range of issues related to law enforcement. Members of my staff and I consulted with Mr. Weich regularly, including on occasions when I testified in Congress.

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It appears to me that Mr. Weich has precisely the right credentials to lead the Legislative Affairs Office at the Justice Department. As a former prosecutor, he understands the real world of criminal practice and the needs of state and local law enforcement. As a long-time Senate staff member, he understands the needs of Congress and the complex relationship between the branches of government. As a former United States Attorney myself, I would be pleased to see the Justice Department represented in Congress by someone with the experience and abilities that Mr. Weich possesses.

For these reasons, I am happy to recommend Mr. Weich to the Judiciary Committee. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Morgenthau". The signature is written in a cursive, slightly slanted style.

Robert M. Morgenthau

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Statement of

## The Honorable Patty Murray

United States Senator  
Washington  
April 1, 2009

Murray Introduces Seattle Chief Kerlikowske at Senate Confirmation Hearing

(Washington, D.C.) – U.S. Senator Patty Murray (D-WA) today introduced Seattle Police Chief R. Gil Kerlikowske at his confirmation hearing to be Director of the White House Office of National Drug Control Policy (ONDCP).

Murray delivered the following remarks at Kerlikowske's Senate Judiciary Committee hearing:

"Thank you, Mr. Chairman, Ranking Member Specter, and Members of the Committee.

"Along with my colleague Senator Cantwell and members of our House delegation, it's my pleasure to introduce Gil Kerlikowske, the Chief of the Seattle Police Department, at this important hearing.

"I want to welcome Chief Kerlikowske and his wife, Anna Laszlo [Laz-Lo], to this hearing and congratulate his entire family on the honor of being nominated as the next Director of the Office of Drug Control Policy.

"I'd also like to thank Chief Kerlikowske and his family for accepting this responsibility at this important time in our nation's history.

The Challenges

"Mr. Chairman, we know the next ONDCP Director will face a number of key challenges.

"ONDCP will play a leading role in addressing the drug-related violence in Mexico and along the southwest border. If we don't take the right steps to tackle this problem now, we will find these drugs and this violence in towns and neighborhoods thousands of miles from the Mexican border.

"We also know from history, that as the economy falls, crime rises.

"Crime is growing at the same time that law enforcement agencies across the country face painful cutbacks and greater strains on personnel and resources. Law enforcement from all different levels must work smarter, forge new relationships and leverage the resources they have.

Personal

"Mr. Chairman, Chief Kerlikowske is the right man to address these challenges.

"He brings a fresh, new perspective to the job as the nation's drug czar. He is a cop's cop, and his perspective was shaped patrolling the streets in Florida, New York and Washington state.

"Along the way he has helped thousands of people touched by violence and drugs. He, and the people he has led, have been on the front lines of our nation's war against illicit narcotics and in keeping our communities safe.

[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit\\_id=2181](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit_id=2181) 6/16/2009

"He'll bring this hands-on perspective to ONDCP.

A New Perspective at ONDCP – State and Local

"Chief Kerlikowske understands the importance of partnerships between ONDCP and our state and local law enforcement because he has been on the local level.

"As the head of the Major Cities Chiefs organization, which represents the 63 largest police departments in the US, he sees the common problems facing cities across the country.

"I've seen his work first-hand as the Seattle Police Chief. This past December, the Seattle Police Department, in cooperation with county, state and federal law enforcement agencies to bust a drug ring that stretched from Mexico to Idaho to Seattle.

"And Chief Kerlikowske worked cooperatively to create a regional response to gang violence in Seattle and King County.

"He built a coalition with the King County Sheriff's Office, other King County police chiefs, the Washington Department of Corrections, the ATF and other community leaders to tackle persistent gang violence in our neighborhoods.

"These multi-agency, federal-local partnerships require cooperation and compromise. They require a leader with Chief Kerlikowske's experience to bring them together.

"Local police chiefs and sheriffs have told me that they are "Sorry to see him go" but that the nation is gaining a true innovator in Gil Kerlikowske.

"I know he will continue to work on these relationships with state and local law enforcement across the country – and that this approach will make all of America's communities safer.

A New Perspective – Fight Crime, Invest in Kids

"Mr. Chairman, Chief Kerlikowske also understands that the drug war will not be won on the streets.

"For the past 9 years, he has been the National Board Chairman for the group, Fight Crime: Invest in Kids.

"As this committee knows, this is a group of police chiefs, sheriffs, prosecutors, and other law enforcement leaders who could easily be fighting only for more cops, more jails and longer prison sentences.

"But instead, under the guidance of Chief Kerlikowske, they are working on prevention. They are fighting for early childhood intervention funding, after school programs, and efforts to prevent child abuse as an effective way to fight crime.

"Chief Kerlikowske knows that the best way to end the use of drugs and spread of crime is to prevent it. He will bring this common-sense thinking to ONDCP.

"Chief Kerlikowske has served the people of our state well, and will serve the people of our nation well. And I'm proud to support his confirmation.

"Thank you."

[http://judiciary.senate.gov/hearings/testimony.cfm?senderforprint=1&id=3757&wit\\_id=2181](http://judiciary.senate.gov/hearings/testimony.cfm?senderforprint=1&id=3757&wit_id=2181) 6/16/2009

NATIONAL ASSOCIATION OF  
DRUG COURT PROFESSIONALS  
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March 30, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

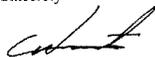
On behalf of the over 22,000 judges, prosecutors, public defenders, probation and law enforcement officers, court administrators, substance abuse and mental health treatment professionals, and community leaders the National Association of Drug Court Professionals represents, it gives me great pride to strongly support the nomination of R. Gil Kerlikowske for the position of Director of the White House Office of National Drug Control Policy.

Throughout his career in law enforcement, Gil Kerlikowske has pioneered innovative approaches to community policing that have greatly enhanced the communities in which he has served. In doing so, Chief Kerlikowske understands the critical role treatment plays in ending the cycle of substance abuse and crime.

While serving as Police Commissioner in Buffalo and Chief of Police in Seattle, Gil Kerlikowske was a proponent of diversion programs, such as Drug Court, that treat substance abusing offenders. In Seattle, he developed a strong relationship with Drug and other Problem Solving Courts and made sure his officers did the same. He has spoken at a Drug Court graduation and has seen first hand the transformation Drug Courts bring about in individuals, their families and their communities. Gil Kerlikowske truly understands that treatment must be part of the solution to the drug epidemic in this country.

The nomination of Gil Kerlikowske presents an opportunity for the White House Office of National Drug Control Policy to stem the tide of substance abuse and crime by implementing a policy that incorporates enforcement, prevention and treatment. Chief Kerlikowske is the right choice to develop and execute this policy and his expedient confirmation is soundly endorsed by the National Association of Drug Court Professionals. Thank you for your continued leadership and for considering this letter of support.

Sincerely



West Huddleston  
Chief Executive Officer

**NADCP**



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Interim Executive Director

Robert L.L. Morrison

March 31, 2009

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

Dear Mr. Chairman:

On behalf of the National Association of State Alcohol and Drug Abuse Directors (NASADAD), thank you for your leadership as Chairman of the Senate Judiciary Committee on issues pertaining to addiction prevention, treatment and recovery. We are very appreciative of your work and continue to stand ready to partner with you and others to make further progress.

I am writing today to express support of Chief R. Gil Kerlikowske as the next Director of the Office of National Drug Control Policy (ONDCP). We are pleased the Committee has chosen to consider this important nomination and recommend action that will lead to a quick confirmation process.

As Chief Kerlikowske noted during his White House appointment announcement, the "...success of our efforts to reduce the flow of drugs is largely dependent on our ability to reduce demand for them... and that starts with our youth." We could not agree more. Chief Kerlikowske recognizes that effective substance abuse prevention represents a core component of any successful national drug control strategy. In particular, Chief Kerlikowske is known for his commitment to working closely with a cross section of State and local law enforcement officials, parents, educators and others to make our communities and neighborhoods safer and healthier places to live. We appreciate his dedication and stand ready to partner with the Chief to expand and improve our prevention services.

During his 36 year career, Chief Kerlikowske has promoted the benefits of helping more Americans find the path to treatment and recovery. The Chief displayed this focus whether he was serving as Chief of Police, Deputy Director of the Department of Justice (DOJ) COPS program, or President of the Major City Chiefs Association. As the managers of State prevention, treatment and recovery systems across the country, we appreciate Chief Kerlikowske's frontline experience and pledge to serve as an active partner in expanding and improving our treatment and recovery services.

1258

In sum, we are pleased with Chief Kerlikowske's commitment to bring a balanced and thoughtful approach to our nation's drug control policy. In addition, we are impressed with Chief Kerlikowske's career and commitment to our communities and neighborhoods. As a result, we recommend quick action in order to confirm Chief Kerlikowske as the next Director of ONDCP.

Again, thank you for your leadership. Should you or your staff have any questions or require additional information, please do not hesitate to contact me at (202) 293-0090 x106.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L.L. Morrison". The signature is fluid and cursive, with a prominent initial "R" and "M".

Robert L.L. Morrison  
Interim Executive Director



NATIONAL BLACK POLICE ASSOCIATION, INC.

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26 March 2009

The Honorable Senator Patrick Leahy, Chair Senate Committee on the  
Judiciary

433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Re: Endorsement of Chief of Police R. Gil Kerlikowske

Dear Senator Leahy:

On behalf of the National Black Police Association, I am writing to  
express our support of Chief Kerlikowske for the position of Director of  
the Office of National Drug Control Policy.

