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S.HRG. 107–841

NOMINATION OF SCOTT W. MULLER TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

OCTOBER 9, 2002
OCTOBER 16, 2002

Printed for the use of the Select Committee on Intelligence

Available via the World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE

83–725 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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NOMINATION OF SCOTT W. MULLER TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY

WEDNESDAY, OCTOBER 9, 2002

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The Committee met, pursuant to notice, at 9:37 a.m., in room SH–216, Hart Senate Office Building, the Honorable Bob Graham (Chairman of the Senate Select Committee on Intelligence) presiding.

Committee Members Present: Senators Graham and Rockefeller.

OPENING STATEMENT OF SENATOR BOB GRAHAM

Chairman GRAHAM. The Committee will come to order.

Today's hearing of the Select Committee on Intelligence is for the single purpose of receiving testimony from the President's nominee for the position of General Counsel of the Central Intelligence Agency, Mr. Scott W. Muller. Mr. Muller, we welcome you and thank you for coming today, particularly on such short notice.

Mr. MULLER. Thank you, Senator.

Chairman GRAHAM. We also welcome Mr. Muller's wife, Caroline, and two of his three children, Christopher and Pete, as well as his present and former assistants, Anna Corrales, Barbara Doan and Karen Baker, who are all here indicating their support. Would the family please stand and be recognized. Thank you very much.

Mr. Muller is currently the managing partner of the Washington, D.C., office of the law firm of Davis, Polk & Wardwell. His law practice has included complex litigation matters that contain securities, antitrust and criminal aspects.

Mr. Muller also served as an Assistant U.S. Attorney in the Southern District of New York from 1978–1982. We heard testimony yesterday from Mary Jo White, formerly the U.S. Attorney for the Southern District. This was part of our joint inquiry into the events of September 11. I know that the Southern District prosecutors are among the best and most highly recognized Federal prosecutors in the country.

We hope Mr. Muller will elaborate today in his statement and in response to questions from the Members of the Committee on what he has learned in his career that has prepared him to be the General Counsel for the Central Intelligence Agency.

If confirmed, Mr. Muller would be only the second CIA General Counsel to go through the confirmation process. Congress amended

the Central Intelligence Agency Act of 1949 in 1996 to require that the person to fill this position be selected with the advice and consent of the Senate. This reflects the importance we attribute to the functions performed by the CIA General Counsel.

With the critical role played by the agencies of the intelligence community in the war on terrorism and, perhaps soon, the war on Iraq, now more than ever the CIA must have a strong General Counsel. This is, in part, the reason that we are holding this special meeting of the Committee today to hear from Mr. Muller, in hopes that we can expedite this process so that he will be able to assume his position prior to the adjournment of Congress.

I am certain that Mr. Muller knows the role of lawyers at the CIA has evolved over the last 25 years. In the early 1970s there were only a handful of lawyers in the CIA. Today there are approximately 100. In the Counterterrorism Center alone the number has gone from one as recently as 1997 to seven today.

This growth reflects the fact that after the Pike and Church Committees in the late 1970s completed their review of the performance of the intelligence agencies, intelligence operations became, as has been referred to, a heavily regulated industry.

Executive Order 12333, first issued by President Ford in 1976, created a set of guidelines for operations—particularly those against U.S. persons and those conducted inside the United States. The CIA and the FBI have classified regulations that further guide operations.

These complex sets of rules need lawyers to interpret and apply them to day-to-day operations—and they must do it quickly, and they must get it right. Officers in the Directorate of Operations need lawyers they trust so that they can go about their business devising and implementing aggressive operations that will help us thwart the terrorists before they can do us harm.

On that point, I would like a moment to speak about the issue of cautious lawyering at the CIA. I know from my work on this Committee for the past 10 years that lawyers at CIA sometimes have displayed a risk aversion in the advice they give their clients, particularly some of the lawyers assigned to the posts in the Directorate of Operations.

Unfortunately, we are not living in times in which lawyers can say no to an operation just to play it safe. We need excellent, aggressive lawyers who give sound, accurate legal advice, not lawyers who say no to an otherwise legal operation just because it is easier to put on the brakes.

I also know that the lawyers assigned to the Directorate of Operations are not always perceived as part of a team by their clients but, rather, a hurdle that must be surmounted before the operators can do their jobs. Team work requires mutual respect and I hope, if confirmed, that you will instill that in your lawyers.

The previous General Counsel came before this Committee in a public hearing last year on the U.S.A. Patriot Act intelligence-related provisions and asserted that the officers in the Directorate of Operations needed "adult supervision" by their lawyers. As you might imagine, that comment was not well received at the Directorate of Operations. In my opinion, the Directorate of Operations

officers are performing the most adult jobs in our Government today.

I hope that if you are confirmed, Mr. Muller, you will instill in your lawyers the need to be a team player and to give cutting-edge legal advice that lets the operators do their jobs quickly and aggressively within the confines of law and regulation.

We are joined this morning by my good friend and former colleague in the State House, Senator Kit Bond of Missouri. I know the close friendship that he has with Mr. Muller because he's been telling me about it on a daily basis for the last 6 weeks.

Senator Bond.

[The prepared statement of Senator Bond follows:]

PREPARED STATEMENT OF SENATOR BOND

Good Morning Mr. Chairman, Members of the Committee. Thank you for the opportunity this morning to appear before the Intelligence Committee on behalf of Mr. Scott Muller.

President Bush's nomination of Mr. Muller to the position of General Counsel of the CIA reflects careful deliberation and consideration on the part of the President for this important position.

The Central Intelligence Agency, in addition to the entire Intelligence Community, now more than ever, faces the daunting and paramount task of gathering effective and reliable intelligence as we conduct the war on terror.

Currently, in an effort to fulfill this paramount task, the relationships and interactions between the various entities within the Intelligence Community are being reexamined and restructured in an effort to facilitate more effective and reliable intelligence gathering.

Throughout this reexamination, the CIA General Counsel will need to have an understanding of the laws governing these relationships. In addition, the CIA Counsel will need to be capable of carrying out careful and thorough analysis of all the legal ramifications of intelligence and law enforcement collaboration.

I am convinced Scott Muller's extensive legal experience and training will afford him the ability to provide proactive, timely, objective and independent advice to the agency and the Intelligence Community, consistent with the laws and the Constitution of the United States.

Scott began his higher education at my alma mater, Princeton University, graduating cum laude with a Bachelors degree in 1971. From there, he went on to Georgetown University Law Center earning his J.D., making Law Review and Law Review Executive Board.

Since that time, Scott has distinguished himself amongst his colleagues in the legal community. For the past 24 years, he has been a litigator at Davis Polk & Wardel specializing in representing Fortune 100-sized companies conducting what can best be described as "crisis management." Scott is no stranger to being thrown into high-pressure, high-stakes legal arenas that have put his legal and managerial abilities to the test. His ability to assimilate quickly and then master new and multiple subject matters would serve the CIA and Intelligence Community well as it attempts to reexamine and restructure its collaborative sharing and intelligence gathering abilities.

Among Scott's many honors and awards, he has received:

- FBI Commendation and Department of Agriculture Commendations
- One of New York Law Journal's "Rising Stars in 13 of New York's Largest and Most Prestigious Law Firms"
- Included in "Guide to The World's Leading White Collar Crime Lawyers"
- International Who's Who of Business Crime Lawyers

Scott's interest in national security can be traced back to the mid-1980s when he served as a member of the Arms Control and National Security Affairs Committee of the Association of the Bar of New York City. He has over 25 years of experience with the Federal Criminal Law Enforcement process as a prosecutor, teacher, and defense lawyer and has worked extensively with general counsels of large organizations. After serving with the Watergate Special Prosecution Force, he:

- Clerked in the United States Court of Appeals for the Third Circuit.
- Was an Assistant United States Attorney in the Southern District of New York from 1978 to 1982

• Served as the Vice Chairman of the American Bar Association's White Collar Crime Committee

• Was Adjunct Professor at the Georgetown University Law Center where he taught an advanced course in Federal Law Enforcement.

