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CONFIRMATION HEARING ON THE NOMINATIONS OF CHARLES A. JAMES, JR. AND DANIEL J. BRYANT TO BE ASSISTANT ATTORNEYS GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CONFIRMATION HEARING ON THE NOMINATIONS OF CHARLES A. JAMES, JR. AND DANIEL J. BRYANT TO BE ASSISTANT ATTORNEYS GENERAL

WEDNESDAY, MAY 2, 2001

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

The Committee met, pursuant to notice, at 10:06 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Grassley, Specter, Leahy, Biden, Kohl, and Cantwell.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. If I could bring everybody to attention. Good morning and welcome to this nomination hearing before the—if I could have order? Welcome to this nomination hearing before the Senate Judiciary Committee. Today we are going to consider the nominations of Charles James to be the Assistant Attorney General for Antitrust and Daniel Bryant to be the Assistant Attorney General for Legislative Affairs.

I want to congratulate both of these nominees. I have a lot of nice things to say in my opening remarks, but I want to accommodate my colleagues in the House. Normally we would go with Mr. James first, but I think I am first going to call on my various colleagues who are here for Mr. Bryant. So if we could have Chairman Hyde and Ranking Member Conyers, two great friends, and Senator Biden—is there anybody else who needs to be in this first group?—Senator Warner, and I understand Senator Allen is on his way.

Senator Warner and Senator Biden, would you mind if I let the two House Members go first since they have a hearing over there?

Senator WARNER. You can let them go right ahead.

Chairman HATCH. That would be OK? Would you resent it?

Representative HYDE. By all means.

[Laughter.]

Chairman HATCH. Then we will do it anyway. But I never disagree with the distinguished Senator.

Senator WARNER. Biden and I live here, and they have travel time.

Chairman HATCH. That is right. Why don't we start with you, Chairman Hyde, and then Mr. Conyers, and then we will let you go.

I will put my statement in the record.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S SENATOR FROM THE STATE OF UTAH

Good morning and welcome to this nomination hearing before the Senate Judiciary Committee. Today we will consider the nomination of Charles James to be the Assistant Attorney General for Antitrust and of Daniel Bryant to be the Assistant Attorney General for Legislative Affairs.

I would like to congratulate both of the nominees for being chosen by President Bush. It is a true pleasure to have before the Committee two nominees who have so much experience in the areas for which they have been nominated. Their impressive backgrounds and past government service make me confident that they will be great assets to the Department of Justice, this Committee and the American people.

CHARLES JAMES

In recent years the position of Assistant Attorney General for Antitrust has grown in importance. High profiles cases, and the complexities of competition policy in the age of new technologies, have made the general public familiar with a variety of anti-trust issues. The Assistant Attorney General for Antitrust plays a crucial role in formulating competition policy and enforcing existing antitrust laws to make sure our entrepreneurs compete on a level playing field.

Mr. James is one of the most qualified people for this important job. Since his graduation from law school in 1979, Mr. James has been working on antitrust matters. He began his legal career at the Bureau of Competition of the Federal Trade Commission where he developed antitrust investigations and litigated cases. After six years at the FTC, Mr. James went into private practice at the firm of Jones, Day, Reavis & Pogue, where he serviced as counsel to firms and individuals subject to civil or criminal antitrust investigations.

In 1991, Mr. James was appointed to be Deputy Assistant Attorney General in the Antitrust Division, where he served for almost two years. So he already has a great deal of experience with the Division he will now be leading. As Deputy, Mr. James worked on case development and supervision, legislation, the promulgation of guidelines, and various international matters. He was a principal drafter of the 1992 DOJ/FTC Horizontal Merger Guidelines. He left the Division in 1993 and returned to private practice as a partner at Jones Day, again advising clients on antitrust matters.

With such an impressive background in antitrust law, both in private practice and in enforcement, I am confident that Mr. James will be an excellent Assistant Attorney General for Antitrust.

DANIEL BRYANT

The Assistant Attorney General for Legislative Affairs serves as the legislative liaison between Congress and the Department of Justice. Some of the staff on this Committee, might argue that this position is the most important position at the Department.

The Office of Legislative Affairs must represent the interests and opinions of the Department before Congress. The Office also internally coordinates testimony given to the Senate and the House of Representatives. Moreover, the Office reviews legislation proposed by other departments with the Office of Management and Budget and other executive branch agencies.

Mr. Bryant is very well prepared for heading the Office of Legislative Affairs. He has served in numerous government positions and is very familiar with the inner workings of Congress. He has served as counsel and then chief counsel of the House Subcommittee on Crime under former Chairman Henry Hyde. He also worked on the Senate Permanent Subcommittee on Investigations. While attending law school at American University, Mr. Bryant worked as a special assistant at the Department of Justice in the Office of Juvenile Justice and Delinquency Prevention. He has also served as the policy director for the First Freedom Coalition, a non-profit organization.

Mr. Bryant's experience in Congress along with his service within the Department of Justice make him well qualified to serve as the Assistant Attorney General for Legislative Affairs, and our liaison with the Department.

I am extremely pleased to have two such qualified nominees before us today and am hopeful that this Committee and the Senate as a whole will move quickly to confirm them.

PRESENTATION OF THE NOMINEE, DANIEL J. BRYANT, BY HON. HENRY HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Representative HYDE. Thank you, Senator Hatch, and Senator Grassley and other distinguished members of this body and my colleague, John Conyers.

I will not recite matters from Dan Bryant's resume. They are available. But I would like to just say that for 6 years he was a counsel on the Crime Subcommittee and then chief counsel on the Crime Subcommittee in the House Judiciary Committee, and was a brilliant lawyer. He was a scholar, a student of the law, both substantively and procedurally. He knows the Hill intimately. He is a thoroughgoing gentleman without a partisan taint to him. The law is important to him. He is a gentleman in the fullest sense of the term and is ideally suited to be liaison with the Justice Department and the Hill.

My acquaintances with him were important. He provided advice over some very controversial issues, sound advice. He was always there, and I think it is one of the better appointments of this administration to nominate him for Assistant Attorney General for Legislative Affairs. It is a real privilege to have this opportunity to say how much I think of Dan Bryant.

Chairman HATCH. Well, thank you Chairman Hyde. That is very, very high praise indeed.

Mr. Conyers, we are glad to have you here as well. We are honored by your presence.

PRESENTATION OF THE NOMINEE, DANIEL J. BRYANT, BY HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CONYERS. Good morning, Chairman Hatch, Senator Grassley, Senator Warner, Senator Biden. What a pleasure it is for me to continue the kind of bipartisan support that has gone to those who hold this very important office of being Assistant Attorney General for Legislative Affairs. Dan Bryant has received the support of all of the Democratic members of the House Judiciary Committee, and it is for the very reasons that Chairman Hyde has outlined.

He works in fairness. He is a very honest and able lawyer, and what he does is continue the tradition of bipartisanship that is so important on the constitutional and other judicial issues that come before both our committees. And so I am happy to tell you that he takes the place of Robert Rabin, another former House Judiciary counsel, who I am sure dispatched his duties with the same kind of zeal and competence that we expect and know that Dan Bryant will do.

I am very pleased to join my dear friend Henry Hyde in supporting the nomination that I think will redound to all of our benefit.

Thank you.

Chairman HATCH. Well, thank you Congressman Conyers.

The testimony of the two of you is very important to this committee. I think we are all very grateful that you took the time to come over here. It is a real tribute to Dan Bryant. So we are very pleased with that.

Thanks so much. We will let you both go. We know you have——

Representative HYDE. We have a markup at 10 o'clock, so if we may be excused——

Chairman HATCH. You are excused.

Representative HYDE.—we will read in the record the remarks from Senator Warner and Senator Biden.

Chairman HATCH. Thank you. And Senator Allen right behind you.

Representative CONYERS. Thanks so much.

Chairman HATCH. Thank you for being here. We appreciate you taking the time.

Senator Allen, if you would come up to the table? We will start with seniority. We will start with Senator Biden first and then Senator Warner and then Senator Allen.

Senator BIDEN. Mr. Chairman, since I am going to be around, anyway, why don't I let my colleagues go first?

Chairman HATCH. Fine.

Senator BIDEN. Why don't we let Senator Warner go first since I am a member of this Committee and I will stay.

PRESENTATION OF THE NOMINEES BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, for you are always courteous—except when we are on talk shows.

[Laughter.]

Senator WARNER. We were scheduled tonight on "Hardball," but I understand you bailed out as soon as you heard I was coming.

Senator BIDEN. I did.

[Laughter.]

Senator BIDEN. I went last night so I would not have to face that awesome power.

Senator WARNER. You know, these are moments you do not forget in the life of your Senate career. You sit here with Henry Hyde and Congressman Conyers, two giants of this institution who come together in a truly bipartisan spirit on behalf of the nominee, Dan Bryant. I think the best that I could say is that I associate myself with their remarks and their observations and add just but one or two of my own.

This nomination, which is a superb one by the President and our esteemed colleague, former colleague, the Attorney General, John Ashcroft, represents a tribute to the staff of the Senate and the House that one of their own has achieved the recognition through many years of hard work to come before the Senate for the advice and consent process.

I am proud that this distinguished nominee is a resident of our great State. He also, I wish to point out, has received the recognition of two Democrats: Congressman Boucher and Congressman

Bobby Scott, two highly esteemed members of our congressional delegation.

And with that, I would just conclude my remarks. I think sometimes brevity in introduction connotes the strength of the candidate, and that is certainly true with this nominee.

I am also privileged to appear on behalf of Charles James to serve as Assistant Attorney General of the Antitrust Division. If the Committee would indulge me in just a moment of levity, so many years ago—I cannot remember—I was appointed an Assistant United States Attorney to the District of Columbia, and the U.S. Attorney was short of funds, so he parked me in the Antitrust Division for 60 days to await my transfer over to the U.S. Attorney's Office. And I remember so well working there—I guess I worked. I do not remember. But I went in and out of these offices with stacks of files covered with dust. People disappeared into the Antitrust Division for 20 years never to be seen again, and the case they worked on when they came was the case they were working on when they left.

[Laughter.]

Senator WARNER. But I hope Mr. James can inspire a new sense of achievement in bringing together this staff, which is usually a wonderful professional staff in the Department of Justice, to achieve the goals of our President and the Attorney General. And I am confident he certainly has the background, having been with the most distinguished firm of Jones Day for many, many years. And he served in the Justice Department before as Deputy Assistant Attorney General for the Antitrust Division, so he fully knows what he is coming to and what he will be entrusted to succeed.

He spent 6 years with the Federal Trade Commission, and we are fortunate as citizens to get persons of this accomplishment to come back into public office. I am confident he has taken a very significant, together with his family, reduction in his salary, but he is doing it in the spirit of public service.

So it is my honor to be here on behalf of both of these appointees, and I thank the Chair and the distinguished Ranking Member and my good friend Senator Grassley for bearing with me for these short introductions.

Chairman HATCH. Well, thank you Senator Warner. We will let you go because we know how busy you are. But that testimony is very important here.

Senator Allen, we will go to you next.

PRESENTATION OF THE NOMINEES BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. As I understand it, we are introducing Mr. James and Mr. Bryant at the same time. Is that correct?

Chairman HATCH. That is correct, if you can.

Senator BIDEN. And anyone else you would like to pick out in the audience.

[Laughter.]

Chairman HATCH. And that is with Senator Biden's permission, too.

Senator ALLEN. That is great. Thank you, Senator Biden.

Thank you, Mr. Chairman and Members of the Committee. It is a privilege and pleasure to appear before this Committee with my colleague, Senator Warner, and other distinguished Senators, Senator Biden, as well as the two distinguished leaders in the House, to introduce two fellow Virginians. Both Charles James and Dan Bryant have distinguished themselves with careers of hard work and especially great intellect. And I am confident that they both will perform their respective duties with great distinction in the Department of Justice for the people of the United States of America, after their confirmation, obviously.

Certainly the position—let me first start with Assistant Attorney General for the Antitrust Division. This is a vitally important division for the economic development and for our consumers in our country, and it is important, again, to have somebody with great experience understanding the needs of consumers as well as business.

Charles James' high-tech law background and his Government experience will help him deal with the new-economy antitrust issues, and he is a perfect choice. He has an enormous amount of experience in the antitrust field as well as an impressive background in Government. His previous legislative leadership in the antitrust—previous leadership, Government experience in the Antitrust Division and his extensive experience in antitrust law make him truly a perfect choice to guide the Division, this Division of the Justice Department, in today's global society and economy as well. And so he has the intelligence, he has the work ethic, and I am certainly very proud to present him to this Committee and look forward to working with him after his confirmation. This is a vitally important position, and the right person has been selected by the President and the Attorney General in that regard.

Now, switching from Charles James to President Bush's particularly wise choice in selecting Dan Bryant to be Assistant Attorney General for Legislative Affairs, not only is he a fellow Virginian these days, but you have heard the testimony of Senator Warner. You see the bipartisan support he has from the House, and I am sure that committee—I was not here—had some contentious days. And to see both Congressman Conyers and Congressman Hyde together in support of Dan Bryant shows how perfect he is for this position of Legislative Affairs for the Justice Department.

I know a lot of people have gone through his record as chief counsel to the House Judiciary Subcommittee and the variety of positions he has held in the Department of Justice. He also has been described as an astute political strategist, and I am sure our colleagues will do their best to challenge him on that.