Chief R. Gil Kerlikowske service to the community and his influence in  
policing started long before his arrival to the Seattle Police Department.  
As a student at Fort Meyer's High School a number of students  
regarded him as a focused, studious and got a long with everyone.  
One person stated that he was then considered a "very honest man".  
He definitely was regarded as a person you could trust. Wherever Chief  
Kerlikowske went that same thought about his character was second to  
none. Following graduation from high school it was clear that the law  
enforcement field was his destiny. In the United States Army he was  
recognized for his work by being bestowed the honor "outstanding  
military police officer." His years of service with the St. Petersburg Police  
Department help him to define his role in policing and his commitment  
to the communities he served.

Policing has changed dramatically over the past 20 years. It became  
clear after meeting Chief Kerlikowske that many of those changes  
rooted themselves in the leadership of individuals like him. As the Chief  
of Police Fort Pierce and Port St. Lucie Florida, his departments received  
the Attorney General Crime Prevention Award. As Commissioner for the  
Buffalo, New York, he was the first outsider appointed in thirty years.  
Chief Kerlikowske was know for his creative approaches to policing and  
his ability to build bridges with entities that often didn't talk to each  
other. He was known for his fairness and openness. Most of all he

worked hard. As the Deputy Director of the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) Program he provided local grants to police departments all across the United States. The position with COPS fit many of his basic principals he held true throughout his career. His expectations about policing are that it should be fair, comprehensive, and attentive to the concerns of communities of color, supportive of direct and positive communication. He wanted officers to be safe and have the tools to address serious concerns many communities in crisis were facing. This was never more prevalent than when he came to Seattle, Washington in August of 2000.

While in Seattle Chief Kerlikowske brought every tool he had acquired over his career in policing to resurrect the tarnished image of the Seattle Police Department. It would be impossible to name all of the things he did to turn things around. When he arrived in Seattle it was clear he wanted Seattle residents to know things would be different. He modeled his actions with the expectations that officers would do the same. He wanted policies and directives with in the department that showed prevention and intervention were just as important as enforcement. He wanted officer to have safe working conditions and exceptional equipment and tools to do the job. Chief Kerlikowske focus was on the big picture, a picture that included everyone.

As Chief of the Seattle Police Department he worked with local leaders to establish the Seattle Police Foundation. The Foundation has raised over a million dollars in funds to get the department additional equipment and resources. He established a less lethal option program to provide officers with alternatives to lethal force when the situation allows. Chief Kerlikowske's hiring and promoting of minority officers has not gone without notice. He has promoted officers of color and placed them in recognizable and strategic positions within the department, everyone from the ranks of Sergeant to Deputy Chief. Chief Kerlikowske participated in several settings that allowed him to meet frequently with diverse community members and often those individuals that felt disenfranchised from the police department. Relying on his eleven Demographic Advisor Councils he was able to address issues quickly

and directly. Chief Kerlikowske believed the Seattle Police Department should be transparent. As he engaged community members, officers, grass root organizer, outside consultants and the business community he took the department to a higher standard. He took great pride in getting the Seattle Police Department accredited. In 2006 he received the "James V. Cotter Award" from the Communications\_Assistance\_for Law\_Enforcement\_Act (CALEA) committee, marking the first time the Seattle Police Department has ever been nationally accredited.

Through the years Chief Kerlikowske has spearheaded initiatives and encouraged problem solving thinking to address crime issues. He has never been shy about taking risks on ways to better address community concerns and crime. Chief Kerlikowske has been outspoken about alternatives to minority confinement and the use of social services to better address problem areas. He supported programs like Re-investing in Youth, GOTS (Get Off the Streets) program that provided treatment for offenders, the restoration of voting rights for convicted felons under specific conditions and working with King County Juvenile Detention to reduce the disproportionate minority confinement. His active over site of the department and his participation in the community has resulted in City of Seattle being one of the safest major cities in the United States.

The National Black Police Association strongly supports the recommendation of Gil Kerlikowske for this position knowing that his leadership and expertise will well serve the America people with his sound principles of public safety and public health and demonstrates to criminal organizations threatening to undermine stability that we take seriously our responsibility to reduce drug use in the United States.

Sincerely,



Ronald E. Hampton  
Executive Director

Cc: John F. Hayes, Jr., National Chairman

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March 11, 2009

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Committee on the Judiciary  
United States Senate  
Washington, DC 20010

Senator Arlen Specter, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20010

Re: Nomination of Gil Kerlikowske to be the Director of the  
Office of National Drug Control Policy

Alexander Auersperg  
Hon. Richard J. Condon  
Hon. Carol DiBattiste

Dear Chairman Leahy and Ranking Member Specter:

Philip Gerson  
Sarah S. Gold  
G. Morris Gurley  
Marla Hanson  
Ann Hayes  
Alberta Davis Hogg

I am writing to express my strong support for the nomination of Gil Kerlikowske to be the Director of the Office of National Drug Control Policy (the "Drug Czar"). I have known Mr. Kerlikowske since 1998, when I worked closely with him during my time as a deputy associate attorney general and acting director of the Office of Community Oriented Policing Services (COPS). Mr. Kerlikowske impressed me as a strong manager and a smart, ethical, devoted public servant.

Ralph H. Isham  
John J. Libonati  
Mark Mandell  
Frank M. Ochberg, M.D.  
Hon. Eric Smith

I have kept in touch with Mr. Kerlikowske over the years and continue to be impressed with his abilities. He is a leader in policing circles and a strong advocate for improving the effectiveness of law enforcement. For example, he and I made a joint presentation to the Major City Chiefs Association on new research and innovations in community policing. I can assure you he is highly regarded by his peers.

Chairs Emeriti  
Ala Isham  
Hon. Arnold I. Burns

Furthermore, Mr. Kerlikowske is committed to crime prevention, as evidenced by his work with Fight Crime: Invest in Kids. He will bring that important perspective to the position of Drug Czar.

**Honorary Board Members**  
Dominick Dunne  
Linda Fairstein

As the head of a national victim-serving organization, I understand the connection between illegal drugs and crime. The National Center for Victims of Crime believes that our nation needs a Drug Czar who is a skilled manager, is open to new research, and has a strong reputation with the law enforcement community. Mr. Kerlikowske embodies those qualities, and we urge his swift confirmation.

**EXECUTIVE DIRECTOR**  
Mary Lou Leary

Sincerely,

Mary Lou Leary

2000 M Street, NW • Suite 480 • Washington, DC 20036 • Tel. 202 / 467-8700 • Fax 202 / 467-8701 • www.ncvc.org

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**NCJA** National Criminal Justice Association

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**PRESIDENT**  
David O. Steinglass†  
Executive Director  
Wisconsin Office of Justice Assistance

March 30, 2009

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Executive Director  
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The Honorable Patrick J. Leahy, Chairman  
The Honorable Arlen Specter, Ranking Member

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Executive Director  
North Carolina Governor's  
Crime Commission

Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

**EXECUTIVE DIRECTOR**  
Cabell C. Cropper†

Dear Senators Leahy and Specter:

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Massachusetts Pequot Tribal Nation

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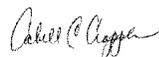
Thank you for this opportunity to express our support for Gil Kerlikowske to become the next Director of the Office of National Drug Control Policy (ONDCP). Members of the National Criminal Justice Association (NCJA) include the state, territorial and tribal chief executive officers of criminal justice agencies charged with managing federal, state, and tribal justice assistance resources as well as practitioners from all components of the criminal and juvenile justice systems. As an association and as the representatives of their individual jurisdictions, our members work closely with many federal agencies including the Department of Justice and ONDCP on issues related to substance abuse prevention, treatment, and control.

Chief Kerlikowske, as the chief of police for Seattle, Washington, and former chief of police in Buffalo, New York, has broad experience in developing policies and strategies to address substance abuse and its consequences. His experience as an official in the COPS Office and as a leader of the Major City Chiefs Association has given him a national perspective on policing and the challenges facing the public safety community. He understands the environment we in state, tribal, and local governments face as we seek to improve the functioning and efficiency of the nation's justice system.

Throughout his career, Chief Kerlikowske has shown a deep commitment to, and passion for, using the criminal justice system to protect Americans and bring positive change to communities nationwide. In this environment of tight budgets and a worsening economy, it is critical that public officials use all available resources of the federal government to keep our streets safe, protect our kids, and respond to the needs of crime victims. Chief Kerlikowske's experience, record of public service, and prior tenure at the COPS Office demonstrates that he has the judgment, experience, temperament, depth of knowledge, and commitment to best practices to lead the Office of National Drug Control Policy.

We strongly urge his speedy confirmation.

Sincerely,



Cabell C. Cropper  
Executive Director



CHUCK CANTERBURY  
NATIONAL PRESIDENT

NATIONAL  
FRATERNAL ORDER OF POLICE®

309 MASSACHUSETTS AVE., N. E.  
WASHINGTON, DC 20002  
PHONE 202-547-8189 • FAX 202-547-8190

JAMES O. PASCO, JR.  
EXECUTIVE DIRECTOR

27 March 2009

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for Ronald H. Weich to be the next Assistant Attorney General for the Office of Legislative Affairs at the U.S. Department of Justice.

Throughout his long and sterling career as a public safety policymaker, he has been a friend to the FOP, an advocate for law enforcement, and a passionate champion for justice. From the start of his legal career as an Assistant District Attorney in New York City to his current post as Chief Counsel to the Senate Majority Leader, Ron has the policy knowledge and experience to lead the Office of Legislative Affairs at a Department in sore need of leadership.

After leaving New York City for Washington, Ron served as Special Counsel to the United States Sentencing Commission, and worked with the law enforcement community to strengthen the Federal guidelines system and defended the constitutionality of the Sentencing Reform Act. He left the U.S. Sentencing Commission for Capitol Hill, and the FOP worked extensively and successfully with Ron to develop and enact the Armed Career Criminal Act while he was a member of Senator Arlen Specter's staff on the Committee on the Judiciary. We also worked with him while he was a member of Senator Edward M. Kennedy's Judiciary staff on anti-gang legislation, and on law enforcement labor issues when Senator Kennedy asked him to move over to work for him on the Senate Committee on Health, Education, Labor and Pensions. We continued our relationship with him when he left private practice and returned to the Hill to serve as the Senate Majority Leader's Chief Counsel.