Mr. Chairman, Members of the Committee, it is for all of the aforementioned reasons in my statement this morning that I am confident my colleagues on both sides of the aisle will approve the nomination of Scott Muller to the position of General Counsel of the Central Intelligence Agency.

The emerging challenges before the Intelligence and Law Enforcement Communities that will surface throughout their reexamination and restructuring will necessitate the talents and legal expertise of folks like Scott.

Thank you again Mr. Chairman and Members of the Committee.

OPENING STATEMENT OF SENATOR KIT BOND

Senator BOND. Mr. Chairman, thank you very much for your very thoughtful and carefully worded guidance to the General Counsel's position. Most of all, thank you for conducting this hearing so promptly. I know the President and the Administration are very grateful that you are moving expeditiously because, as you indicated, this is a position of paramount importance given the challenges we face in the international and national arena today.

In the interest of full disclosure, I will tell you that even though Mr. Muller lives in Maryland and practices in New York and Washington, D.C., I am here as a Senator from Missouri to offer my highest commendations. His son and my son were in high school together and now in college together and furthermore my wife has known him longer than I have, and I would say on behalf of Linda and Sam, he has their highest endorsement, and that's just one of the reasons I'm here today.

The most important reason, obviously, is that President Bush's nomination of Mr. Muller to the position of General Counsel reflects, I think, careful deliberation and consideration on the part of the President for this important position. As you have indicated, Mr. Chairman, the Central Intelligence Agency, in addition to the entire intelligence community, now more than ever faces the daunting and paramount task of gathering effective and reliable intelligence as we conduct the war on terror.

I have many more things to say about Mr. Muller that I will submit for the record because of the time constraints, but I think you've indicated that the CIA General Counsel will need to have an understanding of the laws governing these relationships, and the Counsel will need to be capable of carrying out careful and thorough analysis of all the legal ramifications of intelligence and law enforcement collaboration, not simply being the abominable noman, but providing the best advice on how to comply with all the laws to get the job done.

I'm convinced that Scott Muller's extensive legal experience and training will afford him the ability to provide proactive, timely, objective and independent advice to the Agency and the Intelligence Community consistent with the laws and the Constitution of the United States.

Scott began his higher education at Princeton University, graduating cum laude in 1971, and from there he went to Georgetown University Law Center, earning his J.D., where he served on the Law Review and the Executive Board of the Law Review. Since that time he has distinguished himself among his colleagues in the

legal community, for the past 24 years as a litigator at Davis Polk & Wardwell.

He has received the FBI commendation, the Department of Agriculture commendations. His interest in national security can be traced back to the 1980s, when he served as a member of the Arms Control and National Security Affairs Committee of the Association of the Bar of New York City. He has also clerked in the U.S. Court of Appeals for the Third Circuit, and, as you indicated, was an Assistant U.S. Attorney.

Mr. Chairman, Members of the Committee, for all the aforementioned reasons I am confident my colleagues on both sides of the aisle will consider this nomination carefully and approve the nomination of Scott Muller to be the General Counsel of the Central Intelligence Agency. I again offer my sincere thanks to the Committee for the expeditious hearing, and I offer any assistance I can in moving this nomination forward. Again, Mr. Chairman, my sincere thanks.

Chairman GRAHAM. Thank you very much, Senator. We are being joined by Senator Rockefeller. Senator Rockefeller, Senator Bond has just introduced Mr. Muller, and we are prepared to turn to his statement unless you would like to make an opening statement.

Senator ROCKEFELLER. No.

Chairman GRAHAM. Mr. Muller.

STATEMENT OF SCOTT W. MULLER, GENERAL COUNSEL-DESIGNATE, CENTRAL INTELLIGENCE AGENCY

Mr. MULLER. Thank you, Mr. Chairman, Senator Rockefeller. Let me start, Mr. Chairman, by thanking you and the distinguished Members of this Committee for giving me this opportunity to appear before you and to make this introductory statement. I am honored that the President has nominated me to the position of General Counsel of the Central Intelligence Agency.

The privilege I feel in being asked to serve is particularly great because this is an extremely challenging time for the Agency, the Intelligence Community, and the Nation as a whole. The laws governing the relationships between the Intelligence and Law Enforcement Communities and the practices of those communities are undergoing rapid and substantial change. A new and fresh perspective is being brought to balancing the need for collaboration and the simultaneous need to respect constitutional values and, in particular, the Intelligence Community is being asked to coordinate more closely than ever with criminal investigators and prosecutors on the domestic side and overseas.

This re-examination is taking place in a real-time crisis situation where there are continuing, simultaneous demands on a number of fronts and a critical need for judgment, management skill and a collaborative spirit in the Office of General Counsel.

For 24 years, I have been a litigator at Davis Polk & Wardwell specializing in representing Fortune 100-size companies and others at times when they were immersed in crisis and felt that they were under siege. A major part of my practice and experience can best be described as crisis management. I have frequently been asked to walk into fast-moving, high-pressure, high-profile legal disaster

areas, to assemble and manage large teams of lawyers and other experts, to work within new and complex institutional structures, to collaborate, as appropriate, with those representing diverse interests and to guide my clients' responses on multiple fronts simultaneously.

I've had the opportunity to engage and, I trust, to master new subject matters, often extremely complex and usually technical, if not arcane, and to do so under severe time constraints. I've also had the opportunity to advise numerous large institutions on the establishment of legal compliance programs designed to avoid violations of law while at the same time giving business executives the tools they need to perform their jobs effectively. To add a word here, I might say that it's not cautious advice that's part of that; it's careful and timely advice. That's the critical element.

The central part of my practice for the last 25 years has been Federal criminal law and enforcement, and my experience in that area is current and extensive. After serving with the Watergate Special Prosecution Force, I clerked in the U.S. Court of Appeals for the Third Circuit. I was an Assistant U.S. Attorney in the Southern District of New York from 1978 to 1982. I served as the vice chairman of the American Bar Association's White Collar Crime Committee and as an Adjunct Professor at Georgetown University Law Center, where I taught an advanced course in Federal law enforcement. More importantly, the vast majority of my cases have involved Federal criminal law and interaction with Federal prosecutors and other Federal regulators at all levels.

I believe that the job of General Counsel of the Central Intelligence Agency is to provide timely, objective and independent advice to assist the DCI, the Agency and the community as a whole in accomplishing their missions effectively and doing so in a way that is fully consistent with the laws and Constitution of the United States. I view a critical part of that job as working with this Committee and its House counterpart as you fulfill your important oversight responsibilities.

I am enthusiastic about the opportunity to serve. I look forward to answering your questions and providing whatever information you feel may be necessary or that you may find useful as you consider my nomination. If confirmed, I look forward to working with you on the important matters that face the Central Intelligence Agency, the intelligence community, this Committee and its House counterpart, and as I said before, the Nation as a whole.

Thank you, Mr. Chairman. I'm prepared to answer any questions you may have.

Chairman GRAHAM. Thank you, Mr. Muller. We will proceed with questions on a 5-minute rotating basis.

As I indicated to you in our remarks before the hearing commenced, I was very impressed with the file that I had the opportunity to review. You have an impressive background. One question that would be raised in reviewing that is the fact that you have not had much previous experience in intelligence or intelligence-related activities. Could you tell us what you think in your background has best prepared you to assume this responsibility?