One thing, I see General Barr here, and General Barr—this is an important thing to us in Virginia. He was a speech writer for Attorney General Bill Barr from April 1994 to 1995. At that time former Attorney General Bill Barr was heading up our effort to reform sentencing in Virginia, to put truth in sentencing into effect in Virginia, rather than the lenient, dishonest system that they had previously had in Virginia where folks would serve a fraction of their sentence. We needed to put together a coalition for a special session in Virginia to abolish parole and institute truth in sentencing.

General Barr was giving speeches back then, and they were very effective and very eloquent. Little did I know Dan Bryant was his speech writer during this very time, from April 1994 to January 1995. We abolished it as of January 1, 1995, but passed it in October. So, General Barr, I can tell where some of the good speech writing was coming from.

Chairman HATCH. I kind of wish you had not brought that up. [Laughter.]

Senator ALLEN. Well, it is part of his record.

Chairman HATCH. No, no. It is OK. You are doing fine.

Senator ALLEN. At any rate, Dan Bryant has, as far as I am concerned, the perfect experience, and, most importantly, what it takes as a Legislative Affairs person is you need the right temperament. And he has the right temperament and the experience, and so I think he will do an outstanding job, and I know all Members of the House and the Senate look forward to working with Dan in this role to make sure that we are making the right policies here at the Federal level to protect law-abiding citizens.

Thank you, Mr. Chairman.

Chairman HATCH. Well, thanks, Senators. I think to have both of you from Virginia here is a tribute to both of these gentlemen, and we are grateful that you took time to come over. We know how busy you are.

We will now turn to our distinguished former chairman.

PRESENTATION OF THE NOMINEE, DANIEL J. BRYANT, BY HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Mr. Chairman, I am here to nominate former Attorney General Barr for Attorney General.

[Laughter.]

Senator BIDEN. That is why I am here. I do not know why the hell these——

Chairman HATCH. That sounds about what you would do.

Senator LEAHY. You notice former Attorney General Barr, after you said that, is heading toward the door.

Senator BIDEN. Mr. Chairman, members of the committee, it is a pleasure to be here this morning to introduce Dan Bryant, along with others, for confirmation as Assistant Attorney General for the Department's Office of Legislative Affairs. I have had the occasion to work with Dan over the years in his capacity as chief counsel for the House Subcommittee on Crime. For years I headed the Crime Subcommittee on this Committee and as Chairman of the Committee continued to work with Dan.

There Dan served former Representative McCollum, Chairman Hyde, and Congressman Conyers, both of whom have spoken today, and worked across party lines to develop legislation that we can all, I think, be very proud of. But for Dan's excellent work, I doubt whether the legislation such as my Violence Against Women Act or the Foreign Narcotics Kingpin Designation Act or the DNA Blocking Elimination Act would be law today.

He is an able lawyer. He is a straight shooter, as you heard, and I know he will represent the Department well in his dealings with this committee.

He has integrity, he has good judgment, and he is well respected by those who have had the good fortune to work with him.

Now, Dan was born in Port Jefferson, New York, but he spent his formative years in my home State of Delaware, and his parents, Gary and Carolyn, and his older brother and sister and their families to this day live in Wilmington, Delaware. And while I have been impressed with his work in the Justice Department—excuse me, with the Subcommittee in the House and with the House Committee and the juvenile justice bill and on my Violence Against Women Act and on public safety measures, what brought me to this hearing this morning was his accomplishments in our home State of Delaware.

In 1992, it was a particularly good year for Dan. He placed first—I am sure you will want to know this—in the Delaware State Spanish oral exam. He was a member of the All-State soccer team and a recipient of the Di Sabitino Leadership Award at Wilmington's Tower Hill School, the second best school in Delaware. And if it was not for his appearance before us today, I would be tempted to say Dan peaked a little too early.

In all seriousness, the President did the country a service and did us a service here on the Hill by nominating Dan Bryant to serve in what is often a difficult job as the chief liaison between the Department and Congress. When the President picks a Delawarean to head the Office of Legislative Affairs, he has picked a winner in this one, and I would recommend him to this Committee very highly. I would urge my colleagues, which I have no doubt they will, to vote favorably on Dan's nomination. He truly is a fine guy. And as my colleague from Virginia, Senator Allen, said, he has the temperament, he has the brains, and most of all he has the integrity. When he tells you something, you can count on it. And that is a big deal. That is a big deal in this body.

So I compliment the President on his pick, and I compliment Dan on being willing to stay in public service and take the job.

I thank you for your courtesy, Mr. Chairman.

Chairman HATCH. Thank you, Senator Biden. We really appreciate your testimony, and for your bringing this spirit of bipartisanship here is a wonderful thing. Certainly Mr. Bryant has to appreciate it, as do all of us.

If we could have the two nominees come forward, we will turn to Senator Leahy and take his opening remarks.

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

Senator LEAHY. Do we all have to give a statement first praising Bill Barr? Because I am happy to do so. I happen to be a fan of Attorney General Bill Barr. But we are delighted to see the nominees here.

As mentioned, Dan Bryant is very well known to this committee. He has had to sit through some late-night conferences with all of us, but he served very well as a member of the congressional staff and chief counsel to the House Judiciary Committee's Subcommittee on Crime. And I think the fact that Chairman Hyde and Ranking Member Conyers were here to speak for you today shows the type of respect you have on both sides of the aisle, which is

something very valuable and something you have worked for, and, of course, Senator Biden and others coming here.

He knows the legislative process, and I do not want to get Chairman Hyde to retract anything, but he has always been very respectful of the Senate's role in this process as well as very protective of the House role. He has a very demanding job.

Mr. James, you come from a distinguished law firm in which you have distinguished yourself, and you should be proud of that. I will have questions later about your experience representing clients against Government antitrust enforcement efforts. You will be asked about that and also about effective antitrust enforcement, which will come as no surprised to you, I am sure. And there may even be a question or two about the Microsoft case, Senator Hatch may ask, I may, or others.

The Antitrust Division's most recent leaders, Anne Bingaman and Joel Klein, did an extraordinary job reinvigorating the Division. I believe they assembled a first-class team of professionals enforcing our antitrust laws. I know these professionals, many with whom I have worked. I had no idea what their political allegiances were, but I was well aware of their professional allegiance to the Department of Justice and the Antitrust Division. And I think you have to build on that work.

If I could make three quick points, Mr. Chairman. Mr. James, you have been so successful in advising an impressive list of corporate clients that some have joked you are going to have to recuse yourself for your term in office from doing your job. Look at the corporate Who's Who of those who wanted to merge. Your clients have included, for example, airlines—American, Delta, United, the new D.C. Air. One of your deputies is also from your firm. And so I think that it is going to be important to the public and this Committee to make it very clear where you will recuse yourself.

I would want assurance that you will not seek waivers from those recusal rules in order to work on matters involving former clients, because even the appearance of impropriety would hurt the Justice Department and the Antitrust Division.

I want to mention two issues of importance to Vermont as a New England State. One has to do with the increasing concentration of the agricultural processing sectors. One of the first bills I introduced with the Democratic Leader in this Congress focuses on concentration in the meat-packing, the poultry, the livestock, and the dairy-processing industries. The studies being released today by researchers at the University of Connecticut raise serious concentration and antitrust issues affecting New England regarding a major milk processor, Suissa Foods. The report concludes that supermarket retailers and milk processors, using the very considerable signaling of price intentions and undue market power, have bilked New England consumers out of almost $50 million.

The report says that Suissa Foods has acquired major processors in the region, and then after they acquire them, they dismantle them or they shut them down. And it shows that in the Boston and Providence areas, Suissa processes between 80 and 90 percent of the milk sold in supermarkets, and they can basically set whatever price they want. In other parts of New England, they have something like 70 percent of the milk.

So they are following the approach that the best way to eliminate competition, to increase market power, is not to aggressively compete with others but, rather, to just buy their competitors and then dismantle them.

Now, they totally lose their investments, of course, in these local dairies when they buy them and dismantle them, but they end up with no competitors, and in the long run, they make a lot more money because there is no competition.

I worry about this because milk is an essential food. I would hope that you will personally look into these reports of price signaling and abuse of market power regarding Suissa Foods of Texas, unless for some reason you need to recuse yourself. If you need to recuse yourself, then I would hope somebody else would look into it.

You have been very critical also of the role of the FTC as a dual enforcer of antitrust laws. I think they are an independent agency and they perform valuable service to the Nation. Their recent efforts to go after brand-name drug manufacturers for allegedly paying generic drug companies not to compete is a good example of this.

I introduced a bill, along with Senators Kohl and Schumer and Durbin, to look into these secret deals made by brand-name and generic drug manufacturers. I asked that it be referred to the FTC and the DOJ to make sure that we are all being protected and that consumers have access to low-cost generic drugs. All I want to make sure of is that there is enough competition out there so we are protected. People are entitled to fair profits. People can make fair profits. But they are only fair if they are in a competitive world.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator Leahy.

Let me just say this before I turn to the nominees. I would like to add that Chairman Hyde and Congressman Conyers are correct. There has been a tradition of bipartisan support for the position as Assistant Attorney General for Legislative Affairs. And I am pleased that so many people have been here to show that that tradition is holding and continuing.

I was a big fan and supporter of Robert Rabin, who occupied the office under the prior administration. I want to commend Mr. Rabin, who is here today, for the fine job he did during his tenure at the Department. So you both have had some really fine people come in and testify for you.

At this point we want to congratulate both of you, and I would just like to make a few comments. Mr. James is one of the most qualified people for this important job. Since his graduation from law school in 1979, he has worked on a multiplicity of antitrust matters. He began his legal career at the Bureau of Competition of the Federal Trade Commission where he developed antitrust investigations and litigated cases. After 6 years at the FTC, Mr. James went into private practice at the firm of Jones, Day, Reavis & Pogue, where he served as counsel to firms and individuals subject to civil or criminal antitrust violations or investigations.

In 1991, Mr. James was appointed to be Deputy Assistant Attorney General in the Antitrust Division, so he already has a great

deal of experience with the Division that he will now be leading. As Deputy, Mr. James worked on case development and supervision, legislation, the promulgation of guidelines, and various international matters. He was a principal drafter of the 1992 DOJ/FTC Horizontal Merger Guidelines. He left the Division in 1993 and returned to private practice as a partner at Jones Day, again advising clients on antitrust matters.

With such an impressive background in antitrust law, both in private practice and in enforcement, I am confident that you are going to make an excellent Assistant Attorney General for Antitrust. In fact, I have every confidence in you, and it is a tribute to you that former Attorney General Bill Barr, former head of the Division, and Jim Rill, are here in support of you. It has got to make you feel pretty darn good and make your Dad and your family feel pretty good as well.

The Assistant Attorney General for Legislative Affairs serves as legislative liaison between Congress and the Department of Justice. Some of the staff on this Committee might argue that this position is one of the most important positions at the Department.

The Office of Legislative Affairs must represent the interests and opinions of the Department before Congress. This office also internally coordinates testimony given to the Senate and the House of Representatives. Moreover, the office reviews legislation proposed by other departments within the Office of Management and Budget and other executive branch agencies.

As has been expressed, Mr. Bryant is eminently prepared for this job. We have worked very closely with him, and frankly, I just cannot imagine them making a better choice than either of you.

So we are pleased to have both of you here with us. We will turn to you first, Mr. James, and if you have any short comments to make about your nomination or—oh, I guess I've got to swear you both in. Would you please stand? Please raise your right hands. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JAMES. I do.

Mr. BRYANT. I do.

Chairman HATCH. Mr. James, we will turn to you.

STATEMENT OF CHARLES A. JAMES, JR., OF VIRGINIA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR ANTITRUST

Mr. JAMES. Good morning, Mr. Chairman, members of the committee. It is a great honor to be here today.

Before I begin, I would like to acknowledge the presence of my family. Here with me today are my father, Charles A. James, Sr.——

Chairman HATCH. Please stand when he introduces you so we will all know. We are sure happy to have you here, Mr. James.

Mr. JAMES. He has made it possible for me to do a great many things in life; my teenage daughter, Kathryn E. James, who is, of course, my heart——

Chairman HATCH. Really happy to have you here.

Mr. JAMES. And two men who have been like brothers to me: Retired Air Force Captain Charles C. White, who has given up a tre-

mendous career to become an elementary school teacher, and he is to be commended for that; and someone I am very proud of, my cousin, Dr. Craig Thomas.

Chairman HATCH. We are sure happy to have all of you here.

Mr. JAMES. I also wish to acknowledge just a few members of my professional family, men who have been my mentors and lawyers who I have been very proud to practice with. I invited him here today and his appearance has been noted: former Attorney General Bill Barr, who has been a tremendous force in my career; James F. Rill, who I succeeded at the Antitrust Division and a big force in my life; and three of my partners, Phillip A. Proger, Joe Sims, and James D. Wareham, who have been important to me.

Chairman HATCH. We are happy to welcome all of you here.

Mr. JAMES. I began my career, as Senator Hatch noted, at the Federal Trade Commission as a GS–11 staff lawyer, and I never thought I would be sitting in this chair. There is no greater job for a professional antitrust lawyer than to head the Antitrust Division of the U.S. Department of Justice. There just isn't. And I am honored that President Bush and Attorney General Ashcroft have shown confidence in me and believe that I can do this job at this time.

We all recognize the vital importance of antitrust enforcement. Competition is the driving force of our market economy, and effective enforcement is what makes it go.

There are challenges facing the Antitrust Division. The Antitrust Division must operate in a very complex and rapidly changing economic environment, and it has very, very, very complicated matters to learn about, figure out, and do the right thing with respect to. We have global commerce, we have new technology, we have business relationships that are changing all the time. Keeping up is quite a job.