I believe that the President has made a fine choice in Ronald H. Weich to be the next Assistant Attorney General for Legislative Affairs, and I urge you and your Committee to expeditiously confirm his nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury  
National President

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Puerto Rico Narcotic  
Officers' Assn. (TERR)

R.I.S.S. Projects

Tennessee Narcotic  
Officers' Assn.

Texas Narcotic  
Officers' Assn.

Utah Narcotic Officers' Assn.

Washington State Narcotics  
Investigators' Assn.

Wisconsin Narcotic

**REGIONAL DIRECTORS**

**NORTHWEST REGION**

Ron Nelson  
Oregon Narcotic Enforcement Officers' Assn.

**SOUTHWEST REGION**

Robert Almonte  
Texas Narcotic Officers' Assn.

**CENTRAL REGION**

Michael J. Maley  
Illinois Drug Enforcement Officers' Assn.

**NORTHEAST REGION**

William E. Burke  
Narcotic Officers' Assn. of Connecticut

**SOUTHEAST REGION**

Tim Lane  
Tennessee Narcotic Officers' Assn.

Richard M. Sloan - Executive Director

March 30, 2009

The Honorable Patrick Leahy, Chairman  
Senate Committee on the Judiciary  
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member  
Senate Committee on the Judiciary  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the forty-four state narcotic officer's associations and the more than 69,000 law enforcement officers represented by the National Narcotic Officers' Associations Coalition (NNOAC), to offer our strong support for the appointment and confirmation of Chief R. Gil Kerlikowske as Director of the Office of National Drug Control Policy (ONDCP).

America's narcotic officers and every other person or organization involved in drug enforcement, treatment and prevention, have come to rely upon the services, support and leadership of the Office of National Drug Control Policy (ONDCP). Having a well-qualified person leading this office is important to the safety and well being of every American. We believe that Chief Kerlikowske's many years of law enforcement service, his life-long commitment to the safety and welfare of our fellow citizens and his experience in addressing drug prevention, treatment and enforcement issues make him an ideal candidate to fill this critically important position.

Through his 36 year law enforcement career - most notably, as Seattle's Chief of Police for the past nine years - and through his work as President of the Major Cities Chiefs Association (MCCA), Chief Kerlikowske has worked on all sides of the drug problem and has provided steady leadership on a range of issues, including prescription drug abuse, enhancing drug courts, and tackling methamphetamine production. Additionally, by serving as Deputy Director for the Community Oriented Policing Services (COPS) office within the U.S. Department of Justice (DOJ), Chief Kerlikowske understands the importance of working closely with federal, state and local law enforcement and is experienced in administering federal programs.

The NNOAC is very concerned with the growing movement to legalize or decriminalize illegal drugs including marijuana and the efforts by some groups to advocate in favor of a strategy of harm-reduction rather than our nation's proven abstinence based drug prevention message. During the past twelve years, we have witnessed attacks against our nation's comprehensive drug strategy of prevention, treatment and enforcement by those who would support changes to our drug laws and policies. These reckless proposals to change successful drug policies are being made despite dramatic reductions in meth labs and teen drug use and without regard for the impact on the health and well being of our children or communities.

1266

As you consider Chief Kerlikowske's nomination, the NNOAC would ask the Committee on the Judiciary to use this as an opportunity to work with Chief Kerlikowske to re-focus our government's attention on the need for a clear and consistent national drug control policy that strongly opposes drug legalization or decriminalization and that reinforces the threat that illicit drugs pose to every community in America.

Chief Kerlikowske is a dedicated and well qualified professional and we can think of no one more qualified than him for appointment as Director of the Office of National Drug Control Policy, Executive Office of the President. The NNOAC would urge you to confirm Chief Kerlikowske's nomination as Director of ONDCP as soon as possible.

Please feel free to contact me at [REDACTED] if you require further information as you work through the nomination process.

Thank you again for taking time to review our position.

Sincerely,



Ronald E. Brooks, President  
NNOAC

CC: Senate Committee on the Judiciary



Barry C. Scheck, Esq.  
Peter J. Neufeld, Esq.  
Directors  
Maddy deLone, Esq.  
Executive Director  
Innocence Project  
100 Fifth Avenue, 3<sup>rd</sup> Floor  
New York, NY 10011  
Tel 212.364.5340  
Fax 212.364.5341  
[www.innocenceproject.org](http://www.innocenceproject.org)

March 23, 2009

The Honorable Patrick J. Leahy  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy,

We are the co-founders and co-directors of the Innocence Project, and are writing to recommend Gil Kerlikowske as Director of the Office of National Drug Control Policy.

Our relationship with Chief Kerlikowske developed through our work with the Innocence Project during his tenure as Chief of the Seattle Police Department in Washington. During that time we have seen him express and demonstrate significant regard for the reforms that can prevent wrongful convictions, and take affirmative steps to address and prevent police misconduct. We have also noticed and respect the policies that he implemented to help ensure that his officers would be sensitive to the disparate needs of the various ethnic and racial communities throughout the city of Seattle, thus enhancing the value of his department's role therein.

The country would be well served by placing a person of Gil Kerlikowske's character and regard for effective policies to the position of Director of the Office of National Drug Control Policy.

We hope that you, the Committee, and the Senate will see fit to confirm his nomination.

Sincerely,

Handwritten signature of Peter Neufeld in black ink.

Peter Neufeld  
Co-Director

Handwritten signature of Barry Scheck in black ink.

Barry Scheck  
Co-Director

cc: Ranking Member Arlen Specter  
Benjamin N. Cardozo School of Law, Yeshiva University

1268



Gregory J. Nickels  
Mayor of Seattle

March 23, 2009

The Honorable Patrick Leahy  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510

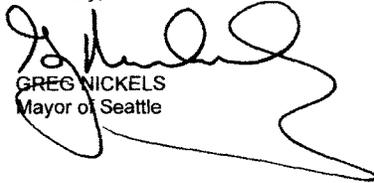
Dear Senator Leahy:

It gives me great pleasure to offer my full and unequivocal endorsement for the nomination of Chief R. Gil Kerlikowske as the Director for the Office of National Drug Control Policy (ONDCP). Gil has served as the Chief of Police in the City of Seattle for nearly nine years, and this nomination is a tremendous recognition of his accomplishments throughout his law enforcement career.

Shortly after I became mayor, Gil and I had a long conversation about our approach to public safety. We formed a close working relationship, and Gil has led with distinction. He oversees a department that is one of the most transparent in the nation, setting a high standard for professionalism and accountability. Crime rates have dropped to historic lows during his tenure, and we continue to find innovative ways to reach our young people and prevent violence.

It is a privilege to support Gil. Our nation would be well-served by Gil's appointment as Director of ONDCP. I look forward to assisting him in any way I can. Thank you for your consideration.

Sincerely,



GREG NICKELS  
Mayor of Seattle

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Seattle City Hall, 7th Floor, 600 Fourth Avenue, P.O. Box 94749, Seattle, WA 98124-4749  
Tel (206) 684-4000 • TDD (206) 615-0476 • Fax (206) 684-5360 • [www.seattle.gov/mayor](http://www.seattle.gov/mayor)

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Department**

**Director's Office**



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March 30, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

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I am the Metropolitan Sheriff for Miami-Dade County, Florida and I take great pleasure and pride in strongly recommending the appointment of Chief Gil Kerlikowski to serve as the next Director of the Office of National Drug Control Policy (ONDCP). Chief Kerlikowski currently serves as President of the Major Cities Chiefs Association (MCC). Prior to that appointment, he served with distinction as Commissioner of Police in Buffalo, New York and Chief of Police in Seattle, Washington.

Chief Kerlikowski is a proven high performance manager and a seasoned administrator who is able to make reasoned, well thought out decisions that greatly benefit the MCC organization. Moreover, he fosters effective working relationships and has earned the respect of his staff and senior management by displaying outstanding professionalism and assistance to the various member departments and community as a whole. Therefore, I have no reservations that he is capable of managing the ONDCP and I urge you to move his nomination quickly through the confirmation process.

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Should you have other concerns regarding this recommendation, please contact me at [redacted]. Thank you for your continued support of law enforcement.

Sincerely,  
  
Robert Parker, Director  
Miami-Dade Police Department

9105 NW 25 Street • Miami, Florida • 33172-1500  
Telephone (305) 471-2100 • Fax (305) 471-2163 • Website <http://www.mdpd.com>



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March 19, 2009

The Honorable Patrick Leahy  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy & Ranking Member Specter:

I have closely followed Chief Gil Kerlikowske's nomination to serve as the Director of the Office of National Drug Control Policy. As the Senate considers Chief Kerlikowske's nomination, I would ask that you take note of the important role that he has played in supporting community policing activities, including drug prevention efforts, over the last thirty-five years. With this in mind, on behalf of D.A.R.E. America and the thousands of DARE officers throughout the United States, I would like to wholeheartedly support Chief Kerlikowske's nomination.

Gil Kerlikowske's experience as a police officer over three decades will provide a much needed front line perspective on the need for prevention, enforcement and treatment efforts to effectively address the epidemic of drug abuse. Since his time as a police chief in Florida, where he guided two cities to the Attorney General's Crime Prevention Award, Gil has been at the forefront of understanding the critical role that the community - with parents, teachers, and law enforcement officers working together - can have on crime and drug prevention. He firmly believes that the long-term answer to drug abuse starts with our youth and championed prevention efforts, including D.A.R.E., during his tenure as Commissioner of Police in Buffalo.

During his time with the Office of Community Oriented Policing Services (COPS) and more recently as the President of the Major Cities Police Chiefs, Chief Kerlikowske always made an effort to work closely with drug prevention and education organizations like D.A.R.E. This dedication to a balanced approach on drug abuse is a perspective that will serve him well at the Office of National Drug Control Policy.