Mr. MULLER. Yes, Senator. I think that's a fair and appropriate question and I thank you for asking it. To start, I have no direct

intelligence or national security experience. I have in the vast majority of my cases, however, specialized in mastering new subjects—often extremely complex subjects—in very short periods of time. That has been the essence of my practice over the past 25 years, and the range of subjects has been quite broad.

In addition to that, as I said in my opening statement, I have come to specialize over time in what, as I've said, can best be described as crisis management, which essentially has meant going into very difficult situations with multiple challenges at the same time. Often I'll have the media, Federal investigators, Securities and Exchange Commission or civil anti-trust authorities, foreign investigators—every kind of possible challenge to an entity—all at the same time, all happening sometimes with lightening speed and be called in to try to marshal the resources necessary to deal with that problem. Often that involves hiring multiple law firms—literally organizing and managing hundreds of lawyers—and then in a very brief time understanding the facts, and often brand new law, in a way which I can then advise on how best to respond on those fronts at the same time.

Finally, and I think perhaps most importantly given the changes that are underway in the Intelligence Community, and as we reexamine the national security organization generally, I have an extensive experience in law enforcement—both as a former prosecutor, but again, most recently and more importantly, as a defense lawyer. I am fully conversant with the way the Federal investigative system works with FBI agents. I think I would have a credibility in dealing with them and understanding their problems and the interactions in a way which, while not unique, will be of extraordinary importance.

Let me say as well that I asked myself this question when I was first approached about the possibility of serving as General Counsel of the Central Intelligence Agency, and I asked it on a number of occasions through the process in which I was interviewed. I've spoken now to four former General Counsels of the—and did speak prior to accepting the nomination—four prior General Counsels of the Central Intelligence Agency and the Acting General Counsel now. I spoke to two of the witnesses you had here before you yesterday, both of whom are my friends, Louis Freeh and Mary Jo White. I spoke to a former head of the Central Intelligence Agency and I spoke to the gentleman who is now the General Counsel for the National Security Council.

Each and every one of them told me—and also a former Attorney General who is a friend—each and every one of them told me that in their view the most important requirement for the General Counsel of the Central Intelligence Agency is judgment and maturity and the ability to make decisions quickly but properly. I have no illusions about how much there is to learn. Clearly it's a lot. I also have no doubt that I can do it and do it well.

Chairman GRAHAM. Thank you, Mr. Muller. That was very reassuring statement. You are going to face a number of challenging legal issues should you be confirmed. One of those that has been discussed repeatedly, including yesterday by former FBI Director Louis Freeh and former U.S. Attorney for the Southern District of New York, has to do with the wall between law enforcement and

intelligence. We have found instances where that wall has been so impenetrable as to keep information that would have been valuable, potentially even change the course of events, from passing in one direction or the other.

There were some significant changes made in the law as part of the U.S.A. Patriot Act that was adopted in October of last year. At this stage, do you have any comments to make, including from your experience as a U.S. Attorney, as to how that wall of separation should be either modified, dismantled, strengthened?

Mr. MULLER. Well, let me start, Senator, by saying that I think the changes that were made in the U.S.A. Patriot Act were clearly necessary in light of the events of September 11 and I think have gone a long way toward creating at the operational level the kind of sharing and collaboration that this Committee and the Intelligence Community and the Bureau and law enforcement think need to occur. There's a lot of work left to be done.

The wall that originally existed obviously had its basis in experience. The concept essentially was that to the extent there was a merger of foreign intelligence and law enforcement there would be both the incentive and the opportunity for abuse. But we now live in a world that's different than when that wall was first erected.

First, unlike the days prior to the Church and Pike investigations, there is now Congressional oversight that is effective and extensive. In addition to that, the nature of the threat has changed dramatically. The distinction between domestic and foreign is difficult to apply in a world where the threats are truly transnational, just as the distinction between law enforcement and intelligence is difficult to sustain when the line between war and peace has essentially been eroded in the way that it has.

Obviously, it's going to be a critical issue going forward to continually re-examine the relationship between domestic law enforcement and domestic activities on the one hand and foreign on the other. There are clearly things that can be done now, some of the issues relating to the FISA that are being litigated before the court that need to be examined, but as a general matter, while keeping an eye on the reasons why the wall was essentially erected in the first place, clearly we're moving toward other ways of achieving the goals of protecting U.S. civil liberties interest while getting the job done.

Chairman GRAHAM. Thank you very much, Mr. Muller.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman. I bid you a good day.

Mr. Muller, a couple of things. I think that essentially in life people have two parts to them. You get this all for free.

Mr. MULLER. My children are getting it, too.

Chairman GRAHAM. Senator Rockefeller might charge tuition for your children—always mindful of the family treasury.

Senator ROCKEFELLER. That's right. Always looking for more.

[Laughter.]

Senator ROCKEFELLER. In other words, the skill sets that they're trained with and then sort of the way they adapt to how life puts them into a different circumstance. Skill sets—this is still a continuation of the Chairman's question—skill sets are powerful. Now,

as Senators we have to manage time and all kinds of things. Lots of people have to do that. When a lawyer says I can manage time, get a hundred lawyers together, react to a crisis, and walk into a situation and master it, that's important. It was reassuring to the Chairman and it doesn't un-reassure me, but I want to probe a little bit further.

If you don't know about a subject, there is a price. I'll just pick an example out of the air. You can have mastery of the history of China, for example, but if you don't speak Chinese or if you don't speak several of its dialects, talking about this Agency, you're disadvantaged. Because it means that Mao Tse-dong, for example, could never, was never understood by more than one-third of the people of China because of the dialect and the province that he came from when he spoke.

So for a lawyer for the CIA, General Counsel for the CIA, the skill set has to be, I think, quite broad. In your case it's a set of instincts as to how to gather together the threads needed to use, as you say, good judgment, common sense, as the others said, good judgment and common sense. I'm not questioning whether that's enough, but I'll just give you an example then, ask you to respond. I've used this several times before.

We had here in open session not long ago a Minneapolis FBI agent and he had been dealing with the Moussaoui case. He had two choices. Moussaoui was working under an expired French visa, of that nature. Thus, he had broken the law and, therefore, law enforcement said, "you go get that person."

Now there was another choice he could have made, which was to say, I know that this person, I suspect that this person has terrorist ties and, therefore, rather than nailing him for what I know I can get him on, wouldn't it be more useful for me to surveil him, to see who he has lunch with—to figure out, just to watch over a period of months what his interaction is and who he sees. In fact, this gets more and more important as we get more into all of this.

He clearly, resolutely, proudly, definitively picked the first course and rejected the second, in his testimony to us. It's that I think that the Chairman and I are thinking about. Mastery—you've got to speak the language. You can go to the country, but you've got to speak the language. So with that kind of alliteration, I want you to expand more on just that good judgment is enough.

Because it's like why Mormons are so important to the Agency because they get their language training for 2 years and then they go out and they go in the street. So they learn not just the dialect, which they've already learned, but they learn the colloquial language. Then some of them go to the Agency where they do unbelievably helpful things. But if they didn't have that, they couldn't do that. Now, you have this whole, huge field to survey.

Mr. MULLER. I understand your question, Senator. First, let me say, obviously, I agree with you. In order to do the job or understand China, you ultimately need to learn Chinese, and you need to learn it pretty fast. I will not know Chinese the day I arrive. I will be able to rely on people in the Agency and in the General Counsel's office for the time that it takes me to learn for a period of time. But I will need to learn fast, and I have no illusions about that.

It is also true that this is a highly specialized area. It's not much you read about in books. You have to go out and actually spend some time and understand the business of what is done at the Agency.

There is, of course, the legal part—the law—and, as I said, I have learned extraordinarily arcane areas of law and have done it fast. The more difficult part, and I think you're right, is to learn the business of the Agency——

Senator ROCKEFELLER. The instinct which pulls you back to one or another place.