Second, the Antitrust Division confronts the new economy, and it must continually update its thinking in order to deal with the emergence of products and services that are more intellectual property and networks than traditional physical products. Again, there is a great deal to be done in that area. The basic tenets of antitrust to preserve competition have to apply to these industries just as they apply to all the other industries.

Third, in our global world, the Antitrust Division is charged with taking a leadership role among national antitrust authorities around the world. In today's world, in order to detect, investigate, and remedy antitrust problems, there has to be cooperation among national agencies and, more importantly, there has to be an effort to harmonize different legal structures and different procedures so that the process works smoothly.

I have had the opportunity to work with the men and women of the Antitrust Division for my entire career, and I can say without question that this group of people is up to the challenge. They have met every challenge before, and they will meet the challenges of today.

I like to think of myself as a fairly practical lawyer, and I have practical goals for the Antitrust Division. My goal will be to ensure the utmost respect for our antitrust laws and for the manner in which they are enforced. For me, that means four things: aggres-

sive but thoughtful enforcement; the clearest possible enforcement standards, applied even-handedly; the best available legal and economic thinking on the issues we face; and enforcement decisions based solely upon the factual merits as reflected in the evidence.

This Committee and the Subcommittee chaired by Senators DeWine and Kohl have been great supporters of the Antitrust Division and of the antitrust laws. And if confirmed, I will do my utmost to ensure that the division continues to earn that respect and trust.

I would be pleased to respond to your questions, and once again, it is a tremendous honor to be here today.

[The prepared statement and biographical information of Mr. James follow:]

STATEMENT OF CHARLES A. JAMES, JR., OF VIRGINIA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR ANTITRUST

Good morning Mr. Chairman and members of the Committee. It would be a considerable understatement for me to say that I am honored to appear before you today. Thinking back to my first day as a staff attorney at the Federal Trade Commission, fresh out of law school, I would have never imagined that my career in antitrust would bring me to this place. There is no greater job for a professional antitrust lawyer than heading the Antitrust Division of the U.S. Department of Justice, and I am truly humbled that President Bush and Attorney General Ashcroft believe that I have what it takes to perform this job at this time.

At the outset, I would like to acknowledge the presence and support of my family. With me today are my father, Charles A. James, Sr., my teenage daughter, Kathryn E. James, and two men who have been like older and younger brothers to me, Retired Air Force Captain Charles C. White, and Dr. Craig Thomas.

The challenges facing the Antitrust Division are great. Competition is the driving force of our market economy, and we rely upon vigilant and effective antitrust enforcement to ensure that our markets are not undermined by cartels and other anticompetitive practices. The antitrust laws are our most fundamental consumer protection statutes. Companies around the world feel the pressure to compete in increasingly global markets. New technologies are emerging in every sector of the economy. Firms are experimenting with new business relationships, many of which involve varying forms of cooperation with their customers, suppliers and even their competitors. While these dynamic economic conditions are the very essence of competition, they also create great temptation for firms to probe the boundaries of permissible competitive conduct and, sadly for some firms, to flagrantly ignore those boundaries. When that occurs, the Antitrust Division must step in to preserve for consumers the benefits of free competition.

The Antitrust Division also is challenged to be a leading voice among antitrust enforcement agencies around the world. In a global economy, anticompetitive behavior does not respect national borders, and cooperation among the various national agencies is becoming increasingly necessary to detect, investigate and remedy illegal conduct. At the same time, disparate antitrust enforcement by the national agencies can impede free trade flows among nations and impose unnecessary burdens upon legitimate competitive behavior. Once again, cooperation and coordination among the national agencies are essential. As the nation with the longest tradition of antitrust enforcement, and perhaps the greatest commitment to trade, the United States must take a leadership role in promoting sound antitrust enforcement policy in multinational commerce and in creating mechanisms for procedural cooperation on a global scale.

Finally, the Antitrust Division is challenged to continue to grow in its understanding of competitive behavior and to adapt its thinking to an ever-changing economic environment. Increasingly, the industries of concern to antitrust enforcers involve intellectual property and network services, more so than physical goods. These industries challenge many of the paradigms of traditional antitrust analysis, yet the basic tenets of the antitrust laws to preserve competition must apply to these industries, just as they do to all others. The Antitrust Division does not have the luxury of standing still. It must exert intellectual leadership in the field of competition policy, constantly updating its knowledge base and analytical tools.

I had the great honor of leading the Antitrust Division for a brief period in 1992. I know from that experience that the men and women of the' Antitrust Division are

up to the task of meeting these challenges, just as the Division has met similar challenges throughout its existence. The Antitrust Division is an agency of motivated, committed professionals, who believe in the antitrust laws and enforce them with great vigor. I was proud to lead this group before, and I look forward to doing it once again.

Since learning of my nomination, I have given considerable thought to what it takes to lead a large and complex organization and to the attributes of successful leaders I have had the opportunity to observe. One characteristic I have found to be common to all of the leaders I admire has been a constant, unswerving focus on some bedrock organizational goal. If confirmed, my goal as head of the Antitrust Division will be simple: to ensure the utmost respect for our nation's antitrust laws and the manner in which they are enforced. For me, that means that the Division will enforce the law aggressively, but with due regard for the complexity of modern business. It means that the Division will do everything in its power to develop and articulate clear enforcement standards and to apply those standards even-handedly. It means that the Division will bring to bear the best available thinking on the issues we face, and premise all of its decisions solely upon the legal and economic merits, as reflected in the evidence. If, at the end of my tenure, it can be said that I helped to enforce the antitrust laws in a fair and neutral way, I will have achieved my goal.

This Committee, together with the subcommittee headed by Senators DeWine and Kohl, has been a tremendous supporter of the Antitrust Division. It is my hope that the Division will continue to earn your support and, if I am confirmed by the Senate, that I personally can enjoy an excellent working relationship with each and every one of you.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Charles Albert James, Jr.

2. **Address: List current place of residence and office address(es).**

Home: Arlington, VA 22207

Office: Jones, Day, Reavis & Pogue
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

3. **Date and place of birth.**

May 2, 1954,
Newark, NJ

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).**

Divorced

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

Wesleyan University (1972-76), BA 1976

National Law Center, George Washington University (1976-79), JD 1979

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

1979-85 Federal Trade Commission, Washington, DC

Staff Attorney, Bureau of Competition

Attorney Advisor, Office of Regional Operations, Bureau of Competition

Assistant to the Bureau of Competition Director

1985-91 Jones, Day, Reavis & Pogue, Washington, DC
Associate
Partner

1991-92 U.S. Department of Justice, Washington, DC

Deputy Assistant Attorney General, Antitrust Division

Acting Assistant Attorney General, Antitrust Division

1993-Present Jones, Day, Reavis & Pogue, Washington, DC

Partner and Chairman of the Antitrust & Trade Regulation Section

1993-97 Trustee, The Potomac School, McLean, VA

1999-Present Member, Board of Advisors, Barbara Jordon Congressional Fellows Program

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Federal Trade Commission Chairman's Award (1985)

U.S. Department of Justice Edmond Randolph Award (1992)

9. **Bar Associations: List all bar associations, legal or judicial-related committees 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.**

Federal Bar Association (Chairman of Antitrust Committee)

Section of Antitrust Law, American Bar Association (Vice Chairman, Section 1 Committee)

Section of Business Law, American Bar Association (Chairman, Antitrust Committee) 1999-Present

Note: I have almost continuously been a member of the ABA Section of Antitrust Law since commencing my practice in 1979, but do not recall the dates during which I served as Vice Chairman of the Section 1 Committee. I was active in the Federal Bar Association at some time between 1986 and 1990, but do not recall those specific dates.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Lobbying Organizations

Member, Antitrust Council, U.S. Chamber of Commerce

American Bar Association, Sections of Business and Antitrust Law

Non-Lobbying Organizations

Member, Board of Advisors, Barbara Jordan Congressional Fellows Program

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

District of Columbia Court of Appeals (1979)

U.S. District Court of the District of Columbia (1980)

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Publications

Sims, James et al, *Countering Bad Statistics, Strategies for Dealing With the Problem Merger*, Practicing Law Institute, Corporate Law and Practice Course Handbook (Dec. 1, 1987) at 270

Gellhorn, James et al, *Has Antitrust Outgrown Dual Enforcement? A Proposal for Rationalization*, 35 Antitrust Bul. 695 (1990)

James, *Overview of the 1992 Horizontal Merger Guidelines*, 61 Antitrust L.J. 447 (1993)

James, *Mergers in the Defense Industries: No Change in the Rules of the Antitrust Game*, Washington Legal Foundation, Legal Backgrounder, Vol. 8 No. 16 (1993)

James and Sims, *Mergers' Game of Chance: Whose Rules Are in Play*, Legal Times (February 6, 1995)

James and Marsch, *Horizontal Merger Principles and Procedure*, Antitrust Fundamentals, ABA Section of Antitrust Law (Apr. 5, 1995)

James and Kiess, *Counseling a Client Targeted by a Government Antitrust Investigation*, published in Antitrust & Trade Associations, ABA 1996

Non-Published Writings

James, *The Antitrust Pendulum: Staying Ahead of the Blade* (1995) [Distributed at Jones Day client seminar]

James, *Defense Techniques in Government Merger Investigations* (1995) [Distributed at Jones Day client seminar]

Testimony

James, Statement of Charles James, Acting Assistant Attorney General, Antitrust Division, U.S. Department of Justice before the Joint Economic Committee, Congress of the United States, Hearing on The Structure of the Hospital Industry in the 21st Century. (June 24, 1992)

James, Testimony on Behalf of the U.S. Chamber of Commerce before the Federal Trade Commission, Project on Joint Ventures (December 4, 1997)

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent March 2001

14. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

1979-85	Bureau of Competition, Federal Trade Commission (Staff Attorney and Assistant to the Bureau of Competition Director) (appointed)
1992-92	Antitrust Division, U.S. Department of Justice (Deputy Assistant Attorney General and Acting Assistant Attorney General) (appointed)

15. **Legal Career:**

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

1. **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;**

2. **whether you practiced alone, and if so, the addresses and dates;**

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

I have never held a judicial clerkship, nor have I practiced alone.

I was admitted to practice in the District of Columbia in 1979 and began my career as a staff attorney in the Bureau of Competition of the Federal Trade Commission. After roughly two years, I was promoted to Attorney Advisor in the Office of Regional Operations.

After about one year, I was promoted again to Assistant to the Bureau of Competition Director.

In 1985, I left the Commission to join Jones, Day, Reavis & Pogue as an associate in the Washington office. I was promoted to the partnership in 1990.

In 1991, I was appointed by Attorney General Thornburgh to the position of Deputy Assistant Attorney General in the Antitrust Division. Attorney General Barr appointed me Acting Assistant Attorney General in 1992.

In 1993, I rejoined Jones Day as a Partner and Chairman of the Firm's Antitrust and Trade Regulation Section.

Employment Summary

1979-85 Bureau of Competition, Federal Trade Commission, Washington, DC 20580

1985-91 Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001

1991-92 Antitrust Division, U.S. Department of Justice, Washington, DC 20530

1993-Present Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My work at the Federal Trade Commission focused primarily on the development of antitrust investigations and cases. At the Antitrust Division, my work focused on case development and supervision, as well. Additionally, during my stint as policy deputy, my work focused on appellate litigation, legislation, the promulgation of guidelines, and involvement in international matters, such as multinational cooperation

agreements, trade issues and coordination of multinational investigations.

In private practice, I have served as a non-litigating counselor and advisor to firms and individuals subject to civil or criminal antitrust investigation by the Antitrust Division, Federal Trade Commission and State Attorneys General. Occasionally, I have performed in a similar capacity with respect to competition-related inquiries by the Federal Communications Commission, Federal Reserve Board, Department of Transportation and Federal Energy Regulatory Commission.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Approximately 60 percent of my work has involved the antitrust aspects of mergers, acquisitions and joint ventures. The remainder has involved other types of civil and criminal antitrust investigations.

Clients I have served since rejoining the Firm in 1993 include: wireless telecommunications providers, airlines, financial services companies, hospital systems and networks, producers of pharmaceuticals and medical devices, information technology companies, manufacturers of engineered industrial equipment and controls, and producers of intermediate and consumer goods.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

2. **What percentage of these appearances was in:**
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

3. **What percentage of your litigation was:**
   (a) civil;
   (b) criminal.

4. **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.**

5. **What percentage of these trials was:**
   (a) jury;
   (b) non-jury.

In the course of my career, I have never served as the courtroom litigator in any case. My work has involved advocacy before the agencies short of litigation. On three occasions, I have served as the chief antitrust lawyer on litigation matters handled by the general litigation section of our law firm. In each instance, my role was limited to advising trial lawyers on substantive points of antitrust law, assisting in the preparation of factual and expert testimony and drafting briefs. I did not appear in court proceedings.

All three matters were in federal court, all were civil, and all were resolved before a full trial on the merits.

16. **Litigation: Describe the ten 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 representations;
   (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.

As discussed above, I have never practiced as a courtroom advocate. I have had substantial involvement in litigation in only three instances. In each case, I served as the principal antitrust counselor and advisor to the litigation team.