Chief Kerlikowske's dedication and knowledge have given him the support of law enforcement across the nation. Likewise, his sincerity and integrity have earned him the respect and trust of the criminal justice community. Taken together, I cannot imagine an individual better suited for the challenges of re-focusing the nation's attention on the critical issue of youth drug abuse. Therefore, as the head of D.A.R.E. America and on behalf of the officers, students and communities we serve, I would hope that you will give Chief Gil Kerlikowske positive consideration for Director of the Office of National Drug Control Policy.

Sincerely,

Charlie J. Parsons  
President & CEO

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1271



CITY OF ATLANTA

Shirley Franklin  
Mayor

675 Ponce De Leon Ave. NE  
Atlanta, Georgia 30308  
(404) 817-8900

Atlanta Police Department  
Richard J. Pennington  
Chief of Police

March 31, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Pennington".

Richard J. Pennington  
Chief of Police

**Chester J. Culver**  
Governor  
**Patty Judge**  
Lt. Governor



**Eugene T. Meyer**  
Commissioner

March 27, 2009

The Honorable Patrick J. Leahy, Chairman  
The Honorable Arlen Specter, Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Leahy and Senator Specter:

I am writing about the nomination of Seattle, Washington Police Chief Gil Kerlikowske to become the next Director of the Office of National Drug Control Policy (ONDCP). On March 26, 2009 in Washington, DC, I spoke in person with The Honorable Charles E. Grassley, U.S. Senator from Iowa, about this nomination. I have also sent a copy of this letter to Senator Grassley, a member of the Committee.

By way of introduction, I have been a local and state law enforcement officer since 1978. I am now the Director of the State of Iowa Intelligence Fusion Center at the Iowa Department of Public Safety. For more than twenty-five years, I have specialized in criminal intelligence and information sharing, and I currently serve as the chairman or as a member of numerous national boards, councils, and other bodies engaged in this important work. These groups work closely with many federal agencies and their components, including the U.S. Department of Justice, the U.S. Department of Homeland Security, and the ONDCP and its High Intensity Drug Trafficking Area (HIDTA) Program.

As you know, the principal purpose of ONDCP is to establish policies, priorities, and objectives for the nation's drug control program. Among other things, the Director of ONDCP is charged with producing the National Drug Control Strategy, which directs our nation's anti-drug efforts and establishes a program, a budget, and guidelines for cooperation among federal, state, and local entities. Effective criminal intelligence and information sharing capabilities are critical to producing this Strategy, and to successfully achieving ONDCP's purpose and specified goals.

In recent years, Chief Kerlikowske and I have served together on councils and at events which produce policy recommendations and publications covering a wide range of criminal intelligence and information sharing issues. Even as a busy police chief in a major U.S. city, he has always been accessible and fully committed to this work, and he has made the time to actively contribute to it in meaningful ways. His availability, participation, and steadfast support demonstrate the value and importance that Chief Kerlikowske places on criminal intelligence and information sharing – work that is central to the development of the National Drug Control Strategy, and vital to achieving ONDCP's goals to reduce illicit drug use, manufacturing, and trafficking, and drug-related crime and violence. I am also confident that his history as a collaborative, innovative leader and his extensive experience as a local police executive will help him coordinate the anti-drug efforts of executive branch agencies, while ensuring that such efforts sustain and complement state and local anti-drug activities.

Each day hundreds of thousands of state, local, and tribal law enforcement officers work in partnership with federal agents on the front lines in our fight against the illicit drug trade. Effective coordination and the sharing of intelligence and investigative information are crucial in the fight against violent drug trafficking organizations. Chief Kerlikowske is committed to these essential activities, which will serve all of us well during his tenure as ONDCP Director.

Sincerely,

RUSSELL M. PORTER, Director  
Intelligence Fusion Center

cc: Senator Charles E. Grassley

STATE OF IOWA INTELLIGENCE FUSION CENTER • 215 EAST 7<sup>TH</sup> STREET • DES MOINES, IOWA 50319-0049 • 515-725-6330



March 17, 2009

The Honorable Patrick J. Leahy, Chairman  
Senate Committee on the Judiciary  
SD-224 Dirksen Senate Office Building  
Washington, D.C. 20510-6275

Chuck Wexler  
*Executive Director*

Dear Senator Leahy,

On behalf of the Police Executive Research Forum (PERF), I am writing to wholeheartedly endorse the nomination of Seattle Chief of Police Gil Kerlikowske to be Director of the Office of National Drug Control Policy (ONDCP).

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and consulting firm specializing in helping police agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

PERF has had a long and productive relationship with Chief Kerlikowske. In 1990, when he was chief of police in Fort Pierce, Fla., Gil was the recipient of PERF's Gary P. Hayes Award, which is given to up-and-coming police executives who are recognized for their leadership abilities and achievements on the critical issues affecting law enforcement agencies. In 1996, PERF's member chiefs across the nation elected Chief Kerlikowske for a two-year term as President of PERF. And in 2006, Gil received PERF's highest honor, the Leadership Award, for his outstanding contributions to the field in developing community policing and other innovations.

Even though Chief Kerlikowske has already had a brilliant career, PERF is pleased to see that President Obama recognizes that some of Gil's greatest contributions may be yet to come, as he takes on the task of coordinating the nation's entire campaign against illegal drug abuse. As a seasoned police chief, Chief Kerlikowske has no illusions about the devastating impact that illegal drugs have had on American cities. He knows firsthand that drug markets drive the violent crime in many cities, and he will bring a street-level view to the formulation of national drug policies.

At the same time, throughout his career Gil has demonstrated a broad understanding that enforcement is only one part of a comprehensive approach, and that drug abuse prevention, treatment, and education initiatives bring long-term reductions in drug abuse and drug-related crime.

Thus, Chief Kerlikowske is the right person at the right time to serve as President Obama's drug czar. He will bring the balanced view to drug abuse policy that was envisioned when Congress created the Office of National Drug Control Policy.

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CITY OF PHILADELPHIA

March 27, 2009

POLICE DEPARTMENT  
HEADQUARTERS, FRANKLIN SQUARE  
PHILADELPHIA, PA 19106

CHARLES H. RAMSEY  
Commissioner

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Messrs. Leahy and Specter:

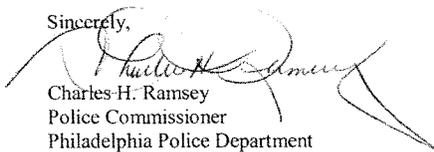
I am writing in support of Mr. Gil Kerlikowske as President Obama's nominee for the Director of the Office of National Drug Control Policy. I have known Gil for many years and most recently as the Chair of Major City Chiefs. He understand the demands and needs of local law enforcement as well as the benefit of preventive programs.

I am confident that as the Director of the Office of National Drug Control Policy, he will bring his knowledge and experience to advance our efforts in controlling illegal drugs in this country. Gil has worked to combat the affects of illegal drugs in our urban centers, on families, and individuals' lives.

The recent events on our southern border highlight the importance of a coordinated national drug control policy and its relationship with homeland security and neighborhood safety. I know that Mr. Gil Kerlikowske will perform the duties of this position with commitment and skill. I ask that you move his nomination in front of the Committee on the Judiciary as soon as feasible.

Thank you for considering this request. As always, please call on me if I can be of any assistance.

Sincerely,

  
Charles H. Ramsey  
Police Commissioner  
Philadelphia Police Department

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



[< Return To Hearing](#)

Testimony of

## The Honorable Harry Reid

U.S. Senator  
Nevada  
April 1, 2009

U.S. Senate Majority Leader Harry Reid  
Remarks on Nomination of Ron Weich  
Wednesday, April 1, 2009

As the members of the committee know, United States Senators have the opportunity over the course of our careers to work with a tremendous number of staff members. We are grateful for every one of them. But among this dedicated group of men and women, a few stand out -- with intellect, dedication and work ethic that make them indispensable. On my staff, Ron Weich stands out. As part of my senior staff since 2005, he has been by my side for every critical legal question we have faced. I recommend Ron for the position of Assistant Attorney General for Legislative Affairs with some measure of sadness to lose him in my office, but with absolute confidence that he will serve Attorney General Holder and the American people with the utmost skill and dedication. Like his mother, who was one of the first women to graduate from Brooklyn Law School, Ron began his legal career in the courtroom. After attending Columbia University and Yale Law School, Ron tried cases involving violent crimes as an Assistant District Attorney in Manhattan. There is no question that part of what makes Ron so effective at his job is the "real-world" experience he learned in those courtrooms. This experience gives him the perspective to understand how to make legal policy that will actually work in practice. While many of his colleagues were entering the private sector, Ron has spent almost his entire career in public service. We become a better country when men and women like Ron make the choice to make a difference. After his tenure in the Manhattan District Attorney's office, Ron served at the U.S. Sentencing Commission and for Senator Specter and Kennedy. Following a stint at a law firm, Ron returned to government service to work as my senior and then chief counsel after I became Democratic leader following the 2004 elections. Ron's work for Senators Kennedy and Specter are indicative of a character trait that will serve him well as Assistant Attorney General for Legislative Affairs: he has built a foundation of trust and friendship among key Members of Congress and staff on both sides of the aisle. For example -- Ron was a voice of reason during debate over the "nuclear option" and worked closely with members of the "Gang of 14" as they negotiated a solution to that potential legislative crisis. Ron also took a lead role in the landmark ethics and lobbying reform legislation we passed last year, working to pass a bill that would be both meaningful and practical. In his new role, Ron will be responsive to requests from both sides. In the best tradition of our Department of Justice, he will serve in a manner blind to partisanship, blind to politics, with a clear eye only toward ensuring equality in our laws. Ron's parents, Robert and Cecile, his wife, Julie, and their two daughters, Sophie and Sara, are all here today. I am grateful that they have shared Ron with us so generously through the years. In his new role, Ron will be an integral role of rebuilding the Department of Justice to be once again a place where all are equal under the law, all are protected by the law, and no one is above the law. I am confident that he will serve President Obama, Attorney General Holder, and most importantly, the American people, exceptionally well.