Mr. MULLER. You're talking about the two choices, you mean.

Senator ROCKEFELLER. I just use that as an example. The question of the instinct. Where do you go? You get the information, but then where does it take you?

Mr. MULLER. It's hard to answer a question about instinct in the abstract. Let me say this and then I'll sort of venture into, as best I can, to try to answer that.

I think one of the reasons why I have been lucky enough to have success going from one crisis management situation to another—why I get asked by different clients to do it is because I'm willing to make judgments. I'm willing to take risks when they have been carefully calculated. I'm willing to act with the speed that's required by the clients and the circumstances.

As well, I think I've been able to show a number of clients that I can learn Chinese. If I may, I'll give you a brief example. I represented—one of the most arcane parts of the securities business is the loaning and borrowing of securities back and forth between firms. There are a handful of firms in the country and, indeed, in the world who do it. They make vast sums of money doing it. Two firms ran an operation together for a period of years and then had a dispute about how to account for the proceeds of it because their system seemed to be giving them results that weren't intuitively right.

They interviewed a number of lawyers to try to find one who could come in and understand what was going on, and they gave that lawyer—and I was among a group of lawyers who were interviewed about doing it; I'd had no prior experience in the area at all and, indeed, relatively little in the way of accounting background. I knew nothing about the business; I had never heard of it.

I had a month to do this because it was actually a dispute. I was being hired by one side. I went in with the people who had actually put the system together, and we took it apart, piece by piece. I learned the business. Not only that, I found imbedded in the assumptions—in one of the assumptions that underlay their system—a system that they had created and which they had looked at—and this particular issue they'd looked at over and over again, they had missed it.

I ended up taking the system apart. I ended up putting their system back together. That system, the system that I created essentially for them, is now being used by that particular firm for hundreds of millions of dollars every year. That was Chinese—or Greek in that case. I learned it, and I was able to be helpful and fast.

Now in terms of instinct, to come back to what I think is the core of your question, it's hard to answer again in the abstract. I have had, albeit awhile ago, the choices that you asked between does one act now to stop a particular individual or does one, in effect, let the chips ride to see what additional gains can be made.

Those are judgments which can only be made on the basis of all the facts at the time. As a lawyer, I will not be making them in the first instance. Instead, I'll largely be advising as to what I perceive the risks are.

I'll come, if I can, one further point. Senator Graham in his opening statement referred to a prior General Counsel who talked about the need for adult supervision—who had used the word adult supervision. I obviously and clearly do not view that as my role. I view the lawyer more as a navigator who will help the captains of the ship steer it as best they can as so it's not to hit shoals, to tell them where the water is deep and where it is shallow, and to give them their best judgment—my best judgment as to how the ship will fare in particular seas. But I will not be running it. I will not be the captain. I will be advising as best I can on how to navigate.

Senator ROCKEFELLER. I'll wait for the second round. Thank you.

Chairman GRAHAM. I'd like to follow up on Senator Rockefeller's questions by posing, as one might in a law school classroom, a couple of hypotheticals.

Mr. MULLER. Sure.

Chairman GRAHAM. We don't expect a master's paper on this, but in 2 or 3 minutes, if you can sort of give us an idea of how your mind works, how you would go about approaching these issues.

First, one of the most vexatious issues that we've been dealing with is the so-called leaks problem. We have an elaborate system by which information is classified, which means that its release to the public is restricted, and we have laws to protect that classification system, many of which point directly at the Director of Central Intelligence, who has specific legal responsibility, if he becomes aware of an inappropriate release of classified information, to take actions, including forwarding cases to the Department of Justice.

The fact is, this system, from my information, has not resulted in a successful prosecution in some two or three decades. The number of leaks are rampant. You could probably pick up today's New York Times and Washington Post and find several of them on the front page. I've described we now are not dealing with leaks; we're dealing with dam breaks where big surges of information such as the Department of Defense battle plans for Iraq get released inappropriately.

If during your third week on the job Director Tenet should come in to you and say that he shares this concern and clearly the current system is not functioning either as a deterrent or as a punishment system, how would you go through the process of approaching that problem? With whom would you consult? What would be your analytical steps, et cetera? I might say I hope this hypothetical issue becomes a real issue soon.

Mr. MULLER. Well, Senator, I think you are right. The issue of leaks is an extraordinarily important one. The damage that is done by leaks is no different than the damage done by a spy. The fact that it's done for, you know, what the leaker may view as appro-

priate reasons is absolutely no excuse given the horrendous damage that can occur. I think I would approach—leaving aside for the moment the question of who I would consult—my mind wraps itself around the problem in the following way.

The first question I ask myself is what are the legal authorities and what are the statutes that apply and are they adequate? In the case of leaks, I know that there are espionage statutes which relate to the leak problem. I also suspect that there is a certain amount of disinclination on the part of the Federal prosecutors to want to use the word espionage to deal with the problem of—with an issue of a U.S. person who is leaking as opposed to spying. So the first question I would ask is to find out what the statutes are, to find out whether they're adequate and, to the extent that they're inadequate, an issue which I think I would clearly address with the Department of Justice, the Criminal Division, and others, I would ask that question first.

The most difficult question with respect to leaks has to do with actually investigating and finding them. In order to do that, you would want to have a specific case where it came to you or, to the extent that you could, you would want to put in place systems which would actually allow you to find them before they occurred or as they were occurring.

More than anything else, you want to find a case that you can bring. You want to find a case that you can bring and bring successfully. You'd have to navigate your way through the problem of the threat of exposure of national security secrets as you do it.

So to answer the question, again, I would first analyze what are the legal authorities and, most importantly, I would try to find a way—pro-actively rather than reactively—to, whether it's set a trap, or set up a system where I could actually come up with a way to do it. It's a very difficult problem.

I think the reason why, at least to my knowledge, there haven't been leak prosecutions—leaving aside the issue of to what extent can we actually go to the media in order to deal with this—a highly sensitive question and one which the Department of Justice I know has thought about extensively—but if one is limited to looking internally, that's one of the great problems, is actually finding it.

Chairman GRAHAM. Thank you.

Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I want to still go back to the first question. This is not unfriendly questioning. You recognize that there is this gap and you say that you can overcome it and it is our duty to try to make our best judgment that you are right about that.

Mr. MULLER. As I said Senator, I view it as a fair and appropriate question and I continue to.

Senator ROCKEFELLER Yes, you did and you are very forthcoming about that.

There is an agency that used to be called HCFA—which is the Health Care Financing——

Mr. MULLER. I had a case involving them.

Senator ROCKEFELLER. You are involved with them?

Mr. MULLER. I had a case involving them. I had to learn something about them, yes.

Senator ROCKEFELLER. I think it takes somebody about 12 years—it is my judgment—to learn health care, public policy, in and out. You can do it through the master's thing. You can do it through a Ph.D. at Johns Hopkins or wherever, but then you've got to practice it. Then the real world comes in on you and then you have the political process that comes in on you, and then OMB that comes in on you.

President Bush's head of HCFA is a fellow named Tom Scully, who knows health care cold. That's what he's done. He's a lawyer. But he brings more to it than the law. He brings to it just flat out knowledge and the battle scars of what went wrong as he applied legal instincts versus the practical problems of a recalcitrant HHS Secretary or President or OMB or whatever.

Am I justified in saying that fast learning skills—and then shoot me right down if you think I am wrong—that it really isn't just a matter of collating lawyers and learning quickly, but that instincts are not learned quickly. They come from experience. It's like an agent who has served overseas and does human intelligence. I mean, you don't just go get trained for it. It takes years to develop the instincts that allow you to know what you are doing—which is right, which is smart, that you should have done this or that. Now how do you help me?