In re Disposable Contact Lens Litigation, Docket No. 1030 (M.D. FL)

Judge: Hon. Harvey F. Schlesinger

Co-counsel: Thomas F. Cullen, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001 (202-879-3939)

Opposing Counsel: See Attachment A

Date: 1997 to present

As a regular antitrust advisor to Bausch & Lomb, I have worked closely with litigation partners in my firm in connection with the defense against charges that Bausch & Lomb and other contact lens manufacturers conspired with eyecare professionals to restrict the sale of disposable contact lenses by mail-order houses. Following an initial suit by the State of Florida, actions were filed by a class representing contact lens users and several state attorneys general. My work has been confined to developing the substantive defense and overseeing the work of expert economists. The case is ongoing.

FTC v. Tenet Healthcare Corporation, 17 F.Supp.2d 937 (E.D.Mo. 1998), *rev'd*, 186 F.3d 1045 (8th Cir. 1999)

Judge: Hon. Catherine Perry

Co-Counsel: George T. Manning, Jones, Day, Reavis & Pogue, 3500 Sun Trust Plaza, 303 Peachtree Street, NE, Atlanta, GA 30308 (404-521-3939)

Opposing Counsel: Gary R.Gibbs, Bureau of Competition, Federal Trade Commission, 601 Pennsylvania Avenue, NW, Washington, DC 20580 (202-326-2767)

Date: 1997-99

Tenet Healthcare Corporation proposed to purchase Doctors Regional Medical Center in Poplar Bluff, Missouri. I served as the chief antitrust counsel on the matter during the HSR investigation by the Federal Trade Commission and Missouri Attorney General. When the FTC and Missouri elected to challenge the acquisition, I was the

principal antitrust lawyer supporting our litigation team. The U.S. District Court for the Eastern District of Missouri granted the government's motion to enjoin the transaction. That injunction, however, was reversed by the U.S. Court of Appeals for the 8th Circuit. My work consisted of developing the substantive defense of the merger, overseeing the work of expert economists and supervision of briefing in the District Court and the Court of Appeals.

U.S. v. Motorola, Inc., Case No. 1:94CV02331 (D.C.D.C. 1999)

Judge: Hon. Thomas F. Hogan

Co-counsel: Thomas F. Cullen, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW 20001 (202-879-3939)

Opposing Counsel: Donald J. Russell, Antitrust Division, U.S. Department of Justice, 1401 H. Street, NW, Washington, DC 20530 (202-514-5621)

Date: 1998-99

Nextel Communications pioneered the concept of using Specialized Mobile Radio ("SMR") spectrum to deploy a digital mobile radio network capable of providing mobile telephone service in competition with what were at that time duopoly cellular telephone providers. Nextel acquired its spectrum through hundreds of acquisitions of SMR operators, the largest of which were investigated by the Antitrust Division of the U.S. Department of Justice. Those investigations -- in particular, the investigation of Nextel's acquisition of Motorola's systems -- resulted in a 1995 consent decree, permitting Nextel to acquire substantially all of the SMR spectrum on the 800 MHZ band, but restricting its ability to acquire 900 MHZ spectrum in the major markets. Those restrictions would have been in effect for ten years.

In 1999, Nextel petitioned the Antitrust Division to vacate the decree based upon changed circumstances. When the Antitrust Division indicated its intention to oppose

any weakening of the decree, Nextel petitioned the U.S. District Court for the District of Columbia for relief. On the eve of the hearing on Nextel's motion, the Antitrust Division relented, entering a settlement permitting Nextel to substantially increase its holdings of 900 MHZ spectrum immediately and to eliminate the restrictions entirely on the fifth anniversary of the decree. I was substantially involved in all non-courtroom aspects of the litigation and negotiated the modified final judgement with the Antitrust Division.

17. **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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

In addition to the three matters listed above, I would note the following recent representations:

In 2000, I was retained by M.A. Hanna Corporation to assist in its proposed merger with Geon Corporation. The combination produced the world's largest producer of performance polymers. Hanna and Geon, however, tended to produce complementary products and their merger was largely synergistic. Working with counsel for Geon and local counsel in numerous foreign jurisdictions, we were successful in persuading U.S. and foreign antitrust regulators to permit the transaction to proceed.

In 1997, news reports indicated that several bidders in the FCC PCS auctions had employed the last numbers in their bids -- so-called "trailing digits" -- to signal their intentions with regard to preferred markets and thereby discourage bids by others. The news reports prompted investigations by the Antitrust Division and the FCC. I was retained by Mercury PCS, one of the firms that had been mentioned in the press. Working with FCC counsel, we were successful in resolving the matter such that Mercury was able to obtain its licenses and construct its systems. In the DOJ proceeding, Mercury entered a consent decree agreeing to refrain from employing trailing digit bidding in future auctions, a practice the FCC already had made

impossible by requiring all firms to bid in fixed increments.

In 1999, Eramet, S.A., proposed to acquire Elkem, a leading producer of ferromanganese alloys. The combined firm would have become the leading U.S. producer of those commodities. I was retained to represent Eramet in connection with the acquisition. The proposed transaction was investigated by the Antitrust Division, and the parties had received a second request under the HSR Act prior to my being retained. We were successful in persuading the Division to withdraw the second request and to permit the parties to consummate the transaction.

In 2001, I represented UPM-Kymmene, a leading world producer of specialty papers, in its proposed acquisition of Rexam Release, the leading U.S. producer of release liners. UPM was the third largest U.S. producer of release liners. Working with counsel for Rexam and local counsel in various foreign jurisdictions, we were successful in persuading the FTC and foreign regulators to permit the transaction to proceed.

In 1999, I was retained by Robert L. Johnson, Chairman of Black Entertainment Television, to represent him in his efforts to form DC Air from assets to be divested in the proposed merger of United Airlines and US Airways. The United/US Airways transaction remains under investigation by the Antitrust Division and several state attorneys general.

Other industries in which I have handled antitrust matters include: airlines, financial services, hospital services, telecommunications and media, information technology, professional services, engineered equipment and controls, pharmaceuticals and medical devices, intermediate and consumer goods, and food products.

Additionally, I have represented clients in approximately seven non-public grand jury investigations, none of which resulted in indictment of my client.

During my tenure at the Antitrust Division, I worked on a number of significant policy initiatives. I was a member of the principal drafting group for the 1992 DOJ/FTC Horizontal Merger Guidelines, I was the lead U.S. negotiator on the 1992 Antitrust Cooperation Agreement between the United States and the European

Community. I was the lead Justice negotiator in the 1992 Structural Impediments Initiative talks between the United States and Japan.

My management experience includes having held supervisory positions at both the Federal Trade Commission and the Antitrust Division. As reflected above, I headed the Antitrust Division for the final eight months of 1992. In private practice, I chair the global antitrust practice at Jones Day, which includes concentrations of antitrust/competition lawyers in five U.S. cities and five European countries.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List 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.**

Jones, Day, Reavis & Pogue will return all invested capital and deferred income at the time of my separation from the law firm. This will include a capital account of $198,750 undistributed 2000 income of $403,058, and 2001 income through the date of my departure at the rate of $2,137 per day. Pursuant to a provision of the partnership agreement addressing partners resigning to enter government or military service, I will receive a lump sum severance payment of $900,000. The severance arrangement also provides for my participation in group tax returns for Firm income earned in 2000 and 2001 and for preparation of my 2000 and 2001 tax returns by Ernst & Young under contract to the Firm. Pursuant to the Firm's retirement plan I have a vested interest in pension benefits payable upon retirement at $838 per month. The vested pension benefit has a present value of $35,349.

There are no other arrangements for future compensation or benefits.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to**

present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will seek and follow the advice of ethics officers within the Department with regard to any matters with which I may have a conflict.

3. **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.**

I presently serve as a member of the Board of Advisors of the Barbara Jordan Congressional Fellowship Program, a non-profit organization associated with the Kaiser Foundation and Howard University. The program places summer interns in Congressional offices. With appropriate clearance from ethics advisors at the Department, I will continue to serve the program for the remainder of this year.

4. **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.)**

See ATTACHMENT B

5. **Please complete the attached financial net worth statement in detail (add schedules as called for).**

See ATTACHMENT C

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

III. GENERAL (PUBLIC)

1. **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.**

Since rejoining private practice in 1993, I have not been directly involved in pro bono representations. My public service activities have included:

service as a trustee at a local private school, with a focus on increasing student, faculty and administrative diversity;

assistance in the formation of the Barbara Jordon Congressional Fellows Program, which provides opportunities for minority students to serve as Congressional staffers focusing on health policy issues; and

work through the NALP (National Association of Law Placement) Foundation and minority student organizations to expand opportunities for minorities in the legal profession.

2. **Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.**

No.

AFFIDAVIT

I, CHARLES A. JAMES, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4-10-2001
(DATE)

(NAME)

Subscribed and sworn to before me this 10th day of April, 2001.

Ellen L. Owens
(NOTARY)

My Commission Expires June 14, 2005

CERTIFICATE OF SERVICE

Dennis Wright
Assistant Attorney General
Office of the Attorney General
State House
11 South Union Street
Montgomery, AL 36130

Nancy Bonnell
Assistant Attorney General
Office of the Attorney General
1275 W. Washington Street
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ATTACHMENT A

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U.S. Department of Justice

APR 9 2001

Washington, D.C. 20530

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Charles A. James, who has been nominated by the President to serve as Assistant Attorney General for Antitrust, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Mr. James recuse himself from participating personally and substantially in a particular matter in which he, his spouse, children or anyone whose interests are imputed to him under the statute, has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Because of his interest in the Jones, Day, Reavis & Pogue pension plan, we have asked him to seek advice before participating in matters involving the firm. Mr. James will resign from Jones, Day, Reavis & Pogue, upon confirmation as Assistant Attorney General. Within 30 days of his resignation, he will receive a lump sum return of his capital account and severance payment which is calculated in accordance with the partnership agreement.

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter with parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have covered relationships with his former clients. If confirmed, Mr. James has agreed to resign from his positions with the American Bar Association

ATTACHMENT B

and the U.S. Chamber of Commerce, listed on Schedule D of his enclosed report, upon appointment by the president. He understands that for one year he should seek advice before participating in matters involving any of these organizations.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney
General for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: James			First Name and Middle Initial: Charles A	
Position for Which Filing	Title of Position: Assistant Attorney General for Antitrust			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 51 Louisiana Avenue, N.W., Washington, D.C. 20001			Telephone No. *(Include Area Code)*: (202) 879-3675	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: 3-14-01	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Gaden			Date *(Month, Day, Year)*: 4/4/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/ Reviewing Official: [signature]			Date *(Month, Day, Year)*: 4/5/01	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Reviewed & annotations by Janice M. Rodgers, after consultation with filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

Schedule B -- Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D -- The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

Agency Use Only

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SF 278 (Rev. 03/2000)
5.C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: James, Charles A.

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund													X										X									
	IRA: Heartland 500 Index Fund							X						X											X								
1	Jones, Day, Reavis & Pogue																															Law Partner. Income $535,725	
2	IRA Janus 20 Fund			✓										✓									✓										
3	Citibank Money Market Account					✓													✓				✓										
4	General Electric Common	✓															✓			✓				✓									
5	Jones, Day, Reavis & Pogue Defined Benefit Plan			✓																	✓												
6	Jones, Day, Reavis & Pogue Capital Account					✓													✓					✓									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
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Reporting Individual's Name: James, Charles A.

SCHEDULE A continued
(Use only if needed)

Page Number 3 / 7

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7	Jones, Day, Reavis & Pogue Keogh Plan: Balanced Fund (Fund I)					✓								✓									✓										
8	Stable Value (Fund II)				✓									✓								✓											
9	Fayez Sarofim (Fund X)				✓									✓								✓											
10	Kaplan Small Cap (Fund XIII)			✓										✓								✓											
11	AIM Blue Chip Fund			✓										✓								✓											
12	Alliance All Asia Fund		✓											✓								✓											
13	Alliance New Europe Fund		✓											✓								✓											
14	Alliance Technology Fund		✓											✓								✓											
15	Liberty Tax Managed Growth Fund			✓										✓								✓											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: James, Charles A.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
16	MFS Capital Opportunities Fund		✓											✓								✓											
17	Van Kampej Emerging Growth Fund		✓											✓								✓											
18	Vanguard 500	✓												✓										✓									
19	Fidelity Blue Chip Growth	✓												✓											✓								
20	Jones, Day, Reavis & Pogue																																
21	1. Severance payment.							✓																									
22	2. 2000 undistributed income and estimated 2001 income.							✓																									
23																																	
24																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: James, Charles A.

SCHEDULE B

Page Number: 5 / 7

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99												
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

None ☐

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: James, Charles A.

SCHEDULE C

Page Number: 6 / 7

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors *(Name and Address)*	Type of Liability	Date incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			✓		✓						
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand											
1	JDRP Partner Line of Credit*	Line of Credit	1994	8%	10 yrs.		✓									
2																
3																
4																
5	* Will be paid upon resignation from firm.															

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to Partnership Agreement, will receive a lump sum payment comprised of severance payment, capital account, undistributed income for 2000, and 2001 income to the date of separation for services performed. Filer will resign from firm upon confirmation.	Jones, Day, Reavis & Pogue	03/01
2	Jones, Day, Reavis & Pogue Defined Benefit Pension Plan. Filer will remain a participant with no further contributions made on his behalf. Filer is eligible for monthly benefit upon retirement at age 65. Filer will retain his accounts in mutual funds in Keogh plan	Jones, Day, Reavis & Pogue	01/90
3	reported on Schedule A.		
4			
5			
6			

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
James, Charles A.		7 / 7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Jones, Day, Reavis & Pogue	Law Firm	Partner	01/93	Present*
2	Barbara Jordan Congressional Scholars Program	Non-Profit	Board of Advisors	01/00	Present
3	Antitrust Council, U.S. Chamber of Commerce	Professional Association	Member	1995	Present*
4	Antitrust Committee, Section of Business Law, ABA	Professional Association	Chair	1999	Present*
5					
6	*Filer will resign upon confirmation.				