[http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit\\_id=7320](http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3757&wit_id=7320) 6/15/2009

1276

March 27, 2009

The Honorable Patrick Leahy  
The Honorable Arlen Specter  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Republican Member Specter:

As individuals who formerly worked for Republican members of Congress, we write in support of the nomination of Ronald Weich to be the Assistant Attorney General for Legislative Affairs.

Each of us worked with Ron during our time as a Republican staff member. While it should be obvious we did not always agree with every policy position that Ron advanced on behalf of the Senators for whom he worked, we could always rely on the fact that Ron is honorable and trustworthy. He dealt with us fairly and cordially. He respected opposing views and sought to find common ground with adversaries. We can attest to the fact that he is highly regarded among staffers – both Democrats and Republicans – for his knowledge of the Senate rules and his constructive approach to difficult legal issues.

We believe that Ron has the solid credentials to head the Legislative Affairs Office at the Justice Department. He currently serves as Chief Counsel to Majority Leader Reid, and previously worked for Senator Kennedy on both the Labor and Human Resources and Judiciary Committees. As you well know, Senator Specter, he also worked for you on the Judiciary Committee. These experiences have given Ron a keen understanding of the legislative process. He appreciates the importance of oversight and the prerogatives of Congress. He is also a former prosecutor and worked as Special Counsel to the U.S. Sentencing Commission.

In short, it seems to us that Ron Weich is an excellent choice to head the Office of Legislative Affairs at DOJ, and we urge that he be confirmed by the Senate.

Sincerely,

BRUCE ARTIM  
Chief Counsel and Staff Director,  
Senate Judiciary Committee (2003-2005)

MAKAN DELRAHIM  
Chief Counsel and Staff Director,  
Senate Judiciary Committee (2001-2003);  
Deputy Assistant Attorney General,  
Antitrust Division, U.S.  
Department of Justice (2003-2005)

MICHAEL O'NEILL  
Chief Counsel and Staff Director,  
Senate Judiciary Committee (2005-2007)

MANUS COONEY  
Chief Counsel and Staff Director,  
Senate Judiciary Committee (1997-2001)

## MARK DISLER

Chief Counsel (1995-1996) and Minority Staff Director (1993-1994); Minority Chief Counsel, Patents, Copyrights and Trademarks Subcommittee, (1989-1992), Senate Judiciary Committee

## MICHAEL VOLKOV

Counsel, Senate Judiciary Committee (2002-2004); Chief Counsel, Subcommittee on Crime, Terrorism and Homeland Security, House Judiciary Committee (2005-2008)

## MARK HEILBRUN

Deputy Staff Director and General Counsel, Senate Judiciary Committee (2004-2005); Chief Counsel to Senator Arlen Specter (2001-2004); General Counsel, Senate Select Committee on Intelligence (1995-1997)

## KEVIN S. MCGUINNESS

Chief of Staff to Senator Orrin Hatch (1988-1991); Minority Staff Director, Senate Labor and Human Resources Committee (1987-1988)

## JAMIE BROWN

Special Assistant to the President for Legislative Affairs (2004-2006)

## AMY F. DUNATHAN

Senior Republican Counsel, Senate Banking Committee (2000-2002); Professional Staff Member, Senate Environment and Public Works Committee (1998-1999); Legislative Director to Senator John Chafee (1988-1998)

## JESSICA NICKEL

Legislative Assistant to Rep. Rob Portman (2003-2005)

## MARK BARNES

Staff Attorney and Chief Counsel, Senator Ted Stevens (1981-1984)

## PETER MADIGAN

Deputy Assistant Secretary, Department of Treasury (1986-1989); Deputy Assistant Secretary, Department of State (1989-1991)

## HAROLD H. KIM

Deputy Chief Counsel and Chief Civil Counsel (2005-2007); and Senior Counsel (2003-2005) Senate Judiciary Committee

## THAD STROM

Chief Counsel (1991-1993); Chief Counsel, Antitrust Subcommittee (1994-1997); General Counsel (1988-1991), Senate Judiciary Committee

## ALLAN HICKS

Chief Counsel, Senate Majority Leader Bill Frist (2004-2007)

## PATRICIA KNIGHT

Chief of Staff to Senator Orrin Hatch (1998-2007); Professional Staff Member, Senate Judiciary Committee (1995-1997)

## NIELS HOLCH

Chief of Staff to Senator Mitch McConnell (1987-1991)

## MICHAEL TONGOUR

Chief Counsel to the Assistant Republican Leader, Alan Simpson (1989-1995); Legislative Director to Senator Strom Thurmond (1986-1987)

## NANCY TAYLOR

Health Policy Director, Senate Committee on Labor and Human Resources (1981-1991)

## CARL HAMPE

Counsel, Senate Judiciary Committee, (1983-1992); Deputy Assistant Attorney General, Office of Legislative Affairs, Department of Justice (1992-1993)

## MORRIE RUFFIN

Legislative Assistant to Senator Arlen Specter (1989-1994)

May 3, 2005	CNET Conference San Francisco, CA CBS Interactive 235 Second Street San Francisco, CA 94105-3124	"Session II: EULAs and You-Knows: What Is Meaningful Disclosure?"
May 12, 2005	NAI Strategic Forum	eCommerce in the Age of Spyware
December 7, 2005	European Commission DG Justice, Liberty and Security	The EU Data Protection Panel: Workshop – Safe Harbor Framework Bridging Differences in Approaches to Data Protection
March 8-10, 2006	IAAP National Summit 2006	Panel moderator on issue of national privacy legislation – No prepared remarks
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference, 23 Everett Street, Second Floor Cambridge, MA 02138	Panel: Privacy and Civil Liberties in Benign and Hostile Environments – No prepared remarks
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference 23 Everett Street, Second Floor Cambridge, MA 02138	Panel: "What you Need to Know about Identity" – No prepared remarks.
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference 23 Everett Street, Second Floor Cambridge, MA 02138	Panel: "Adequacy of Regulatory Frameworks for Privacy" – No prepared remarks.
September 27, 2006	ITAA Conference	Privacy legislation – No prepared remarks
December 12, 2006	Building Trust in Affiliate Marketing (forum) Network Advertising Initiative New York, NY	Panel: A Regulatory Line in the Sand?
March 8, 2007	IAPP Privacy Summit	Panel: Online Marketing: Industry Innovation and Government Enforcement
March 28, 2007	Liberty Alliance Public Policy Expert Group	"A Contractual Framework Outline for Circles of Trust"

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**CITY COURT OF BUFFALO**

50 DELAWARE AVENUE  
BUFFALO, NEW YORK 14202-3898

**ROBERT T. RUSSELL, JR.**  
ACTING ERIE COUNTY COURT JUDGE  
CITY COURT JUDGE  
DRUG TREATMENT, MENTAL HEALTH TREATMENT  
VETERANS TREATMENT COURT JUDGE

SUITE 250  
3  
6  
/US

Buffalo City Court  
50 Delaware Avenue, Suite 250  
Buffalo, NY 14202

March 27, 2009

Hon. Patrick Leahy, United States Senator  
Chairman, U.S. Committee on the Judiciary  
433 Russell Senate Office Building  
United States Senate  
Washington, D.C. 20510

Hon. Arlen Specter, United States Senator  
U. S. Committee on the Judiciary, Ranking Member  
711 Hart Building  
Washington, D.C. 20510

**Re: Letter of Recommendation – R. Gil Kerlikowske**

Dear Senator Leahy and Senator Specter:

It is with great admiration that I offer this recommendation in support of R. Gil Kerlikowske, President Barack Obama's nominee for the Director of the Office of National Drug Control Policy.

I had the privilege of first meeting and working with R. Gil Kerlikowske when he was appointed, after a national search, as Police Commissioner of the Buffalo, New York Police Department.

It was apparent that Commissioner Kerlikowske had a unique personal style which earned him respect from Buffalo's diverse communities. He was embraced by block clubs, neighborhood crime watch groups, and small and large businesses. During the time he served as Police Commissioner, his progressive and engaging law enforcement leadership was able to transcend Buffalo's political and ethnic cultures.

Hon. Senator Patrick Leahy, Chairman  
Hon. Senator Arlen Specter, Ranking Member  
March 27, 2009  
Page Two

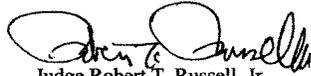
Commissioner Kerlikowske's personable style was direct, forthright, honest and sincere. I found him to be a caring person who was concerned about the plight of crime victims, the sincerity of his officers, and the safety and stability in our neighborhoods. He brought refreshing innovative ideals to the Buffalo Police Department. Commissioner Kerlikowske updated the department's equipment and also implemented community police tactics and procedures that reduced the City's crime rate.

Commissioner Kerlikowske was always available to work with the local courts on new initiatives such as Buffalo's first Drug Treatment Court, which I currently preside over. He was excellent at providing a law enforcement perspective. He was able to balance the need to be aggressive in enforcement initiatives against profiteers and distributors of street drugs, and at the same time be sensitive to the court initiative of strong judicial oversight and judicial monitoring of treatment programs for the addicted offenders as a strategy to reduce recidivism and the demand for drugs.

Commissioner Kerlikowske brings a wealth of experience in law enforcement as an administrator, an undercover officer, and as a street officer. He has broad knowledge and perspective on strategies to address our country's drug distribution and abuse challenges. His personal leadership style, progressive problem solving techniques, and superb law enforcement skills are all strong attributes. I sincerely believe, and I am firmly convinced that he will make an exceptional choice as our country's next Director of the Office of the National Drug Control Policy.