Mr. MULLER. I understand your question. Let me first say instincts, I don't think, are learned. You have them, you develop them in whatever field you have over time. You then take those instincts and you apply them to whatever set of facts or area you are put into. That's what I do. There have been three prior General Counsels——

Senator ROCKEFELLER. Where do you get the instincts from?

Mr. MULLER. Your experience.

Senator ROCKEFELLER. But your experience isn't in this.

Mr. MULLER. No. But you don't need to have—with respect, Senator, I don't believe you need to have your instincts honed in this particular area. I think you need to have your instincts honed in the fight, in the well, in places where there are multiple people with different views where you have to navigate through them and where you have a sense of where a common sense good judgment would put you in the choices between letting someone stay out in the field so you can follow where they go and find the terrorist's co-conspirator, letting them have one more phone call, or instead taking the risk that they are going to do something. You simply look at all the facts and circumstances and you bring to it the best judgment you have.

I have spent the last 25 years essentially making precisely those kinds of judgments in varying fields. In particular, I have made them in the law enforcement area for only 4 years as a prosecutor, although we ran undercover operations, we ran a sting operation and in one case in which I can't talk about here, we actually had a person who was in organized crime who was out on the edge of doing things with organized crime to keep his credibility going.

I have lived those, albeit when I was younger. I have spent the rest of my career dealing, watching prosecutors having made the same decisions sometimes representing on the defense side. There have been three prior General Counsels of the Central Intelligence

Agency who came to that job without intelligence experience. The first, named Tony Latham, came from Shea and Gardener. Russ Bremer came from Wilmer Cutler, and Stanley Sporkin from the SEC. Without knowing the ins and outs of how well they performed in your eyes Senator, I know from the people I have talked to in the Agency that several of those performed very well.

I could add as well that I asked this question and I was—as I said to a person from people who know this community and know me—said, "don't worry about this. You will be able to do it. It will come naturally to you because of your experience and because of the amount of law that is involved is relatively speaking not the body of HCFA law." Would I know health care policy the way the gentleman you described? No. Do I think that my instincts and experience are such that I can add real value and help make sure that the lawyers are part of the team and not viewed as—and don't view themselves as—adult supervisors? Yes. The delivery of legal advice, working as a team, avoiding us versus them kinds of cultures, that's what I do.

Senator ROCKEFELLER. I thank you and I'll have the third round if you don't mind, Mr. Chairman.

Chairman GRAHAM. Thank you, Senator.

I'd like to raise a second issue. The Intelligence Community is organized theoretically under the general supervision of the Director of Central Intelligence. By tradition and history, the Director of Central Intelligence also has served as the head of the CIA, one of the constituent agencies that make up the Intelligence Community.

In your position, you are going to serve as the General Counsel to both of those positions—to both in his directorate of the whole community as well as his specific responsibilities at the CIA. One of the other agencies that's in that constellation of intelligence agencies is that part of the FBI which is involved in intelligence. This multiple responsibility creates the potential of conflicts of interest, as we have learned in our hearings. Not infrequently the FBI and the CIA have different views of the same matter which have resulted in patterns of action, including one ignoring the other.

Think about and tell us how you would approach these multiple responsibilities and particularly how you would see, from your position as General Counsel, dealing with the conflicts between the FBI's intelligence responsibilities, the CIA's virtually total intelligence responsibilities, and the DCI's overview of all of the agencies of the agencies of the Intelligence Community.

Mr. MULLER. I think there are—I'll try to divide that question into a couple of parts if I can. One part has to do with the relationship and possible conflict between the FBI counterintelligence and domestic responsibilities and the CIA's foreign both counterintelligence and intelligence activities. The second question I think has to do with the role of the DCI as head of the community and what conflicts may exist both because of his dual capacity as head of the CIA and head of the community and, as a corollary to that, whatever conflicts I may have as General Counsel to him in those capacities.

Let me address the first question first. The message of the U.S.A. Patriot Act and the lesson of 9/11, subject of course to the correct

oversight, is that the parts of the FBI and the CIA need to work, and the Justice Department, fully hand-in-hand in the investigative stage, in the stage where they are trying to determine ways in which they can disrupt and detect terrorists and other threats.

There is now increasing and should be full field-to-field coordination. It's precisely now—and just as in the past in espionage cases choices have had to be made along the lines of the choice that you referred to earlier, Senator Rockefeller, about when to bring a case and when not to bring a case, when to let one ride and when not to let one ride. Those choices will increasingly need to be made as those teams work together.

They are also going to have significant issues to work on together as to whether or not cases are brought and where they are brought, what obligations will be under Brady against Maryland and a variety of related questions. There is no substitute for not only having the field agents working together but actually having the lawyers work together as well, the prosecutors, as they are now doing in the counterterrorist cases where, as I understand it, there is and has been an extraordinarily good relationship between the Federal prosecutors and the Southern District of New York and the Eastern District of Virginia, the FBI agents, and the CIA agents all working together.

I would envision that there would be, over time, an extensive exchange not only of information but of personnel, hopefully even between the offices, so as to make that—and ultimately when the systems are pulled together in a way which I understand they are not now, then the walls should ultimately be transparent and then choices can then be made as to when cases should be brought, what the costs will be, where they will be.

With respect to the second question having to do with the DCI's role, obviously that has been an issue not only for this Committee, but really for the Nation, most recently, but over time. It is one that when one looks at—every time I look at it and think through a possible solution to how the national security apparatus ought to be organized differently I see both advantages and disadvantages to it and there are obviously a host of proposals.

In the current system, as General Counsel I would view myself as having those responsibilities which the DCI gives me with respect to the community. I have no question but that a significant amount of coordinating work can and should be done. There are lawyers from the General Counsel's office that are deployed to most of the other elements of the community, or can be—I think NSA may be an exception—but I would envision working very closely with the other General Counsels.

I don't perceive a conflict. I have frequently represented multiple clients, to the extent that one can view this as a multiple client. My client is the mission. My client is the President and the Executive branch subject to this Committee's oversight. Actions speak louder than words. I think to the extent that there is a perception of a conflict it can be eliminated. To the extent that there is a conflict, I'll be the first to say so. I doubt it'll occur.

Chairman GRAHAM. Senator Rockefeller, could I ask two favors. First, could I ask a followup question beyond my 5 minutes and then, second, I am going to have to leave. Could you continue the

hearing and then conclude it when you have completed your questions? You're a scholar and occasionally a gentleman.

We have had issues where, because of what now is agreed to have been erroneous legal advice, important decisions were either made or not made. The most prominent example is in this so-called Moussaoui case that Senator Rockefeller referred to in his questioning, where the field agent in Minneapolis was berating the central office here in Washington to seek a FISA in order to get information. The persons making the decision here in Washington, by all now agreement, were misapplying the law and denying this request, and then shortly after 9/11, when they did get access, found information that could have been very significant had it been available earlier.

How do you see your responsibility in terms of the legal community which advises all of the agencies that make up the Intelligence Community, so that on something such as what are the rules for a FISA, that the information is uniformly disseminated, updates of change in the law are promulgated, and some degree of oversight to assure that the legal officers are applying the appropriate standard, that we have a continent of law and not a series of individual islands which may be drifting away from each other.

Mr. MULLER. I think within the Agency, to answer that question there first, what you have identified I think is one of the most important things that the General Counsel is responsible for ensuring. There needs to be careful management and coordination among all the lawyers giving advice within the Agency to assure that it is, A, uniform, B, correct, and, C, that it is not driven by concerns of caution not required by the law, and similarly that it is not—that it doesn't fail to take into account and raise to the appropriate levels any issues where the risks seem to be extreme.