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	See attached client list.	
2	Jones, Day, Reavis & Pogue,	Legal Services.
3		
4		
5		
6		

Prior Editions Cannot Be Used.

Major Clients Served

Charles A. James
Jones, Day, Reavis & Pogue

March 21, 2001

American Airlines
Ft. Worth, Texas

Atlantic Health System
Florham Park, New Jersey

AMI-C, Inc.
Troy, Michigan

Baptist Health Care System
Memphis, Tennessee

Bausch & Lomb, Inc.
Rochester, New York

Blount, Inc.
Montgomery, Alabama

Bridgestone Firestone, Inc.
Nashville, Tennessee

BP Exploration Alaska, Inc.
Anchorage, Alaska

Central & Southwest Corp.
Dallas, Texas

DC Air, LLC
Washington, D.C.

Delta Airlines
Atlanta, Georgia

Dole Food Company
Westlake Village, California

Eaton Corporation
Cleveland, Ohio

Eramet SA
Paris, France

Global Sports, Inc.
King of Prussia, Pennsylvania

GTE Corp. (now Verizon)
New York, New York

HBO & Co.
Atlanta, Georgia

International Management Group
Cleveland, Ohio

Jersey Shore Health System
Wall, New Jersey

JM Smucker Co.
Orrville, Ohio

Kidder Peabody (acquired by General Electric)
New York, New York

KV Pharmaceuticals, Inc.
St. Louis, Missouri

MA Hanna Corp.
Cleveland, Ohio

Medical Society of District of Columbia
Washington, D.C.

Mercy Health System
Cincinnati, Ohio

Mercury PCS
Jackson, Mississippi

Meridian Health System
Wall, New Jersey

National City Corp.
Cleveland, Ohio

Nextel Communications, Inc.
Reston, Virginia

Nippodenso America Inc.
Southfield, Michigan

Nordson Corporation
Westlake, Ohio

Policy Management System Corp.
Columbia, South Carolina

Ricoh Corp.
Tustin, California

Robert Wood Johnson Health System
New Brunswick, New Jersey

Sungard Data Systems
Wayne, Pennsylvania

Sutter Health System
Sacramento, California

TAG/ICB, Inc.
Elmwood Park, New Jersey

Tenet Health System
Dallas, Texas

Textron Corp.
Providence, Rhode Island

TRW, Inc.
Cleveland, Ohio

U.S. Enrichment Corp.
Rockville, Maryland

UPM Kymmene
Helsinki, Finland

United Airlines
Chicago, Illinois

USA Digital Radio Corp. (now Ibiquity)
Columbia, Maryland

Westinghouse Corp. (now CBS)
New York, New York

Williams Companies
Tulsa, Oklahoma

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (includin accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate memb your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	128,000	Notes payable to banks—secured	40,966
U.S. Government securities—add schedule		Notes payable to banks—unsecured	36,355
Listed securities—add schedule	215,537	Notes payable to relatives	
Unlisted securities—add schedule	291,342	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	11,000
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	571,573
Real estate owned—add schedule	716,792	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	46,900		
Cash value—life insurance			
Other assets—itemize:			
Undistributed 2000 Law Firm Profits	403,058		
Law Firm Capital Account	198,750		
Vested Pension Benefit	35,349	Total liabilities	659,894
		Net worth	1,375,834
Total assets	2,035,728	Total liabilities and net worth	2,035,728

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule.)	No
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

ATTACHMENT C

Financial Statement
Net Worth

Supplementary Information

Charles A. James
March 2, 2001

Listed Securities

Fayez Sarofim Fund	62,506
Kaplan Small Cap Fund	18,487
Aim Blue Chip Fund	18,361
Alliance All Asia Fund	8,957
Alliance New Europe Fund	12,034
Alliance Technology Fund	9,765
Liberty Tax Managed Growth Fund	38,216
MFS Capital Opportunity Fund	13,016
Van Kampen Emerging Growth Fund	11,295
Janus Twenty Fund	22,900
Total	215,537

Unlisted Securities

JDR&P Balanced Fund	237,393
JDR&P Value Fund	53,949
Total	291,342

Real Estate Owned

Personal Residence in Arlington, VA 22207

Real Estate Mortgages Payable

Mortgage on Personal Residence Payable to Bank of America Mortgage.

Chairman HATCH. Well, it is an honor to have you here, and we are grateful to have your family, your law partners, the former Attorney General, and former head of the Division, Jim Rill, with you here today.

Mr. Bryant, we will turn to you and hope you will introduce your family, especially these—I think the children were taken outside. They are beautiful children. Caroline, who is age 2, and Peter, who is a little less than one, as I understand it, they are both very active, it looked like to me.

Senator LEAHY. And they are making me miss my grandson a great deal, just seeing them.

STATEMENT OF DANIEL J. BRYANT, OF VIRGINIA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR LEGISLATIVE AFFAIRS

Mr. BRYANT. Thank you, Mr. Chairman. Indeed, Peter already introduced himself to the committee.

[Laughter.]

Mr. BRYANT. My wife, Aerin, is in the front row, joined by my parents, Gary and Carolyn, down from Wilmington, Delaware.

Chairman HATCH. We are very happy to have you folks here, your parents and wife and these two beautiful children.

Mr. BRYANT. Thank you. My older brother and sister are also with us today and their spouses.

Chairman HATCH. Would you all stand? We would appreciate it if you would all stand.

Mr. BRYANT. And children.

Chairman HATCH. OK. Great. Parents, we better let people get a look at you, too. OK.

Senator BIDEN. Children, you realize this is the time to exact whatever promise you want.

[Laughter.]

Senator BIDEN. You are able to object from the audience if you do not like what we are doing, so this is your opportunity.

Chairman HATCH. That is a prelude to——

Senator LEAHY. They will never be more vulnerable.

Chairman HATCH. That is right. I think that is a prelude to your questions.

Senator BIDEN. A sundae, a gift, or something, now is the time.

Chairman HATCH. That is right.

Senator LEAHY. It will also be in the record that you are here if there is something you want to get, and I might also add, Mr. Chairman, we would not want to overlook for the record that the Milwaukee Bucks won their first round NBA playoff against the Orlando Magic last night. I think we should congratulate the people of Milwaukee, the team, and, of course, Senator Kohl.

Chairman HATCH. I think that is pretty good. Were you there last night?

Senator KOHL. Yes.

Senator LEAHY. That is why they won.

[Laughter.]

Chairman HATCH. Well, I have seen him there when they have not won, against the Utah Jazz. But, then they did pretty badly last night.

Well, Mr. Bryant, we will get back to you sooner or later here. [Laughter.]

Senator LEAHY. It is a very serious committee, I want you to know, that you are here before.

Mr. BRYANT. Thank you, Mr. Chairman, Senator Leahy, members of the committee. I would also like to acknowledge this morning friends and colleagues who are here who, along with my wonderful family, have provided support, encouragement, and guidance and have been instrumental through the years.

It is a great honor to appear before this committee. It is a tremendous privilege to have been selected by President Bush and Attorney General Ashcroft for the position of Assistant Attorney General for the Office of Legislative Affairs.

As this Committee well knows, in order for the Justice Department to be effective, it must have a solid working relationship with Congress. Even as mutual respect is vitally important to professional relationships, so it is with relationships between institutions.

Mr. Chairman, members of this committee, if confirmed as Assistant Attorney General, I look forward to working with this Committee to ensure that the Department's relationship with Congress is sound.

Thank you very much.

[The biographical information of Mr. Bryant follows:]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Daniel James Bryant

2. Address: List current place of residence and office address(es).

   Place of Residence:
   Falls Church, VA

   Office:
   Office of Legislative Affairs
   U.S. Department of Justice
   950 Penn. Ave., N.W.
   Washington, D.C. 20530

3. Date and place of birth.

   2/24/65

   Port Jefferson, NY

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business addresses).

   Married to Aerin Dawn Bryant (nee Dunkle), who is not employed outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   American University (1983-87), B.A., May, 1987.
   La Universidad de Sevilla (1986)
   American University, Washington College of Law (1988-1992), J.D., May, 1992.
   Oxford University, Keble College (1992-1993), M.St., July, 1993.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director,

partner, proprietor, or employee since graduation from college.

U.S. Department of Justice, 1987-1992
(Social Science Program Manager and Special Assistant, Office of Juvenile Justice and Delinquency Prevention; Law Clerk/Legal Assistant, Office of Justice Programs)

U.S. Senate, Permanent Subcommittee on Investigations, 1992
(Professional Staff)

The First Freedom Coalition, Inc. (a non-profit corporation), 1994
(Policy Director, and through March, 2001, as director)

The Fourth Presbyterian Church, 1994-5
(College Director, a part-time position)

U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime, 1995-2001
(Counsel; Chief Counsel)

U.S. Department of Justice, 2001 - present
(Special Assistant to the Attorney General)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

National Merit Letter of Commendation, 1982
First Place, Delaware State Spanish Oral Exam, 1982
Delaware All-State Soccer Team, 1982
DiSabitino Leadership Award (Tower Hill School), 1982
American Field Service (AFS) Scholarship Student to Portugal, 1982
Scholarship Student and cum laude graduate, American University
Outstanding Performance Awards, U.S. Department of

Justice

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

Member, Maryland State Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Member, National Historic Preservation Trust (which may periodically lobby before public bodies)

Member, New Hope Presbyterian Church, Fairfax, VA.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Admitted to practice in the Maryland Court of Appeals (and all Maryland State Courts) 1997, with membership being current.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Community-wide Responses Crucial for Dealing With Youth Gangs," Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, September, 1989.

"How much 'community' for Europe?," Guest Opinion, The News Journal, December 19, 1990.

"Christianity and Politics: How Shall the Twain Meet?"

Modern Reformation, September/October, 1994.

"Crime Policy in the 106th Congress," National League of Cities Annual Conference Talk, Televised on C-Span, March, 2000.

13. Health: What is the present state of your health? List the date of your last physical examination.

The state of my health is good. My last physical was approximately one decade ago.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

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

1. 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 not clerked for a judge.

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

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

The U.S. Department of Justice
950 Penn Ave. N.W.
Washington, D.C. 20530
May, 1987 - May, 1992

Employed as program manager, and law clerk

The U.S. Senate
Committee on Governmental Affairs
Permanent Subcommittee on Investigations
100 Russell Senate Office Building
Washington, D.C. 20510
July, 1992 - September, 1992
Employed as professional staff

The U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime
2138 Rayburn Office Building
Washington, D.C. 20510
January, 1995 - February, 2001
Employed as counsel and chief counsel

The U.S. Department of Justice
950 Penn. Ave., N.W.
Washington, D.C. 20530
February, 2001 - present
Employed as Special Assistant to the
Attorney General

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I have been engaged as a legislative counsel for the last six years (See response to Question #17). Prior to that I focused on legislative and policy matters as policy director for a non-profit. And prior to that I served briefly in the Senate as professional staff to a Committee. Throughout law school, I served in the U.S. Department of Justice, including two years as a law clerk.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients have been the government agencies and institutions that have

employed me: the U.S. Department of Justice, the U.S. Senate Governmental Affairs Committee, and the U.S. House Committee on the Judiciary.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

None.

2. What percentage of these appearances was in:
(a) federal courts - 0%
(b) state courts of record - 0%
(c) other courts - 0%

3. What percentage of your litigation was:
(a) civil - 0%
(b) criminal - 0%

4. 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.

None.

5. What percentage of these trials was:
(a) jury - 0%
(b) non-jury - 0%

16. Litigation: Describe the ten 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 representations;
(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.

I have not litigated any case, though I have participated in matters before the U.S. District Court as a law clerk/legal assistant for the U.S. Department of Justice from May, 1991, to May, 1992.

17. 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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I attended law school at night from 1988 to 1992. Throughout that period I was employed by the U.S. Department of Justice. From May, 1987, until May, 1990, I served in the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs (OJP). While at OJJDP, I was responsible for developing, implementing and managing programs focusing on a wide range of juvenile justice issues. Programs had to be developed and managed consistent with applicable law and guidelines. And the programs themselves often focused on legal reforms, for example, the utilization of closed-circuit television in child sexual exploitation cases; the disproportionate representation of minorities in the juvenile justice system; and the question of sharing juvenile delinquency records with school personnel.

From May, 1990, to May, 1991, I was a law clerk/legal assistant in the Office of General Counsel, OJP, U.S. Department of Justice, where I was responsible for researching and drafting legal opinions and memoranda to provide guidance for five Departmental bureaus: The Office for Victims of Crime; the National Institute of Justice; the Bureau of Justice Statistics; the Office of Juvenile justice and Delinquency Prevention; and the Bureau of Justice Assistance. The work products I developed required regular analysis of the organic statutes and legislative history that guide the bureaus' activities, including the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351); and the Juvenile Justice and Delinquency Prevention Act of 1974 (Public Law 93-415).

From May, 1991, to May, 1992, I served as a law clerk/legal assistant in the Criminal Division's Child Exploitation and Obscenity Section of the U.S. Department of Justice. In this capacity I researched and drafted briefs and motions in preparation for federal trials.