I enthusiastically recommend R. Gil Kerlikowske's confirmation by this Honorable Body.

Respectfully Submitted,



Judge Robert T. Russell, Jr.  
Buffalo City Court  
Presiding Judge: Drug Treatment Court,  
Mental Health Court, and Veterans' Treatment Court

RTR:sdm

1281



Karl F. Dean, Mayor  
Ronald W. Serpas, Ph.D.  
Chief of Police

**METROPOLITAN POLICE DEPARTMENT**  
*of Nashville and Davidson County*

March 30, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I respectfully submit this letter to offer my strong support and confident recommendation for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). I join with fellow Law enforcement executives in taking great pride that President Obama has recognized and honored the Major Cities Police Chiefs Association by nominating the acting President of our Association to serve in this extremely important position.

Chief Kerlikowske has consistently demonstrated excellence in integrity, professionalism and strength of leadership in his role in leading the Nation's largest police departments on matters of public policy. He has led and served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. He will be well equipped to face the challenges of critical issues in Washington from his outstanding executive experience at the U.S. Department of Justice. The time is crucial in addressing the violence and tragedy that results from drug abuse in our country and the devastating effects in the lives of people. Chief Gil Kerlikowske is exceptionally qualified to serve in the position of Director of ONDCP to encounter and contend with superlative resolve the serious issues in drug control, prevention and treatment in America.

Personally and in conjunction with fellow Law enforcement leaders, we have witnessed Gil's superb leadership as President of the Major City Police Chiefs Association. We are committed and prepared to join partnership and support with him in his new position. American law enforcement continues to look to your leadership and we collectively offer our respectful requests that you regard the nomination of Gil Kerlikowske with full affirmation and prompt action in confirmation process so that he may begin the valuable work at ONDCP.

Sincerely,  


Ronald W. Serpas, PhD  
Chief of Police  
Metropolitan Nashville Police Department

RWS: bss



200 James Robertson Parkway • P.O. Box 196399 • Nashville, Tennessee 37219-6399 • Phone (615) 862-7400



PATRICK J. LEAHY, VERMONT, CHAIRMAN

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**United States Senate**  
 COMMITTEE ON THE JUDICIARY  
 WASHINGTON, DC 20510-8275

BRUCE A. CUMMIS, Chief Counsel and Staff Director  
 STEPHEN A. MURPHY, Jr., Political Staff Director  
 DEBRA L. BROWN, Deputy Staff Director

March 24, 2009

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

Dear Patrick:

I write to request that you not schedule a hearing for the nomination of Judge David Hamilton to the Court of Appeals for the Seventh Circuit before the upcoming Senate recess. While I also have some concerns about scheduling a hearing on the nominations of Mr. Ron Weich to be Assistant Attorney General for Legislative Affairs and Mr. Gil Kerlikowske to be the Director of the Office of National Drug Control Policy for Wednesday, April 1, 2009, these concerns are not as significant as those I have about Judge Hamilton's nomination schedule.

On February 6, 2009, I wrote to you to convey my concern over the expedited schedule for consideration of several executive nominations and I suggested that, at a minimum, Senators should be afforded at least two weeks to evaluate executive nominees' records prior to their hearings. The Judiciary Committee did not receive Mr. Weich's or Mr. Kerlikowski's questionnaires until after 6 p.m. on Wednesday, March 18 and supplements to those materials were received on Friday, March 20. An April 1 hearing does not give the Committee a full two weeks to examine their records. Notwithstanding, I recognize the need to fill these important executive positions, and I am willing to move forward on these nominations before the Senate recess. A hearing for Judge Hamilton on April 1 is a different matter.

Judge Hamilton's nomination was announced on March 17, but the Committee did not receive his questionnaire until after 8:30 p.m. on March 18 and the attachments to his questionnaire arrived after 5:00 p.m. on March 19. Those materials were still not complete, and Judge Hamilton supplemented his materials on March 23. Judge Hamilton has been a district court judge for almost 15 years and has authored over 1200 opinions. In addition, he has submitted approximately 2000 pages of speeches, articles, and public policy papers relating to his nomination. Members cannot prepare for a hearing for a lifetime appointment to a circuit court in a mere thirteen days, especially when they are expediting review of two executive nominations. I also would note that, during the Bush Administration, Members were afforded an average of 138 days to evaluate a circuit court nominee prior to a hearing, and no nominee was considered in this short a period of time. Similarly, during the Clinton Administration, Members were afforded an average of 117 days to evaluate circuit court nominations. There are no extraordinary factors counseling expedited review of this nomination; the Seventh Circuit seat is not a judicial emergency and the seat has only been vacant for a few months.

I hope you will agree to postpone the hearing for Judge Hamilton until after the recess in order to give Members an appropriate amount of time to prepare.

Sincerely,

  
 Arlen Specter

*Pat - If you insist on this schedule for Hamilton, you will start on the first pro Obama nomination on a very contentious manner which will provoke opposition & prove counter productive.*

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB COLE, MONTANA	ALLEN SPALTER, PENNSYLVANIA
DANNY JOHNSON, CALIFORNIA	GRINGE HATCH, UTAH
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WYTHAM J. BYRD, WEST VIRGINIA	JEFF BLUNTING, OKLAHOMA
DEBRAH L. CASPER, MARYLAND	LINDSEY O. GRAHAM, SOUTH CAROLINA
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AMY KLOBUCHAR, MINNESOTA	
EVERETT D. CAULMAN, DELAWARE	

**United States Senate**  
COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6775

BRUCE A. COHEN, Chief Counsel and Staff Director  
STEPHAN A. MCGEEVER, Republican Staff Director  
NICHOLAS A. RING, Republican Chief Counsel

March 31, 2009

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

Dear Chairman Leahy:

We write to express our serious concern over the abbreviated hearing schedule for Judge David Hamilton's nomination to the U.S. Court of Appeals for the Seventh Circuit, and to express our disappointment that you have decided to hold this hearing despite the request by Ranking Member Specter to reschedule the hearing after the Easter recess to give senators adequate time to prepare.

Holding a hearing on Judge Hamilton's circuit court nomination a mere fifteen days after he was nominated is a significant departure from past Committee practice. None of President Bush's circuit court nominees received a hearing so quickly. In fact, on average, senators were afforded 166 days to prepare for hearings on President Bush's circuit court nominees, and 117 days for President Clinton's circuit nominees.

This nomination is ill-suited to being rushed. The vacancy to be filled is not a judicial emergency. In fact, it is the only vacancy in the Seventh Circuit, which is currently the federal appellate court with the most efficient docket. Moreover, Judge Hamilton has been a district court judge for almost 15 years and, by his own calculation, has authored "roughly 1,150 written opinions." He has also written and spoken extensively, generating roughly 2,000 pages of material for the Committee to review.

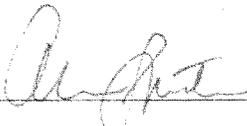
We have been unable to properly prepare for this hearing on a nomination to a lifetime position in this short timeframe; therefore, we request that Judge Hamilton be invited back to answer senators' questions once we have had an opportunity to prepare. We believe this request is consistent with past practice and would note that past Republican chairmen of this Committee acceded to Democrat requests and held multiple hearings for at least five of President Bush's circuit court nominees, including John G. Roberts' nomination to the D.C. Circuit. Following Justice Roberts' initial hearing on January 29, 2003, senators asserted that they had not had an opportunity to question him sufficiently and a second hearing was held on April 4, 2003. Justice Roberts was confirmed to the D.C. Circuit by voice vote later that year. Consideration of the views of the minority is one of the hallmarks of the United States Senate, and the importance of minority participation is enshrined in numerous Senate and Committee Rules. One such rule is

The Honorable Patrick J. Leahy  
Page 2 of 2

Senate Standing Rule XXVI(4)(d): "Whenever any hearing is conducted by a committee (except the Committee on Appropriations) upon any measure or matter, the minority on the committee shall be entitled, upon request made by a majority of the minority members to the chairman before completion of such hearing, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of the hearing thereon."

In accordance with this Committee's past precedent and Senate procedure, we respectfully request that you invite Judge Hamilton back for a second hearing after the upcoming recess to afford the minority enough time to properly review his record and prepare appropriate questions. Additionally, this recognition of precedent and accommodation of minority rights would be an important signal of cooperation on President Obama's first judicial nomination.

Sincerely,

 _____	 _____
 _____	 _____
 _____	 _____
 _____	 _____



*Director/President*  
Paul N. Samuels

*Director for National Policy*  
Gabrielle de la Guéronnière  
202-544-5478 • fax 202-544-5712  
[www.lac.org](http://www.lac.org)



*Executive Director*  
Becky Vaughn  
202-546-4600 • fax 202-544-5712  
[www.saasnet.org](http://www.saasnet.org)

236 Massachusetts Avenue, NE, Suite 505, Washington, D.C. 20002

March 31, 2009

Senator Patrick Leahy  
Chairman, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Senator Arlen Specter  
Ranking Member, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

As nonprofit organizations dedicated to advocating for sound national drug policy, the State Associations of Addiction Services and the Legal Action Center write to express our strong support for Chief Gil Kerlikowske's nomination as the Director of the Office of National Drug Control Policy (ONDCP). The State Associations of Addiction Services is a national association of 44 state associations of drug and alcohol addiction prevention and treatment providers, and the Legal Action Center is a national law and policy organization that advocates for people with drug and alcohol addiction histories, criminal records and HIV/AIDS.