It also has to be client-driven. By that I mean it is imperative in the delivery of legal advice that the lawyer earn the trust of the client. You won't be asked back a second time, you won't be consulted when you need to be consulted unless you earn that trust. You earn that trust by doing everything you can to work with them to be part of the solution to the extent there's a problem, by being clear and simple about the rules that guide, to be clear and simple about the difference between law and policy, and to be sure as well, because you are with them in recognizing that the risk of illegal action in the environment that we are operating in is no different and no greater than the risk of inaction.

Chairman GRAHAM. Mr. Muller, thank you very much. I apologize that I have got to go to a 10:30 meeting. I thank you very much for the candor and the thoughtfulness of your responses and wish you and your family well. We will be attentive to moving this nomination as expeditiously as we can.

Mr. MULLER. Again, Mr. Chairman, thank you for scheduling the hearing. I know you all have been very busy doing very important work and I thank you.

Chairman GRAHAM. Senator.

Senator ROCKEFELLER. One of the interesting—well, not interesting—well it is interesting, but it is slightly depressing—facts is that there is a large and growing distrust between the executive branch and the legislative branch. It is often said—and this is not

political because I think all Presidents are guilty of this or we are guilty of it—it really doesn't make any difference—there is quite a lot of disdain for oversight committees now. There is a great deal of disdain within the Intelligence Community for Oversight Committees—the Intelligence Committees in both Houses.

That has been proven many, many times in the last number of weeks as we have been trying to carry on this 9/11 investigation and deadlines and postponements and we'll have it for you in 24 hours and then it's we're OK with it, but we've got to take it over to the FBI or NSC and then it comes back and we end up getting it at 10 o'clock or at 9:55 and the hearing begins at 10 o'clock.

That makes us—it means we can't read it, we can't read anything. That's deliberate or it's inadvertent. But in any event there is this disdain. I understand that because there are people putting their lives on the line out in the world and here these Congresspeople, who unfortunately have come on and off the Committee too quickly—but it comes at great cost. It comes at great cost.

It causes us to do the one thing that I don't want to see happen as between oversight and the Intelligence Community, and that is the blame game. The blame game can come from two sources. One is that we get angry because we feel we are being looked down on and, you know, that we get sent second- and third-line people, and then sometimes we fail to recognize that the first-line people may have obligations they have to meet.

But whatever it is, just accept what I say as being true, if you will.

So then there comes a question of timely reports. There are timely reports on annual or one-time basis that the Congress requires and is owed which is frequently not met. That brings then the question of a General Counsel advising a Director of Central Intelligence about what to do about that. That is where you run into potentially the politics or we don't want them to know or why are they doing this to us or this is taking all of our time and I've got more important things to do than sit and answer questions.

But the fact is that we do appropriate the money. We do represent the people. You work for the President and, more importantly, you work for the people who we also represent in smaller sections than obviously the President does.

So my question is this. Are you the kind of personality, and if you are, I'd like to know—I want you to sort of prove it to me, give me an example—where you go in and you say to your boss you've got to do this and you are going to do it. You are going to do it. You don't want to do it and I understand that, but you are going to do it because it is the law, because it is required, because it is your instinct that it needs to be done, because these relations have to be good because if we don't then we just play gotcha all the time. That is human nature and it is bad human nature.

But how can I have a sense that you are not just a skilled collator of facts and information leading you to, as you say, the right kinds of intuitions but that you'll also take on the person to whom you report and threaten to resign, if necessary, if the issue is important enough. What aspect of your personality should give me confidence?

Mr. MULLER. Good question. I am going to try to answer with a specific example. I am going to be a little bit opaque because I want to be careful about privilege. But I will give you a specific one and one which one of your witnesses from yesterday would be able to tell you more about from the government's perspective if it ever became appropriate.

My firm represented and represents many financial institutions. I was called into a case on what was then not yet a case actually on a Wednesday to give advice to this financial institution about a Federal Reserve examination which was to begin the following Monday.

I gave some advice with respect to what that client could do or not do in connection with preparing for that examination. It ended up taking the matter first to the CEO, from there to the board of directors, and ultimately, in a personal conversation with the chairman of the board when the advice was not taken, I told him that I was going to be consulting my firm. We withdrew from the representation of that client on a Sunday evening at about 11 o'clock. The Federal examination went forward. Two-and-a-half years later that client was indicted. It was indicted in connection with the matter that had been a part of the discussion that we had had.

There is nothing more important to me than my credibility. There is nothing more important to me than my reputation. I will risk, indeed give up, the financial benefits of my practice for this job, but I will never do anything that would in any way call that into question and there is nothing that—I would never have any hesitation to give the advice that I think is correct. In fact, the people in the General Counsel's office already know I expect push-back when I come up with a view. I give push-back. I think that is my job.

I am not sure I answered the entirety of your question, as I think back on it now. I was giving the example.

Senator ROCKEFELLER Could you give me some more then?

Mr. MULLER. Well, I am trying to remember now if—you asked for an example—I am trying to remember now the general context in which I gave you the example. I remember the point of it. But the question was essentially whether I'd have any hesitation in effect in telling the DCI what he needed to do—oh, I know.

The context of the question had to do with the relationship between the Intelligence Community and the CIA on the one hand and this Committee on the other. Many of the crisis kinds of cases that I came into didn't need to be crises when they started. They became that because of the way in which the client dealt with the regulator or the U.S. Attorney or others, unnecessarily so. Whether the reason for the mistrust was inadvertence or deliberate is really irrelevant, because from the point of view of the regulator the result is the same and the two are indistinguishable.

There have been a number of cases, and I am trying to think of any that are public, where we have come in and my approach has always been the same. There is no excuse for being anything other than forthright with your regulator. I have an expression which I sometimes give to clients, particularly in the criminal arena. I tell them you can try to punch the big bear in the nose or you can smile and try to work with it. The latter is generally the better

course, particularly in an industry where you have no choice but to deal with that regulator.

There may be times when in response to a subpoena or otherwise it is impossible or difficult to meet the deadline. You never let it pass. You talk about it. You do everything within your power to meet it. I read the report that accompanied this Committee's authorization bill this year which described the performance on congressionally-demanded reports as dismal. I looked at the statistics as well. I immediately asked to understand those facts. I understand that work is being done on it now, but I also fully understand why this Committee would be, and was and is upset about that.

I can tell you that from my perspective there is nothing more important than full candor. I can't promise that without knowing particular facts that every question you ask I'll be able to answer. I can promise that if I can't answer those questions or if there is a reason why for one reason, legitimate reason, or another legitimate reason there is something that can't be done, you'll be told. You'll be told the reason so that there is transparency with that regard.

Senator ROCKEFELLER. Thank you. The final question I would have would be your transition assuming this all works out. One way of asking that would be what have you done to prepare. You have obviously just read something which I wouldn't have guessed you would have read, but you did and you know you had a reaction to that from that.

There have been all kinds of reports that have been done over the last many years on the reorganization of the Intelligence Community. Those reports are always dead on arrival. It is sort of fated, but it doesn't mean that they are wrong. It is been really stunning, I think, to those of us on this Committee to see the lack of coordination and the turf nature of the Intelligence Community, in the case of the FBI because in the case of the lawyer he doesn't want to give up information because it might jeopardize his case and that's understandable. You put in the Intelligence Community and that information doesn't go to somebody else who needs to have it because they're surveilling and that is a fine line.

But what have you done to prepare yourself to learn the so-called Chinese language and what is your approach, given the ferocity of the pace at which everything is moving, to preparing yourself for the nuances that don't fall specifically under knowing the law?

Mr. MULLER. As you know I have had a practice of law, but I have also done what I think I could do up until now to begin to prepare. I didn't obviously want to pre-judge the conclusion of this Committee. But first, with respect to the reorganization, I have asked for—although not received—the Scowcroft report. I have clearances, but so far I think, understandably I am cleared up to only a certain level. I have not yet printed or gotten the report for Zoe Baird's group, but I obviously will read that.