After graduating from law school in May, 1992, and prior to leaving the country to attend Oxford University in September, 1992, I served as professional staff on the Permanent Subcommittee on Investigations (PSI), Committee on Governmental Affairs, U.S. Senate. During the two months I served on the Committee, I was responsible for researching and drafting the Committee report on Asian organized crime. In particular, I focused on the impact of various organized crime groups from Japan and China on the crime problem on the West Coast of the United States.

From April, 1994, to January, 1995, I served as Policy Director for the First Freedom Coalition, a non-profit association focused on criminal justice reform. As policy director, I was responsible for policy development and communications on a wide range of crime and justice issues, including truth-in-sentencing; victims rights; mandatory restitution; and juvenile justice reform. In this capacity, I was responsible for policy development in connection with crime issues, briefing congressional staff and interacting with the media.

From January, 1995, until June, 1999, I served as Counsel on the Subcommittee on Crime of the Committee on the Judiciary, U.S. House of Representatives. From June, 1999, to February, 2001, I served as Chief Counsel of the Subcommittee. My work on the Subcommittee included: the drafting of federal crime legislation and overseeing the drafting performed by three other lawyers; organizing oversight and legislative hearings; developing legislative and communications strategies in connection with the national crime agenda; providing counsel to and writing statements for the Chairmen of the Committee and Subcommittee and the other Members on the Committee; ensuring effective oversight of federal law enforcement agencies; and working closely with national, state and local law enforcement and advocacy groups, and the media.

During this period, I was substantially involved in, either as principal staff author or as one of the staff authors, the drafting and or navigating through the House of Representatives, numerous bills. A selection is summarized below.

Local Government Law Enforcement Block Grants
Truth-in-Sentencing Incentive Grants
The Comprehensive Terrorism Prevention Act
The Mandatory Victim Restitution Act
The Punishing Witness Retaliation and Jury Tampering Act
The Interstate Stalking Punishment and Prevention Act
The Comprehensive Methamphetamine Control Act
The Government Accountability Act
The Jacob Wetterling Improvements Act
The Juvenile Accountability Act
The Mandatory Minimum Sentences for Criminals Using Firearms
The Western Hemisphere Drug Elimination Act
The Controlled Substances Trafficking Prohibition Act
The Public Safety Officer Medal of Valor Act
The Child Abuse Prevention and Enforcement Act
The Violence Against Women Act of 1999
The Consequences for Juvenile Offenders Act
The Stalking Prevention and Victim Protection Act of 1999
Jennifer's Law
A Bill to Extend the Retroactive Eligibility Dates for Financial Assistance for Higher Education for Spouses and Dependant Children of Law Enforcement Officers Who Are Killed in the Line of Duty
The Foreign Narcotics Kingpin Designation Act
Project Exile: the Safe Streets and Neighborhoods Act of 2000
The DNA Backlog Elimination Act of 2000
The Enhanced Federal Security Act of 2000
The Protecting Our Children from Drugs Act of 2000

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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.

   My wife and I participate in the Thrift Savings Plan and currently have between $25,000 and $35,000 in the plan.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will seek and follow the advice of the ethics officers within the Department of Justice before participating in any matter with which I may have a conflict.

3. 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.

   No.

4. 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.)

   See attached copy of the Ethics in Government Act of 1978.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Vice President, Delaware Youth for Reagan, 1980
Informal advisor to Congressman Bill McCollum, McCollum for Senate, 2000
Host Committee, Allen-for-Senate fund-raising event, 2000

III. GENERAL (PUBLIC)

1. 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.

During college (1983-87), I was the Coordinator of Special Services for campus life, a Division within the Office of Student life. In this capacity I was responsible for ensuring that all physically disabled students would receive appropriate assistance in the course of their studies. I frequently served as a reader for a blind student who was the President of the student body.

In 1986, I volunteered with Ayuda, Inc., a non-profit organization that assists the indigent Hispanic community in the greater Washington, D.C. area. I served as a Spanish language interpreter to persons who could not speak English. I also served as a sworn Spanish language interpreter in the D.C. Superior Court.

My wife and I are regular contributors to the diaconal fund at our church, which assists persons known by our church to have urgent financial and physical needs.

My wife and I support and are involved in the International Justice Mission (IJM), a non-profit charity that seeks to address international human rights abuses, with particular attention to the problem of child slavery. We have co-hosted two fund-raising events the last two years.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bar accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	8,000.	00		Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule	100.	00		Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule	219,691.	20	
Real estate owned—add schedule	415,000.	00		Chattel mortgages and other liens payable	80,000.	00	
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	20,000.	00					
Cash value—life insurance							
Other assets—itemize:							
Thrift Savings Plan	30,000.	00	(est.)				
				Total liabilities	299,691.	20	
				Net worth	173,408.	80	
Total assets	473,100.	00		Total liabilities and net worth	473,100.	00	
CONTINGENT LIABILITIES	None			GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule.)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

Financial Statement – Net Worth
Schedule Attachment

Daniel James Bryant
SSN 221-66-2208

Listed Securities	
Stock in Walt Disney Company	$100.00 (est.)
Real Estate Owned	
Home in Falls Church, VA	$415,000.00 (est.)
Other Assets	
Thrift Savings Plan	$30,000.00 (est.)
Real Estate Mortgages payable	
North American Mortgage Company	$219,691.20
Dime Mortgage Company	
Home Equity Line	$80,000.00 (est.)

Chairman HATCH. Thank you, Mr. Bryant. We appreciate it.

The distinguished Chairman of the Finance Committee has many obligations, so I am going to defer to him to be our first questioner, and then I will turn to Senator Leahy.

Senator GRASSLEY. Thank you very much, and congratulations, Mr. Bryant and Mr. James. Most of my discussion will be with Mr. James, and it is not really in the sense of "gotcha" questions. I just want to make points and maybe get a slight reaction from you. I will have some of my questions for answer in writing, and some of the things that I am going to talk about Senator Leahy has already brought up. I have been very interested in the work of the Antitrust Division and how mergers and acquisitions impact my constituents. Competition issues, particularly in the agriculture and airline industries, are of particular concern to me, and I would like to reiterate a point that I made many times to the past administration. And this even though I am a Republican and we have a Republican President, these issues are still going to be of as much concern or of more concern now. The point that I make here is that transactions must be evaluated in terms of their impact on rural communities. It comes from a feeling of mine that may be a misimpression, but it is still a feeling of mine, so you know where I am coming from.

I think that maybe we too often look at mergers and how they impact upon urban areas because there is more of an understanding in Government of urban than rural problems. And that is why I bring special attention to the rural impact. I want to make sure that rural America is not getting the short end of the stick as mergers and acquisitions are reviewed and approved by the Justice Department.

As I indicated, an area of special interest of mine is agriculture. I have been extremely concerned about increased agribusiness concentrations, reduced market opportunities, fewer competitors in the marketplace, the inability of family farmers and independent producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anticompetitive activity in agriculture.

I had an opportunity to discuss these issues at length with Attorney General Ashcroft when we met in January, and he has agreed that competition problems in agriculture are unique and should be given particular attention by the Justice Department. If there is something unique about agriculture, it is that the farmer is not only the consumer that antitrust laws were meant to protect, but also the farmer with his inputs into agriculture is kind of a person caught in the middle, maybe being a consumer on one end, but also we want to make sure that he has the opportunity to get a fair price for his product and obviously enough competition on the end with his sales.

Before I start out with specific questions—and I was going to put this in the form of a question, but I now want to make it a statement because I am not trying to catch you off guard or anything. We have the lowest prices in 25 years in agricultural commodities. Maybe that is more true of the Midwest grain and grain generally than it is of all agricultural commodities, but it is a fact, at least for several of our biggest crops in the United States. And I hear about that, but let me say that, as I hold my grass-roots meetings

around Iowa and agricultural issues come up, probably as much or more than the issue of low prices comes up the concern of my constituents about concentration in agriculture.

So I want to point out the low prices and hope that there is some understanding of that, but there is also concern about concentration in agriculture as well.

Last year, a position was created under the previous President within the Antitrust Division that focuses specifically on agricultural antitrust issues. And I understand that this position is still there. I would urge you to make sure that that post is permanent. I think it is important to have a position like this one within the Justice Department to let farmers know that the Antitrust Division takes their concerns seriously and will respond appropriately. And I hope that you would use this person to analyze the competition issues in the farm country that you are dealing with today and to interface with farmers and ranchers about their concerns.

Is that something that you think you could give me an opinion on today, that that position would be maintained as it was in the previous administration?

Mr. JAMES. Senator Grassley, the agricultural sector is an area of focus for the Antitrust Division. As you say, there is the special counsel position.

As I sit here today, I am not quite sure about the personnel circumstances with regard to that position, but I don't see, if confirmed for this position, that I would want to change that personnel situation or the amount of emphasis on agricultural issues at the Department. We have not only the special counsel but a section of the Division that focuses on agriculture among the commodities of focus.

Senator GRASSLEY. Along the lines that I just suggested, another point I wanted to make was very recently, within the last month, the General Accounting Office has put out in regard to agriculture-related matters, a study of Justice's Antitrust Division, and the title of it is "Better Management Information Is Needed on Agriculture-Related Matters." I bring this up to you, not that you should know about it, but to acquaint you with it, and I ask that you would take a look at that and make sure that you read it, follow its recommendations, and, again, the point is the extent to which concerns about agricultural competition are brought to the attention of the Department and are adequately considered.

I want to make sure that the Antitrust Division, on another point, will dedicate time and resources to competition in agriculture, that your Division will carefully scrutinize all possible adverse horizontal and vertical implications of agribusiness transactions that come up to you for review, and also seek a commitment from you that the Antitrust Division will aggressively investigate allegations of anticompetitive activity in agriculture. Could I have a short response to that?

Mr. JAMES. Certainly, Senator Grassley. I understand—I am still an outsider to the Antitrust Division, but I understand from conversations with my predecessors that the agricultural sector has been a priority area for them. I understand also that efforts are being made within the Department to reach out to the farm community and to make sure that they have knowledge about the ways

in which they should address their complaints and concerns to the Antitrust Division so that, to the extent that there is anticompetitive conduct out there, we know about it and we investigate it.

I think it is very important that those activities all continue and that we look for other ways of detecting problems in this sector. The concern that you express, the concern of large, in this instance, purchasers confronting very small sellers in the face of the farmers is something that is certainly contemplated by the antitrust laws. It is something that has to be protected and certainly will be a priority for me.

Senator GRASSLEY. Your Department does not have much to do with the Packers and Stockyards Act because that is under the jurisdiction of the Department of Agriculture. But then-Senator Ashcroft joined me in introducing a bill to strengthen the packers and stockyards program, and this bill was signed into law in November.

Just before that, I requested from the General Accounting Office a review of Packers and Stockyards Act enforcement efforts of the Agriculture Department's Grain Inspection Packers and Stockyards Program, and for short we call that GIPSA. The General Accounting Office found that GIPSA had been ineffective in carrying out its statutory responsibilities to prevent anticompetitive practices in the livestock industry. One provision of the law that was signed requires the Justice Department to assist the U.S. Department of Agriculture in its enforcement of the Packers and Stockyards Act during a 1-year timeframe.

According to that act, would you assure me that this would be done? But before you answer that, in addition, could you assure me that the Department of Justice will help advise GIPSA, which also is along the lines of the General Accounting Office report and the act, as it formulates more effective competitive policies and procedures to enforce the Packers and Stockyards Act? Generally, the General Accounting Office took the view that the Packers and Stockyards Act in some respects is even stronger than the antitrust laws. The General Accounting Office found that there were certain procedures that the Antitrust Division followed that involved both economists and lawyers working together on these issues, and that the U.S. Department of Agriculture was not involving lawyers soon enough in the process. The General Accounting Office felt that the Antitrust Division's procedures were more effective than those procedures utilized by the U.S. Department of Agriculture, and the GAO encouraged USDA to adopt similar procedures. That is basically what the General Accounting Office advised, and that is basically what the law requires.

Mr. JAMES. The Packers and Stockyards Act tries to get at issues that are very similar to antitrust issues, as you have noted, Senator. And certainly if the Antitrust Division can be of assistance to the Department in enforcing the act, that is something we would want to do because the goal is the same.

Senator GRASSLEY. Yes. My time is up, but let me make a point, though, because it is not a case of just the Antitrust Division assisting them if they want assistance. The law now says for a 1-year period of time that you will help them in developing a better GIPSA procedure, which was not done as a result of an inspector

general's report in 1997, a previous General Accounting Office early 1990's, and basically the GAO report that we had last year. It just simply said, you know, all you need to do is what the GAO and IG previously recommended you to do. And then that is how we got the Department of Justice involved because your procedures are so much better.

I think we have to quit.

Chairman HATCH. Yes, your time is up, Senator.

Senator GRASSLEY. I will submit some written questions.

Chairman HATCH. That would be fine. We will keep the record open for questions until—I would say 6 o'clock tonight, and then that way, if you could answer those questions right away, we would appreciate it, both of you.

I think Senator Kohl, the distinguished Ranking Member of the Antitrust Subcommittee, would like to just make a few remarks, because you have an appointment at 11:00, as I understand.

Senator KOHL. Yes. I am delighted to be here today with you and with the nominee. I look forward to working with you. As you know, we have many issues of great importance, and from what I know of your background, you are a highly qualified person, and I think working together we will be able to get quite a bit done.

I will be submitting questions for the record. It is good to have you with us today.

Mr. JAMES. Thank you, Senator.