We believe that Chief Kerlikowske will provide the leadership necessary to shape a new and much more effective vision for our nation's drug and alcohol policies. We are extremely pleased with recent remarks by President Obama, Vice President Biden and Chief Kerlikowske that call for a change in our national policy to a coordinated, comprehensive approach that expands the health responses to addiction, including prevention and treatment. We are excited by President Obama's support for such policy reforms as expansion of addiction prevention and treatment, and sentencing reform that eliminates racial injustice and emphasizes treatment instead of incarceration where appropriate. While more than 23 million Americans need care for drug and alcohol addiction and misuse, 90% of them – nearly 21 million people – never receive it. Prevention techniques that have proven successful reach far too few of our young people, and therefore drug and alcohol use has become an epidemic. People in recovery or still suffering from this disease too often are treated as second-class citizens.

Throughout his 36-year career in law enforcement, Chief Kerlikowske has demonstrated a great commitment to effectively addressing addiction to alcohol and other drugs in our country. We are pleased that Chief Kerlikowske recognizes that solving our nation's drug problems requires strong support for both enforcement and demand reduction efforts including prevention, treatment and recovery supports. Chief Kerlikowske has been a strong supporter of ensuring that adults and young people with drug and alcohol problems can, where appropriate, be diverted from the criminal justice system into addiction treatment. Chief Kerlikowske's support for diverting young people with addiction histories into treatment where appropriate and his support for the work of our nation's drug courts is consistent with clear scientific findings that addiction is a preventable and treatable disease – and that prevention and treatment are the most effective and cost-efficient strategies for reducing drug and alcohol problems.

We strongly commend Chief Kerlikowske's work at the community level and his ability to partner with individuals and organizations representing various important segments in the community who are working on the front lines to fight our nation's problems with drugs. Chief Kerlikowske's breadth of experience in community policing makes him uniquely qualified to bring in the various groups of people, including addiction prevention and treatment providers, people in recovery and their family members, members of the law enforcement community and other allies, to work together in the coordinated way required to successfully fight against drug and alcohol addiction in this country. We strongly believe that Chief Kerlikowske's extensive experience at the community level will provide him with the understanding necessary to implement critically important, effective reforms to our drug policy at the national level.

Thank you for the opportunity to share our views. We strongly endorse the nomination of Chief Kerlikowske to direct the ONDCP and encourage his swift confirmation.

Sincerely,



Paul N. Samuels  
Director/President



Becky Vaughn  
Executive Director  
State Associations of Addiction Services



Gabrielle de la Gueronniere, JD  
Director for National Policy  
Legal Action Center/National HIRE Network

March 27, 2009

Senator Patrick J. Leahy, Chairman  
Senator Arleen Specter, Ranking Republican Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510-6275

Dear Mr. Chairman, Senator Specter, and Distinguished Members of the Committee:

I am John R. Steer, former General Counsel and Vice Chair of the United States Sentencing Commission. I write to support the confirmation of Ronald H. Weich as Assistant Attorney General for Legislative Affairs.

I employed Ron Weich in November 1987 as a Special Counsel on the legal staff of the Sentencing Commission, subsequent to his work with the Manhattan District Attorney's office. During his time with the Commission his valuable contributions included: 1) helping draft significant amendments to the sentencing guidelines, 2) successfully defending the constitutionality of the guidelines and the Sentencing Reform Act against nationwide separation of powers challenges, and 3) helping maintain a good working relationship with Congress as our lead legislative liaison. Mr. Weich proved to be an outstanding attorney with exceptional legal skills and excellent judgment.

After leaving the Sentencing Commission for service on Capitol Hill with, successively, Senator Specter, Senator Kennedy, and Majority Leader Reid, the Sentencing Commission has continued to regularly call on him for guidance and assistance. On a number of occasions he has worked with his principal to provide critical staff leadership in crafting important amendments to the Commission's legal authority and other sentencing statutes.

I believe Mr. Weich is well suited and superbly qualified to serve the Nation well as Assistant Attorney General for Legislative Affairs. He is obviously knowledgeable of the legislative processes and has developed an excellent understanding of the variety of Justice Department issues and programs. Perhaps most importantly, Ron has accrued a well deserved reputation for fairness and professionalism. He is trusted and respected by Members of Congress and staff of both political parties as an attorney with exceptional ability and integrity. I strongly urge his prompt confirmation.

Sincerely,

John R. Steer

Senior Partner, Allenbaugh Samini Ghosheh LLP  
General Counsel, US Sentencing Commission, 1987-1999  
Vice Chair, US Sentencing Commission, 1999-2007

1288

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Stewart Konduros & Associates, LLC

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April 20, 2009

Senator Patrick J. Leahy  
433 Russell Office Building  
Washington, D.C. 20510

Dear Senator Specter,

I am writing to recommend Senate confirmation of R. Gil Kerlikowske as Director of the Office of National Drug Control Policy. I recently retired as Chief of the South Carolina Law Enforcement Division after serving 30 plus years with that agency. I have known Chief Kerlikowske since 1995 when we were participants in the Federal Bureau of Investigation's National Executive Institute.

Currently serving as Seattle' Chief of Police, he has had an outstanding career with service ranging from police chief to deputy director of the Department of Justice Community Oriented Policing Services. He has led three police organizations to national accreditation by the Commission on Accreditation for Law Enforcement Agencies. He is president of the Major Cities Chiefs Association and a past president of the Police Executive Research Forum.

Chief Kerlikowske is a professional, innovative, experienced law enforcement leader. I have every confidence that he has all the qualities necessary to competently perform in this position that is so important to our nation and the well being of its citizens. I am certain he will seek ways to combat illegal drugs by strong enforcement, demand reduction, prevention, and treatment. In conclusion I wholeheartedly recommend confirmation of this fine gentleman.

Sincerely,



Robert M. Stewart  
CEO

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Post Office Box 1971  
Lexington, South Carolina 29071

## City of Cincinnati



Thomas H. Streicher, Jr.  
Police Chief

March 30, 2009

Police Department  
319 Lizzard Charles Drive  
Cincinnati, Ohio 45214  
(513) 352-3536  
(513) 352-2949 (FAX)

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

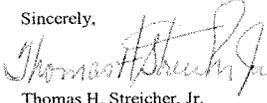
The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I am writing to offer my support for the nomination of Gil Kerlikowske for Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs in Florida police departments, as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, Gil is no stranger to Washington. He possesses the knowledge and expertise so vital to achieving the changes necessary for law enforcement across the nation. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major Cities Police Chiefs Association and we stand ready to work with him in his new position. I support the nomination of Gil Kerlikowske and urge that you move quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,  
  
 Thomas H. Streicher, Jr.  
Police Chief  
Cincinnati Police Department



THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006  
TELEPHONE (202) 293-7330  
FAX (202) 293-2352  
TDD (202) 293-9445  
URL: [www.usmayors.org/uscm](http://www.usmayors.org/uscm)

March 19, 2009

The Honorable Patrick Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

The U.S. Conference of Mayors enthusiastically endorses the nomination of R. Gil Kerlikowske as Director of the Office of National Drug Control Policy and encourages the Committee to act quickly on the nomination.

Chief Kerlikowske is a longtime ally of mayors throughout this nation. He worked with us when he was Chief of Police in Buffalo and President of the Police Executives Research Forum and when he was Deputy Director of the COPS Office. Most recently, as Chief of Police in Seattle and President of Major Cities Chiefs Association, he worked closely with us last summer in the development of our National Action Agenda on Crime for the Next President of the United States.

President Obama's choice of Chief Kerlikowske as the next ONDCP Director is good for our cities and for our nation. He is a top-flight police executive who understands the complexity of the drug problem and its impact on our cities. We look forward to working with him to build the federal-state-local partnership needed to reduce the use and trafficking of the illegal drugs that continue to plague this nation.

Sincerely,

A handwritten signature in cursive script that reads "Tom Cochran".

Tom Cochran  
CEO and Executive Director

1291



**NATIONAL ACADEMY OF ENGINEERING**

OF THE NATIONAL ACADEMIES

**CHARLES M. VEST**  
*President*

March 25, 2009

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I write to express strong support for the confirmation of Mr. Gil Kerlikowske as Director, Office of National Drug Control Policy.

I am president of the National Academy of Engineering and president emeritus of the Massachusetts Institute of Technology (MIT).

Chief Kerlikowske recently served on a major National Academies study that I co-chaired with former U.S. Secretary of Defense William Perry. The topic of our study was Protecting Individual Privacy in the Struggle Against Terrorists. This complex study examined the nexus of technology, counterterrorism, and personal privacy and produced a framework for program assessment that we hope will be adopted throughout the federal government.

Chief Kerlikowske was an outstanding contributor to this study, and displayed an excellent ability to communicate and work with the entire spectrum of participants that included former intelligence community officials, attorneys, academic computer experts, statisticians, and private sector IT specialists. Gil brought on-the-ground law enforcement experience and perspective that were invaluable. Although this was a limited interaction during a two-year period, it was an excellent window into his ability to work at a high policy level while remaining grounded in practical experience.

It is a privilege to support his confirmation.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles M. Vest".

Charles M. Vest

CMV/lbm

**THE NATIONAL ACADEMIES**  
*Advisers to the Nation on Science, Engineering, and Medicine*

500 Fifth Street, NW, NAS 218  
Washington, DC 20001

Phone: 202 334 3201  
Fax: 202 334 1680  
E-mail: [cvest@nae.edu](mailto:cvest@nae.edu)

1292

**Statement of Ronald H. Weich**

**Senate Committee on the Judiciary**

**April 1, 2009**

Chairman Leahy, Ranking Member Specter and members of the Judiciary Committee:

Thank you for the opportunity to testify in connection with my nomination to be the Assistant Attorney General for Legislative Affairs. It is a special honor for me to appear before this Senate Committee with which I have worked closely for many years.

I am grateful to President Obama for nominating me to this important position. If my nomination is reported favorably by this committee and confirmed by the full Senate, I will work hard every day to justify the confidence that the President, Attorney General Holder and you have shown in me.