I have read a fairly thick set of materials that I have was given by John Rizzo and Fred Manget at the Agency to read to sort of get a general sense of the law. I have read and have the kind of understanding one gets without having a specific matter in front of you, you know, all of the statutes and Executive orders.

I have read the authorization bills and then I have asked for and so far had briefings, again up to the secret level, from the heads of each of the groups within the General Counsel's office. I have read 1-page biographies of each of the lawyers in that office and I have given them—I guess I haven't given them yet—I have given orally and they have a longer list of things that I have asked for—things that come to the top of my head.

With respect to that I have asked for an index of all of the IG reports for the last 10 years. I have asked for copies of each of the IG reports that relate to the General Counsel's office. I have asked for a collection of the findings in effect. I have asked for a variety of materials like that—a list and a compilation of the congressional prohibitions, whether precatory or otherwise that are still current.

My plan, subject to the DCI, of course, and conversations with the deputies who are experienced in the office—and we had a brief conversation about this yesterday—is to spend a significant amount of time walking the building, meeting with the clients and learning the business.

There is no way to give intelligent and sound advice without understanding the business and, of equal importance, without the client believing that you understand the business. So I would expect to spend a significant amount of the first at least 4 weeks trying to avoid the incoming while I go and learn what the battlefield looks like.

Senator ROCKEFELLER. I don't want this to sound wrong, but I just want to ask you for my own information. How much traveling have you done in the world? In the Middle East? In South and Southeast Asia?

Mr. MULLER. I spent two summers in Europe. I spent 6—almost 4 months in the Middle East and Africa. In 1971 and 1972 I was the—mostly by accident of fate—became the manager of Middle East and African sales for Harper and Row publishers. My job was to travel to meet booksellers and go to universities throughout the Middle East and Africa. I spent 2½ weeks in Lebanon at that time, well before the war—it was a beautiful place—and throughout Africa. I've been to Europe a number of times. I have never been to South America.

In my work at Davis Polk I have had a number of European clients and spent a significant amount of time in Switzerland, in Spain, investigating and doing cases there, in Germany. I traveled in Eastern Europe on two occasions during summers, spent 2½ weeks in East Germany when I was 17. At one time, I had passable German and passable French—no longer.

Senator ROCKEFELLER. OK, Mr. Muller, I thank you. You understand the nature of our questions.

Mr. MULLER. Of course.

Senator ROCKEFELLER. They are the questions, as you indicated, that we should be asking. I am also very impressed, as Senator Graham is, by your candor and your composure and I think sense of precision and confidence, which is important.

So I draw this hearing to a close and repeat what he says, that we'll do this as expeditiously as possible. The Agency needs a General Counsel and we want it to work.

Mr. MULLER. Thank you very much, Senator.

Senator ROCKEFELLER. Thank you, sir.

[Whereupon, at 10:50 a.m., the hearing adjourned.]

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. NAME: Scott W. Muller

2. DATE AND PLACE OF BIRTH: February 15, 1950; Stamford, Connecticut

3. MARITAL STATUS: Married

4. SPOUSE'S NAME: Caroline Adams Muller

5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Adams

6. NAMES AND AGES OF CHILDREN:

NAME	AGE
Christopher Adams Muller	22
Robin McPherson Muller	20
Peter Severance Muller	16

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
Georgetown Law Center	9/72-6/75	J.D.	6/75
Princeton University	9/67-6/71	B.A.	6/71

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION AND DATES OF EMPLOYMENT.)

EMPLOYER	POSITION/TITLE	LOCATION	DATES
Harper & Row Publishers	Sales Assistant	New York, NY	6/71-8/71
United States Army-National Guard	Trainee, Pvt.	Fort Jackson, SC	8/71-12/71
Harper & Row Publishers	Mgr. Middle East & Africa	New York, NY	12/71-6/72
Hon Patricia Schroeder U.S. House of Representatives	Aide	Washington, DC	6/73-8/73
Davis Polk & Wardwell	Summer Associate	New York, NY	6/74-8/74
Watergate Special Prosecution Force	Law Clerk	Washington, DC	10/74-6/75 (part-time)
Hon. Francis L. Van Dusen U.S.C.A. (3rd Cir.)	Law Clerk	Philadelphia, PA	7/75-7/76
Davis Polk & Wardwell	Associate	New York, NY	9/76-12/78
United States Department of Justice	A.U.S.A., S.D.N.Y.	New York, NY	12/78-3/82
Davis Polk & Wardwell	Associate; Partner	NY and Wash, D.C.	3/82-9/02
Georgetown Law Center	Adjunct Professor (criminal investigative tactics and issues)	Washington, DC	1995-97

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

See above.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

See response to Question 14.

My interest in National Security matters dates back to the mid-1980s when I was a member of the Arms Control and National Security Affairs Committee of the Association of the Bar of the City of New York. As has been true of several previous CIA general counsels, my private, prosecutorial and teaching experience has not to date necessitated the development of specialized intelligence or national security expertise. However, I have current and extensive experience over 25 years with the federal criminal law enforcement process as prosecutor, teacher and defense lawyer. I have worked extensively with General Counsels of large organizations, and have organized and managed large groups of lawyers. Particularly with the help and support of the Agency's experienced cadre of lawyers, I am confident that my training as a litigator and crisis manager and my law enforcement experience will enable me to dig quickly and deeply into the legal, compliance and reporting issues facing the Agency and, as appropriate, component parts of the Community. In my view, there is no substitute for the ability to do so with a fresh perspective and a questioning mind, operating without preconception.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

As an Assistant United States Attorney, I received two commendations: one from the Federal Bureau of Investigation for my work on a labor racketeering case and one from the Department of Agriculture for my work on a case involving program fraud.

In 1986, I was named by the New York Law Journal as one of New York's "Rising Stars in 13 of New York's Largest and Most Prestigious Law Firms."

In 1995, I was selected for listing in the "Guide to the World's Leading White Collar Crime Lawyers."

In 1997, I was selected for listing in the "International Who's Who of Business Crime Lawyers."

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE OR OTHER SIMILAR ORGANIZATIONS):

ORGANIZATION	OFFICE HELD	DATES
Boys & Girls Clubs of America	National Trustee	1996-present
St. Albans School for Boys (Washington, DC)	Governing Board Member; Chair, Strategic Planning Committee	2000-present
Center for the Community Interest (New York, NY)	Chairman; Board Member	1998-present
St. Paul's School (Concord, NH)	Trustee; Alumni Fund Chairman	1995-1996
American Law Institute	Member	1990-present
American Bar Association	Vice Chairman White Collar Crime Committee	1992-1993
Federalist Society	Member, Executive Committee, Federalism and Separation of Powers Practice Group	1997-1999
Metropolitan Club of Washington, DC	Member	1995-present
New York Yacht Club	Member	1986-present
Gibson Island Yacht Squadron	Member	1999-present
Nantucket Yacht Club	Member	1995-present
Chevy Chase Club	Member	1992-present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT OR TRANSCRIPT):

As a member of the Georgetown Law Review, I wrote an article in 1975 on the Civil Rights Provisions of the then Proposed Federal Criminal Code. A copy is enclosed. From time to time, I have participated in panel discussions at American Bar Association and Practicing Law Institute seminars. I am aware of no record of those discussions.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

A good General Counsel is energetic, proactive, objective and sufficiently mature to offer sound advice under pressure and in the face of competing demands. I will bring those qualities to the job of General Counsel of the Central Intelligence Agency.