Chairman HATCH. If we can get those questions in before the end of the day, I would appreciate it, before 6 o'clock.

We will turn to the Ranking Member now.

Senator LEAHY. Thank you very much, Mr. Chairman. To follow on Chairman Grassley's series of questions, I am also a supporter of his legislation, and I earlier on mentioned some of the agricultural concentrations and the concerns. I would hope that hearing this from both Senator Grassley and myself you realize this is not a partisan issue. It is not even a regional issue. It is something we all have a great deal of concern about, and we would like you to look closely at that. I also talked about Suissa Foods and their—is my time up already, Mr. Chairman?

Chairman HATCH. My goodness, it is. Let's go to——

Senator LEAHY. You have been nicer to me than that lately. I take back all those nice things I said.

Chairman HATCH. We will go to Senator Cantwell now.

[Laughter.]

Senator LEAHY. In my opening statement, I raised some very significant concerns about Suissa Foods and their dominant market power in New England regarding fluid milk. I know the Justice Department has filed an action against them in the Commonwealth of Kentucky over concerns about potential anticompetitive pricing of milk for the school lunch program. This is considered an essential food. Certainly a lot of parents would not think of any acceptable substitute. I know around here when there is talk about an inch or two of snow, everybody is running into the store to stock up on milk because they know that if we have a couple days of real bad weather, the milk is going to run out, fresh milk is going to run out. So, again, a reason for having some competition there. Will you assure me that the Justice Department will carefully look

into the growing dominance of Suissa Foods regarding dairy products?

Mr. JAMES. Senator Leahy, certainly the issues you raise about concentration in the agricultural sector are important issues for the Department, important issues for consumers, important issues for these producers. And I certainly can assure you that we are going to do everything we can in that sector.

I think it probably would be inappropriate to talk about specific companies and cases in this context, but I certainly will assure you that the issue that you raise will be one that will be at the top of our minds, and one that we will look into as closely as we possibly can.

Senator LEAHY. Thank you.

During the debate on the budget resolution, Senator Harkin and I offered—and this is for Mr. Bryant—an amendment to add $1.5 billion to the Department of Justice account to fund programs assisting local law enforcement. It was one of the few amendments during that debate that got such strong, bipartisan support that it passed unanimously. During Attorney General Reno's time and the Department of Justice's emphasis on coordinated efforts to State and local law enforcement, we saw crime rates fall in each of the past 8 years, something I have not seen—I certainly have not seen in all the years I have been here as a Senator. In fact, violent crimes, including murder and rape, have been reduced to their lowest level since 1978.

We have a program that seems to be working. I would like to keep it working. I joined, for example, with Senator Hatch, very proud to join with him to pass bipartisan legislation to authorize grants by the Department of Justice to fund 2,500 Boys and Girls Clubs across the Nation. We had strong bipartisan support. Senator Hatch will recall we got the funding increased from $20 million in fiscal year 1998 to $60 million in 2001. In my own State, this long-term Federal commitment has helped us establish six Boys and Girls Clubs, in Brattleboro, Burlington, Montpelier, Randolph, Rutland, and Vergennes, with plans for six more. Educators, parents, everybody knows how important they are. I know that Attorney General John Ashcroft was a big booster of Boys and Girls Clubs, and he worked with Senator Hatch and myself on getting this funding. He spent a lot of his time as a youth, he told us, at a Boys and Girls Club in Missouri.

I hope the Attorney General and Senator Hatch and I can continue to join forces to fund these Boys and Girls Clubs. So I ask you: Do you know what was the rationale behind the Bush administration's decision to not request any funding for Boys and Girls Clubs in the Department of Justice's budget?

Mr. BRYANT. Thank you, Senator. I am aware of the past support for the Boys and Girls Clubs program by this Committee and by the Congress more generally. The budget obviously is the President's budget that he has submitted to this Congress and, therefore, it is a budget that I support. I know there were difficult decisions that had to be made in terms of the finite resources available. I also know that the absence of an earmark for the Boys and Girls Club program was not intended in any way to suggest a lack of continued strong support for the program.

I would be, of course, happy to work with this Committee to ensure that the support for this successful program continues to be in place.

Senator LEAHY. The legislation that Senator Hatch and I have would fund something like 2,500 Boys and Girls Clubs across the Nation for 1998 to 2001, and I would hope you would work with us and I hope the Attorney General will to try to continue this. This is a program—I have gone to a lot of these Boys and Girls Clubs. Nobody asks, for example, whether you are Republican or Democrat or rich or poor. They just know it works. And a lot of parents today, with both parents working, or they are single parents, it is not always a question of knowing where your child is at 4 o'clock in the morning. They kind of like to know where they are at 4 o'clock in the afternoon. And the Boys and Girls Clubs give them a lot of help for that.

Mr. James, you helped fight antitrust laws being used against corporate America, and I do not say that in a pejorative fashion at all. I am a lawyer, and I believe very strongly in having the best lawyers on both sides of an issue, and for the corporate clients, you have certainly been one of the best.

But can you do that 180-degree turn now and enforce antitrust laws? The reason I ask is because in my opening statement, I mentioned how you have had to assure the Committee that you would recuse yourself from matters affecting former clients.

What assurances can you give us, both on the recusal, but also on assurances that you are not going to seek waivers for the normal recusal rules?

Mr. JAMES. Senator Leahy, the ethical considerations that you raise are serious ones. My intention is to avoid any sort of ethical complications, including appearances, so that my posture is going to be to sort of throw myself to the ethics officials of the Department of Justice and follow their instructions without question.

I have no interest at all in entering into matters that are matters of former clients, so I am just going to do what the ethics officials in the Government instruct me to do without question.

Senator LEAHY. Well, Mr. James, I have no question that you are a very ethical lawyer, and I would not expect otherwise. But in those areas, there is the ability to ask for waivers. In other words, the Ethics Committee could say, well, technically, this is one to recuse yourself from, and then you have a second step that you could take on behalf of yourself or, say, your deputy or somebody else, to ask for a waiver.

What is your feeling on asking for waivers? Once they have said that this is technically something that you would recuse yourself from, that you wish a waiver—how would you feel about that?

Mr. JAMES. I will not seek to participate. My experience in the Department and at the Federal Trade Commission indicates that that situation has worked, basically, in the following manner. There has been a recusal from a matter, and persons superior to you for a variety of reasons may come in and say, "We think this is a situation where we need your particular expertise," or something of that nature, and that superior would ask for the waiver.

It has never been my experience that the lawyer himself or herself has asked for the waiver, and it would certainly never be my intention to ask for a waiver.

Senator LEAHY. In the case of Ms. Herman, your deputy, she worked on some of the same cases with you. As a private attorney, would you feel the same way about seeking waivers for her?

Mr. JAMES. Oh, absolutely, absolutely, Senator.

Senator LEAHY. Mr. James, I appreciate that. I am not trying to keep you from doing things. I do not think anybody on this Committee questions either your ability or your integrity. What we do worry about very much, of course, is appearance. And heads of the Antitrust Division come and go, and we have had some superb ones under both Republican and Democrat Presidents. I just want to make sure we maintain the appearance of the most unbiased and the most competent of Antitrust Division. You are going to have a lot of responsibility there.

So I appreciate it, and Mr. Chairman, I would just ask to insert in the record a statement for Senator Kohl.

Chairman HATCH. Without objection, we will put that in the record.

[The prepared statement of Senator Kohl follows:]

STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

CHARLES JAMES

Thank you, Mr. Chairman. Our hearing today is a very important one. The head of the Antitrust Division bears an increasingly important responsibility in today's economy. In the last several years, we have witnessed an incredible wave of mergers and acquisitions touching virtually every sector of our economy. In the space of just nine years—from 1991 to 2000—the value of mergers reviewed by the antitrust agencies increased more than tenfold, from $169 billion to nearly $3 trillion. The increasing numbers and complexity of mergers and acquisitions have resulted in substantially increased workload for the Antitrust Division.

Antitrust law is not limited to corporate mergers, of course. In industries as varied as computer software, airlines, and food processing, the Antitrust Division has been a vigilant watchdog to prevent anticompetitive conduct by companies that harm consumers. The last administration has certainly left you with a full plate, Mr. James. If confirmed, the Justice Department's antitrust lawsuit against Microsoft and its investigation of the pending airline mergers—among the most important antitrust matters in decades—will be resolved under your watch. It will be your responsibility to be the people's watchdog to ensure that anti-competitive practices do not harm consumers and stifle competition so essential to the functioning of our free market economy.

Vigorous and aggressive enforcement of our nation's antitrust laws is essential to ensuring that consumers pay the lowest possible prices and gain the highest quality goods and services. In this era of quickening technological change and increasing corporate consolidation, the need for vigorous enforcement of our antitrust laws has never been greater. I am committed to ensuring that the Antitrust Division has the necessary resources to do this vital job, and I was pleased to see that the administration's 2002 budget request contained a substantial increase in funding for the Antitrust Division.

There is no doubt, Mr. James, that you possess excellent qualifications for the position of Assistant Attorney General for Antitrust. You have held senior positions in, the Antitrust Division, including serving as head of the Antitrust Division in an acting capacity during 1992. You have also held important positions in the Federal Trade Commission, and are widely recognized as one the nation's leading antitrust lawyers in private practice as Chairman of the Antitrust Section at the Jones Day law firm.

Despite these credentials, I am somewhat concerned about your commitment to the crucial mission of vigorous antitrust enforcement. You have written, for example, that "merger law is the 'impossible dream' of federal antitrust enforcement" and that it is "impossible to make sense out of the merger enforcement process." Some

of your writings and positions leave us to doubt your commitment to antitrust enforcement and your appreciation of the vital mission of the agency you are to lead. I will be anxious to hear your explanation of these disquieting statements.

Mr. James, the position of Assistant Attorney General for Antitrust carries with it a special burden, and a special responsibility. The companies over whom the Antitrust Division has jurisdiction have ample resources to hire skilled and talented counsel to represent their interests. But no one represents the interests of the American consumer other than the head of the Antitrust Division and his staff. If confirmed, you will hold a public trust to ensure that competition flourishes and anti-competitive abuses are prevented. Millions of consumers will depend on your efforts and your judgment. You will inherit a proud legacy at the Antitrust Division, and it is my sincere hope, and full expectation, that you will uphold this legacy should you be confirmed.

Thank you for your attendance, Mr. James, and I look forward to hearing your testimony.

Chairman HATCH. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Chairman HATCH. Excuse me. I am sorry. If you would excuse me, Senator Cantwell, I thought Senator Specter had left. We had better turn to him first if that is all right with you.

Senator CANTWELL. That is quite all right, Mr. Chairman.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. James, Mr. Bryant, thank you for coming by to visit with me in advance of this hearing. I reviewed your academic and professional records, and I think you both bring excellent qualifications to the job. These are very important positions, being Assistant Attorney Generals in the Department of Justice.

Let me focus on the antitrust issue first. Mr. James, you and I were talking about the growth of the mergers and acquisitions and the issue as to the adequacy of the antitrust laws as they exist at the present time. We talked about banking matters where, in Pennsylvania, major banks have come in and substantially reduced competition; and looked at the airline industries across the country as well as many other industries.

You suggested that there might be some line where there might be a redefinition of market share which would enable the Antitrust Division to take a hand at some of these mergers which are now not subject to challenge.

Would you elaborate upon that?

Mr. JAMES. Yes, Senator Specter. What we were discussing last evening was the general question of our approach to merger enforcement. The merger guidelines, of course, establish the structural framework for reviewing prospective mergers. We talked about the critical issue of market definition.

From my standpoint, all of the policies, the enforcement standards and policies that we have at the Department of Justice, should be continuously reviewed and updated. And in response to the concern that you indicated about certain mergers going through, I certainly agree with you that looking at the market definition section of the guidelines from time to time and making sure that it is resulting in the appropriate analytical environment for our mergers is something that the Department should do; and there are certainly lots of people in the Antitrust Division who have the capability and the academic ability to review that aspect of the guidelines, and we will look at it very closely. I would be happy to work with your office in looking at that.

Senator SPECTER. Well, we are going to take a look and work with you to see if there might be some appropriate line there.

The Department has a great many ongoing matters which are in litigation, and you and I talked about the question of maintaining the litigation status. Without commenting on the merits, there is a major antitrust case which was recently decided by the Federal Court in Wichita, Kansas, involving American Airlines and the question of predatory practices.

Without getting into the merits, it would be my hope that the Department would maintain a policy of maintaining the litigation of these very close public policy issues. And again without taking a position on Microsoft, which is in mid-stage, a question I asked Attorney General Ashcroft when he was up for his confirmation hearing, I would like your views about the continuity of the Department maintaining that approach when the litigation is in midstream.

Mr. JAMES. Well, Senator Specter, it is certainly my perspective that whenever the Department begins a litigation, commences a complaint, if there is at some juncture of the case an adverse ruling, the appropriate thing for the Department to do in that instance is to evaluate the nature of the ruling and evaluate what the procedural posture is and determine whether there are appropriate issues that can be carried forward legitimately for appeal. And it certainly would be my expectation in any cases that are in midstream today to follow that procedure in the future, that we will look at them, we will look at what the Court of Appeals has said. There certainly are standards about the types of arguments that can be advanced on appeal, and we will look at closely as possible to preserving victories and rectifying defeats if we can.