I am proud to be accompanied today by members of my family: my wife Julie Stewart, my daughters Sophie and Sara, and my parents Robert and Cecile Weich. Their love and support over many years makes me whole, and allows me to be here today.

Senator Reid was kind to introduce me to you, and I am grateful to him for that. But in fact, I owe a debt of gratitude to each of the three Senators for whom I have worked. Each has taught me something important that I would put to use if confirmed to head the Legislative Affairs Office in the Justice Department.

From Senator Specter, who gave me my first job in the Senate 20 years ago, I learned the importance of rigorous legal and factual analysis. He and I share a background as state prosecutors in large cities, where the practice can be a bit rough and ready. But I learned from Senator Specter that when you're writing federal law, every word counts and you'd better get it right.

From Senator Kennedy, I learned the value of bipartisan compromise. He is always guided by a set of unwavering ideals, but he is never afraid to find common ground with those who hold different ideals. That philosophy has led Senator Kennedy to partner with many of the Republican members of this committee and other Republicans over the years to pass so many landmark laws, and it is why he has earned the respect and affection of all of his colleagues.

And from Senator Reid, I have learned to revere the legislative branch – and especially the Senate. Senator Reid, like his mentor Senator Byrd, is known to pull a worn copy of the Constitution from his breast pocket and remind everyone that Congress does not work for the President. It is a co-equal branch of our tripartite federal system, and it is described in Article I of the Constitution because it is the branch closest to the people.

Each of these three lessons would inform my work if I am confirmed as an Assistant Attorney General. I would approach the job with intellectual discipline, always striving to get the law, the facts and the policy right. I would endeavor to work closely with all members of this committee, Republicans and Democrats, because I know that in the effort to keep the American people safe and protect their rights, there is much more that unites us than divides us. And I would always respect the role and the prerogatives of Congress.

I have spent about half of my professional life working for the Senate. For the last few years, I have been privileged to have an office in the United States Capitol, just steps from the Senate floor, with a view of the Supreme Court and the Library of Congress. Every single day I come to work, I marvel at the genius of the Framers in establishing our time-honored system of government in which Congress makes the laws, the President executes the laws, and the judiciary interprets the laws.

Our Constitution establishes a natural tension among the three branches. But that tension need not breed animosity if leaders in the respective branches respect and trust each other, and communicate productively. In particular, a healthy relationship between the Justice Department and this Committee is crucial to the success of federal law enforcement.

If confirmed as the Assistant Attorney General for Legislative Affairs, I will do my small part to strengthen that relationship and help the Justice Department function effectively for the benefit of the American people.

1294



LOUISVILLE METRO POLICE DEPARTMENT

JERRY E. ABRAMSON  
MAYOR

ROBERT C. WHITE  
CHIEF OF POLICE

March 23, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

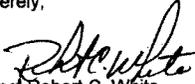
Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

  
Colonel Robert C. White  
Chief of Police

RCW/sb

633 WEST JEFFERSON STREET LOUISVILLE, KENTUCKY 40202  
OFFICE PHONE 502.574.7660 FAX 502.574.2450

1295



**EL PASO COUNTY SHERIFF'S OFFICE**

**Richard D. Wiles, Sheriff**  
**Sylvia Aguilar, Chief Deputy**  
3850 Justice Drive  
El Paso, Texas 79938



Email: [REDACTED]

***We Serve with Pride***

- Administration**  
3850 Justice Drive  
El Paso, Texas 79938  
915-538-2217  
915-538-2028 fax
- Job Line** 915-546-2286
- Region VIII Training Academy**  
12501 Montana Avenue  
El Paso, Texas 79938  
915-856-8570  
915-856-4883 fax
- Criminal Investigations Bureau**  
850 Justice Drive  
El Paso, Texas 79938  
915-538-2591  
915-538-2148 fax
- Detention Bureau**  
691 East Overland  
El Paso, Texas 79901  
915-546-2228  
915-543-3810 fax
- Jail Annex Bureau**  
12501 Montana Avenue  
El Paso, Texas 79938  
915-856-4800  
915-856-4869 fax
- Patrol Bureau**
- Traffic Division**  
3850 Justice Drive  
El Paso, Texas 79938  
915-538-2210  
915-538-2212 fax
- Montana Station**  
12501 Montana Avenue  
El Paso, Texas 79938  
915-856-4872  
915-856-4896 fax
- Vinton Station**  
436 East Vinton  
Vinton, Texas 79858  
915-886-2724  
915-886-3109 fax
- Special Operations Bureau**  
6825 Cielo Vista Drive, Box 4  
El Paso, Texas 79925
- Metro Narcotics Task Force**  
915-772-5885  
915-775-0369 fax
- HDDA Enterprise Task Force**  
915-832-9011  
915-832-6356 fax
- Volunteer Program**  
3850 Justice Drive  
El Paso, Texas 79938  
915-538-2117  
915-538-2028 fax
- Emergency** 911
- Non-Emergency** 546-2280

March 23, 2009

The Honorable Patrick Leahy  
Chairman, Committee on the Judiciary  
U.S. Senate  
Washington DC 20510

The Honorable Arlen Specter  
Ranking Member, Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Richard D. Wiles  
Sheriff

cc: Senator John Cornyn



**First Nationally Accredited Sheriff's Office in Texas**  
**First Two Nationally Accredited County Jails in Texas**



NEXSEN PRUET

**William W. Wilkins**  
Member  
Admitted in SC

March 30, 2009

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Senator Patrick J. Leahy, Chairman  
Senator Arlen Specter, Ranking Republican Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510-6275

**Re: Ronald H. Weich**

Dear Mr. Chairman, Ranking Member Specter, and  
Distinguished Committee Members:

Charleston  
Charlotte  
Columbia  
Greensboro  
**Greenville**  
Hilton Head  
Myrtle Beach  
Raleigh

I am a retired Chief Judge of the United States Court of Appeals for the Fourth Circuit and served as the first Chair of the United States Sentencing Commission and as Chair of the Criminal Law Committee of the United States Judicial Conference. I write to enthusiastically support the confirmation of Ronald H. Weich for the position of Assistant Attorney General for Legislative Affairs.

I came to know Mr. Weich when he was hired to serve as a Special Counsel on the legal staff of the U. S. Sentencing Commission. In that position he provided valuable assistance in helping the Commission to promulgate the sentencing guidelines and subsequent amendments submitted to Congress. He also capably served as a part of our legal team that successfully defended the constitutionality of the guidelines and the Sentencing Reform Act against separation of powers challenges in federal courts throughout the country. As the Chair of the Sentencing Commission, I regularly called on Mr. Weich seeking his legal advice on a variety of issues. He was always responsive, hard-working and dependable.

After Mr. Weich took a position on the Senate staff of Senator Specter, and later with Senator Kennedy, the Sentencing Commission continued to call upon him for assistance on a variety of legislative issues. Throughout his years on Capitol Hill, his knowledge of criminal justice issues, Justice Department programs, and the legislative process has made him an invaluable contact for the Sentencing

55 East Camperdown Way  
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Greenville, SC 29603-0648  
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Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

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Senator Patrick J. Leahy, Chairman  
March 30, 2009  
Page 2

Commission and the federal judiciary. He is an outstanding attorney with excellent legal skills and an in-depth knowledge of public policy issues.

I always found Mr. Weich to be open-minded, realistic, and insightful in his judgments. He is widely respected and trusted for his integrity, ability, and professionalism. I am pleased to support his nomination for the position of Assistant Attorney General for Legislative Affairs and I am confident that, if confirmed, he will perform outstanding service to our nation.

Sincerely,



William W. Wilkins

WWW:dd

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March 23, 2009

William G. Milliken  
*Chairman of the Board*

Hubert Williams  
*President*

The Honorable Patrick J. Leahy, Chairman  
Committee on the Judiciary  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Leahy:

I am writing to wholeheartedly support R. Gil Kerlikowske, nominee for the position of Director of the Office of National Drug Control Policy ("Drug Czar"). I have known Chief Kerlikowske for over 15 years, and during this period, he has served as the Deputy Director of Community Oriented Policing Services and is currently the Chief of Police of the Seattle Police Department.

I have seen the devastating effect that drugs have had on our communities and recognize the value that the Drug Czar's position could have in assisting cities, towns, and villages across our country to find new and more effective remedies for addressing this problem. As a former Police Chief in Buffalo, New York, and now Chief in Seattle, Washington, Gil Kerlikowske is accustomed to making tough decisions under difficult circumstances. He knows that the coordination of efforts and sharing of information between the various departments and agencies of our government is the key to the resolution of this problem, and he has the leadership skills to motivate others to work cooperatively in the accomplishment of this objective.

As President of the Police Foundation<sup>1</sup> for the past 24 years, I have had the opportunity to work with law enforcement organizations throughout the nation to improve policing and enhance the quality of public safety. Gil Kerlikowske has stood out during this

<sup>1</sup> *The Police Foundation is an independent and unique resource for policing. It has been a catalyst for change and an advocate of new ideas, in reminding ourselves of the fundamental purposes of policing, and in ensuring that an important link remains for the police and the public they serve.*

Improving Policing in America Since 1970

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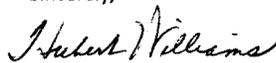
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The Honorable Patrick J. Leahy, Chairman  
March 23, 2009  
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time as one of the most significant policing leaders due to his interest in scientific research and his commitment to make necessary reforms, as well as his balanced approach to prevention and law enforcement.

As a former Deputy Director of the COPS Office for the U.S. Department of Justice, Gil is highly respected with the law enforcement community for his work in Community Oriented Policing. He has the strength, character, and intellect to elevate to the status of the Drug Czar and to help the country find solutions to this complex and difficult problem. I fully support Chief Kerlikowske's appointment as Director of the Office of National Drug Control Policy, based on his impressive law enforcement career, as well as his professional integrity. I believe that Gil is an exceptional candidate for this position.

Sincerely,



Hubert Williams

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