Senator SPECTER. I repeat for the record today what I said to you yesterday, that I think the Antitrust Division is uniquely an advocacy division of the Department of Justice. The public prosecutor has a quasi-judicial responsibility, not a plain advocate, but quasi-judicial. But I think that in the antitrust field, where we do have so many of these acquisitions and mergers and expanding aggressive business practices—and I do not say that in a pejorative sense—people do what they think will be in their interest. But the antitrust laws require, I think, a higher degree of advocacy than perhaps other branches—I would not want to say all other branches of the Department of Justice—but I would urge you to keep that in mind, that you have a very high public trust as the chief law enforcement officer in the antitrust field.

Mr. JAMES. I respect that, Senator.

Senator SPECTER. Let me move to a question that we discussed yesterday, and that is the issue of possible antitrust action against OPEC.

Quite a number of Senators wrote to the President more than a year ago and have polished the letter and sent it to President Bush, joined by Senators DeWine and Kohl, the Chairman and ranking of the antitrust subcommittee, with Senators Schumer and Thurmond, suggesting to the executive branch that litigation be instituted against OPEC under the antitrust laws.

There is no doubt that OPEC is a cartel in restraint of trade, but there are some very difficult issues on the act of State doctrine,

which you and I discussed, and where you have a commercial activity like the sale of oil, it is hardly a governmental activity to be encompassed in the act of State doctrine. The litigation which has been in the field is really old litigation, and some of it was turned down by the 9th Circuit—I will have a copy of this letter made part of the record—where there was doubt as to the internationally accepted legal principles on the antitrust line. That has changed materially in some developments, and while not really directly relevant to antitrust, the activities of the War Crimes Tribunal and the proposals for an international criminal court and the expansion of the International Court of Justice at The Hague, show quite a trend that principles of international law are much more recognizable than in the past.

I have asked you to take a look at this issue from a legal point of view, from an antitrust point of view. There are obviously great foreign policy considerations. In dealing with Saudi Arabia or Kuwait or Iran or Iraq, there are a lot of factors that run through what the Government may do, and when you and I talked just yesterday, I had not known that there had been very recently some action in the United States District Court for the Northern District of Alabama where, on March 21 of this year, in a nationwide class action suit, a default judgment was entered against OPEC as having violated the Sherman Antitrust Act and issued an injunction, which is pretty interesting. It was a default judgment. We have had some interesting and fascinating cases and judgments against Iran and efforts to execute on judgments, and issues on foreign policy.

Aside from the foreign relations aspects, Mr. James, I would be interested in your views for the record as to what legal feasibility you might think possible for an antitrust action against OPEC.

Mr. JAMES. Senator, I think everyone understands the concern that you are raising. We all go to the gas pumps.

The issue that you are describing, an action against the foreign governments that make up OPEC, obviously has lots of implications outside of the antitrust laws.

The antitrust issue is simply an issue of a) can jurisdiction be obtained over parties, and b) whether the conduct is an act of State within the meaning of the law. It is not an issue that I can say that I have studied up until now, but it is certainly an issue that can be studied and can be determined. It is simply a factual determination based on the standards that have been articulated by the courts.

Senator SPECTER. Well, it is hardly governmental to sell oil; is it really economic?

Mr. JAMES. That is certainly a characterization. Whenever you have this——

Senator SPECTER. I do not want to lead the witness too much—but wouldn't you agree with that?

Mr. JAMES. It is certainly the case that the producing governments themselves are selling oil. That is what they do. And the legal question is when that status stops and the governmental actions begins, and it is a factual issue. You would have to study OPEC and study the decisions that you have talked about.

Senator SPECTER. Mr. Bryant, you are taking on an important job, and I would urge you to be as prompt as you can in responding to letters from Senators—maybe all letters—we get a lot of responses the day before the Attorney General comes up for the oversight hearing—and also to get some responses, not over your signature, but from the officials who have the substantive controls when we are looking for substantive answers.

My red light is on. Thank you very much.

Chairman HATCH. Thank you, Senator.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. James, following on some of my colleagues' comments about agribusiness consolidation, I would like to join in as well given the impacts that we have seen in Washington State with the apple market. Specifically, while I do not believe that there is actually price-fixing going on, the sheer size of these companies and their consolidation is basically allowing them to say to family apple farmers, "Take our price, or go elsewhere," and oftentimes, that elsewhere is global.

So my question is how do we ensure that our family farmers have a free market to sell in, and what are your views on the role of Government intervention when the market consolidation results in an oligopoly as opposed to just a monopoly?

Mr. JAMES. Senator Cantwell, the issue that you raise is one that is specifically addressed by the antitrust laws. You are talking about the situation of the farmer as seller dealing with an increasingly concentrated processing upstream market. In those circumstances, what the antitrust laws contemplate is that you look at what are known as oligopsony or monopsony type effects. They work basically the same as the types of relationships that would occur in typical buyer-seller situations. You look at the concentration in the processing sector and determine whether or not particular transactions have the capability of creating market conditions in which they could exercise this purchasing power. In the agribusiness sector, it certainly would be my intention to scrutinize all mergers for these oligopsony or monopsony type effects.

Senator CANTWELL. New merger actions would have to take place, as opposed to current market conditions?

Mr. JAMES. Where current market conditions are concerned—I thought you were asking in particular about acquisition activity——

Senator CANTWELL. These practices exist today because of past practice, so I guess I am trying to understand where the Antitrust Division would take action in an investigation.

Mr. JAMES. If a market were concentrated, and as a result of that concentration, firms in the industry were engaging in particular types of behavior—market allocation, price signalling, those types of things—then you could have an independent case based on Section 1 of the Sherman Act or some Clayton Act violation.

Senator CANTWELL. And the investigation by your office would have to be triggered by some sort of data—I am trying to understand the Antitrust Division—obviously, we have all brought up agricultural examples here, and this consolidation is going to continue, and I applaud Senator Grassley's efforts in the legislative

arena on this. But I am trying to understand the Department's activities as it relates to investigation. What triggers——

Mr. JAMES. Antitrust investigations get triggered by all types of things. I can tell you that as a private lawyer. But as I understand it, one of the things that has occurred at the Antitrust Division is that the Antitrust Division is reaching out to the agricultural sector and finding ways to communicate and explain to farmers how to communicate with the Antitrust Division if they have complaints and the types of issues they ought to bring to bear.

Certainly if in your office, you have indications of anticompetitive practices that we ought to know about, we are happy to receive those from you; we are happy to receive them from complaining farmers; we are happy to try to investigate to determine whether there are problems on our own. So investigations can be commenced in a variety of ways, and if this is something that should be looked at, we appreciate the referral.

Senator CANTWELL. Thank you.

If I could go to another area, I do not know if you have heard of the online travel website that the airlines are talking about, ORBITZ, which would allow them to offer access to cheaper discount fares by those airlines on line, in ways that their other competitors, whether it is Travelocity or Expedia.com, might not be able to do.

Could you comment on that as a potential issue for antitrust?

Mr. JAMES. As I understand it, ORBITZ is a joint venture of airlines to sell tickets online. As I understand it, the ORBITZ arrangement was looked at by the Department of Transportation, and the Department of Transportation concluded that it would allow it to be formed.

I think it is public that there is a Department of Justice investigation of the ORBITZ situation that is ongoing. Beyond that, I would not be able to comment about the specifics of the ongoing investigation—and I do not know very much about the specifics of the ongoing investigation other than what is in the paper.

Senator CANTWELL. Let me ask you a general question, then, because you obviously have a lot of background in the antitrust area is it relates to representing businesses.

In a world that is continuing to consolidate, how do you balance that consolidation against consumer protection?

Mr. JAMES. The way the merger guidelines are written, you begin by evaluating the consolidation, and if there is any adverse impact on consumers, the transaction is unlawful.

Senator CANTWELL. Well, I know that you cannot speak specifically about the details of this, so maybe we will wait until after your confirmation and continue it.

Those are all the questions I have, Mr. Chairman.

Chairman HATCH. Thank you, I appreciate it.

I have such confidence in both of you. I know both of you well. I have worked with you, Mr. Bryant, an awful lot as we have tried to put together many, many pieces of legislation. We have had lots of contacts with the House. I could not recommend anybody higher than the two of you.

And Mr. James, we have had a lot of help from you on this Committee over the years. I just look back to the Hart-Scott-Rodino

changes that we made last year. You were very beneficial to this Committee in helping us to understand some of these things better. So I just could not have a higher opinion of you than I do.

I really commend this administration for choosing the two of you for these very important positions. I am sure your families are very proud of you; I am personally very proud of you myself.

Let me just ask a couple of questions of you, Mr. James; I would feel badly if I did not ask a question or two.

I intend to put you on the markup for tomorrow. Under our rules, anybody can put you over for a week. That may very well happen, because I have been asked to extend the time for questions beyond tonight until Thursday evening, Thursday at 6, if that is OK with those of you over there.

I do not think that should interfere with the markup necessarily, because we have all the time between now and the floor, but I would like you to answer those questions as quickly as you can; if we can get questions in by tonight, I would appreciate it. I would like to shorten this time, not just because I want to help you, but because I think it is just better for us to be prepared for these hearings, and if we have questions, get them out.

Many antitrust scholars, including Judge Posner, have concluded that monopoly power is more likely to exist in high-tech industries and other industries because of the so-called network effects. Network effects essentially means that a technology like the telephone or a fax machine becomes increasingly more valuable as more and more people use such technology.

Do you think that monopoly power is more likely to occur in high-tech industries than in other industries, and if so, what are the implications of your conclusion for antitrust enforcement with regard thereto?

Mr. JAMES. The issue that you have raised, Senator Hatch, is of course one of the top priorities for the Antitrust Division to begin to grapple with these network and high-technology industries.

It is a fact of life when someone is introducing a new product, if they get there first and get to take advantage of the "efficiencies of ubiquity," as one group of economists calls it, they may have a prevailing market position for some period of time.

As an antitrust matter, you certainly do not want to discourage the innovative activity that causes companies to invest in inventing these kinds of things. The clear issues that you have to evaluate are how are these networks formed, whether the networks are designed in an over-inclusive way, and how those networks interact with third parties. I can tell you that the Antitrust Division and in particular its economic staff is looking very closely at those issues. Those issues are always considered in antitrust investigations of networks, and I would hope over a period of time to develop some clear statements of policy with regard to those issues.

Chairman HATCH. That would be very helpful to us. Some have suggested that high-tech industries such as software should be exempt from antitrust enforcement because of their dynamic nature. Do you believe that the antitrust laws can and should be applied to high-technology industries?

Mr. JAMES. Absolutely, Senator. I certainly think that the rapid pace of change is a factor that has to be considered in evaluating the antitrust consequences of behavior in these industries.

However, I think that these industries need to be competitive just like other industries, so there is a continuing role for antitrust.

Chairman HATCH. Thank you.

I want to raise a concern about old decrees arising in Antitrust Division cases. In 1995, the FTC changed its policy so that its administrative orders in antitrust cases expire automatically after 20 years. FTC Chairman Robert Pitofsky explained that eliminating those old orders was appropriate because, he said, quote, "markets change rapidly today, and companies regularly change hands or change corporate cultures. In this kind of environment, orders more than 20 years old that have not been violated ordinarily just do not make sense. And clearing the marketplace of outdated orders can often be one of the most pro-competition and pro-consumer activities an agency can perform."

My understanding is that there are approximately 250 Antitrust Division consent decrees that are more than 20 years old. Do you share Chairman Pitofsky's concern that antitrust orders that are more than 20 years old may no longer make sense in light of the changes in technology and markets, and if so, would you be willing to look into those issues once confirmed?

Mr. JAMES. Senator, I share the concern that Chairman Pitofsky has raised. Older consent decrees very often do not make sense in the modern world. There are circumstances where the industry will exist in an entirely different form than when the consent decree was entered.

Chairman Pitofsky had the luxury of being able to sunset his orders internally; in other words, they were Federal Trade Commission orders, and the Federal Trade Commission could decide to sunset them.

Department of Justice consent decrees are, of course, enforced by courts, and I think one of the reasons the FTC has been reluctant to do that is that we would have to burden lots of Federal judges with applications for sunset orders.

But it is something that should be looked into, and if there some efficient way to do that, I would be all in favor of it.

Chairman HATCH. I think you can find an official way. I really believe that you could go into the courts with multiple consent decree orders that could be changed in multiple fashion. I would like to see you do that, because I just do not think they should continue to hang out there after 20 years unless there is some really valid reason for doing so.

I may have some other questions for you that I will put in writing by the end of today, but frankly, I am very pleased that this hearing has gone well and that both of you appear to be well on your way to being confirmed.

I hope that our colleagues will confirm you tomorrow and allow you to begin this very important work down there. We need both of you in those positions as soon as possible, but any colleague has the right to put nominees over for a week. That is just a right on the Committee that we acknowledge and we live with. But I am

hopeful that we can break through that in your cases, since there appear to be no real objections to these nominations today.

I just want to personally congratulate both of you and tell you how much I think of both of you and how much I look forward to working with each of you in your respective positions. I am going to do everything I can to assist you and help you from up here, and we would like to have your suggestions as to how we might do a better job, because there are a lot of things that we should try to do that are bipartisan in nature that would help make our system of justice even more just and more efficient and, frankly, more workable. So you could help us a lot if you would do that.

With that, I do not see any other Senators here to ask questions, so we will recess until further notice and look forward to hopefully getting you through tomorrow.

Thank you.

Mr. BRYANT. Thank you, Chairman Hatch.

Mr. JAMES. Thank you, Mr. Chairman.

[Whereupon, at 11:37 a.m., the Committee was adjourned.]

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