For the past 20 years as a litigator at Davis Polk & Wardwell, I have specialized in "crisis management" for large institutions dealing with complex, multi-forum criminal, civil and regulatory problems. The heart of my practice has involved "parallel" proceedings where clients are facing simultaneous investigations by federal, state and foreign criminal, regulatory and legislative authorities as well as the media, and multiple civil claims here and abroad by putative victims, shareholders (suing both directly and derivatively) and others. Frequently, these matters have involved high public profiles such as Texaco, Inc.'s crisis several years ago involving allegations that top executives had uttered racial slurs and obstructed justice in a civil rights case.

This crisis management practice has required me to master specialized areas of fact and law under tremendous time pressure and to give advice, often in a highly charged atmosphere, on how to respond to constituencies with frequently competing demands and objectives. Almost invariably, the subject matters in these cases are completely new, and often the cases involve highly specialized areas where those involved had initial doubts about whether either the legal or factual subject matter could effectively be investigated, simplified and, ultimately, presented to others by anyone without extensive prior experience. In each case, any doubts proved to be unwarranted.

My crisis management practice has also given me extensive experience in assembling, managing and coordinating large teams of lawyers and other specialists. At times, I have had

cases involving hundreds of cases in various jurisdictions and I have managed not only teams of lawyers from my own firm but literally scores of lawyers from other firms, forensic accountants, in-house investigative teams and public relations and other specialists.

In addition, a significant number of my cases have involved conducting internal investigations for major institutions and the task of establishing and communicating clear, simple and practical rules of conduct to govern future activities and then advising on specific matters arising under those rules. This experience will be directly relevant to my duties as General Counsel. See response to Question 46.

From a substantive point of view, I have spent the entirety of my 25 years as a lawyer specializing in federal criminal law, and my knowledge of the legal issues surrounding the investigative and law enforcement process is current and extensive. Apart from serving with the Watergate Special Prosecution Force and as an Assistant United States Attorney, I have taught advanced courses as an Adjunct Professor at the Georgetown University Law Center on the subject of federal criminal investigative techniques and the prosecution and defense function and have served as a Vice Chair of the ABA's White Collar Crime Committee. My cases virtually always involve interaction with federal prosecutors and require intimate knowledge of the federal criminal investigative and discovery process.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

Over the past ten years, I have made contributions to the Republican National Committee, the Republican Party of Maryland, the Republican Party of Montgomery County, MD, and the Presidential Campaigns of George H.W. Bush, Robert Dole, and George W. Bush. My contributions averaged approximately $1,000 or less. In this time period, I also made occasional contributions to individual Republican candidates for federal office. I do not have records of the amounts or candidates.

I served as an advisor to Bush/Quayle '92 on various matters including constitutional issues relating to the Electoral College. I served as an advisor to Dole/Kemp '96 on crime and civil justice reform issues.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

I have never been a candidate for public office.

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

In the 1970s I worked briefly on an air crash litigation on behalf of the Airport Authority of the Spanish Government.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

Corporate lawyers in my firm have an extensive transactional practice and from time to time are involved in large corporate transactions involving foreign Governments and government owned entities. I have never been involved in such representations and have no knowledge of the nature or details of any of the representations. At my request, the firm has compiled the following list of "Foreign Government and Government-Related Entity Clients" (January 1, 1990 to Present):

"Foreign Government and Government-Related Entity Clients of Davis Polk & Wardwell
(January 1, 1990 to Present)

Following is a list of foreign governments and government-related entities that Davis Polk & Wardwell has represented. In general, our representation of these governments and government-related entities has been in relation to privatizations involving securities offerings and/or mergers and acquisition activity; debt offerings; and credit financings. The firm has also represented third parties such as underwriters and financial institutions in transactions involving governments and government-related entities.

The firm's client matter database tracks matters that are active as of January 1, 1990, and this list reflects the firm's representations from that date forward. While the firm has made every effort to identify all instances in which Davis Polk has represented a government controlled-entity, it is not always clear as to whether an entity is controlled by a government.

Please contact the firm if you require any additional information on this topic.

Government Clients

Government of Belize
Kingdom of Spain
Kingdom of Thailand/Bank of Thailand
Province of Saskatchewan
United Kingdom (Her Majesty's Government)

Government-Related Entity Clients

Banco de España
Bangkok Metropolitan Bank
Bank Nederlandse Gemeenten
Caisse d'amortissement de la dette sociale (CADES)
Canadian National Railway
Companhia Vale do Rio Doce (CVRD)
Corporación Bancaria de España
Department of Trade and Industry (U.K.)
Deutsche Pfandbrief und Hypothekenbank
Development Bank of Singapore
Empresa Nacional de Electricidad (Endesa)
Finavga
Government Development Bank for Puerto Rico
Hungarian Foreign Trade Bank
ICICI Bank
Japanese Ministry of Finance
Luz del Sur
Mahanager Telephone Nigam Limited

National Bank of Slovakia
Österreichische Industrieholding (ÖIAG)
Petron
Repsol
Royal Bank of Canada
Saudi Arabian Monetary Agency
Sociedad Estatal de Participaciones Industriales
South Australian Government Financing Authority
Telecom Italia
Telefónica
Telefónica del Perú
Telekom Austria
Telecom Argentina STET - France Telecom
Temasek Holdings"

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

Over the past ten years, I have had numerous meetings with federal law enforcement officials from various agencies, including the Department of Justice, the Securities and Exchange

Commission, the Department of Treasury, the Federal Reserve, and the Office of Thrift Supervision, on behalf of clients who were the subjects of investigations by those agencies.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes, subject to receipt of my withdrawal benefit, partnership capital and interest, payout of earnings through the date of my withdrawal, and administration of my retirement plans, as disclosed in SF278 (page 18 of 21).

20. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

See SF278 at page 18 of 21.

21. DO YOU HAVE ANY PLANS, COMMITMENTS OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No. I do intend to continue service (without compensation) as a member of the Governing Board of St. Albans School, a National Trustee of the Boys & Girls Clubs and a board member of the Center for the Community Interest.

22. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR

SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

Not applicable.

23. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE INTELLIGENCE COMMUNITY, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

No.

24. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE
See SF278, page 19 of 21.			Self
Braman B. Adams Trust	Trustee	1980-present	Spouse

25. LIST ALL GIFTS EXCEEDING $250 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

None.

26. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION
See Schedule A of SF278.		
Home in Maryland	$1,750,000	Estimate
Cabin in Wyoming	$600,000	Estimate

27. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF $10,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE D OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT
See Schedule D of SF278.		
Mortgage on Maryland home	Citibank	$400,000
Mortgage on Wyoming cabin	Citibank	$400,000

28. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

29. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING $200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

	1997	1998	1999	2000	2001
SALARIES					
FEES					
ROYALTIES					
DIVIDENDS		See Attachment 1.			
INTEREST					
GIFTS					
RENTS					
OTHER					
TOTAL					

30. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS.

Yes.

31. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

Federal Returns
New York State Returns
Maryland Returns

My firm pays taxes on behalf of the partnership and its partners in various foreign jurisdictions.

32. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

33. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN $5000 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

The following is a list of clients on whose matters I personally worked and who were billed more than $5,000 with respect to my services:

Arthur Andersen
Aetna Insurance Co.
AT&T Wireless Inc.
Baker Donelson Bearman & Caldwell (law firm)
Banco Santander Central Hispano
Bankers Trust Company
Bridgestone Firestone, Inc.
Chevron Texaco (formerly Texaco)
Citigroup, Inc.
ImClone Systems, Inc.
Leonard Judd (Washington Group International, Inc.)
James McDermott
John Morrell & Co.
MCI Communications (now Worldcom)
PepsiCo Inc.
Phillip Morris Company
Pfizer Inc.

Prudential Insurance Co.
Prudential Securities, Inc.
Qwest Communications
Reed Elsevier Ltd.
Roche Holdings Inc. and F. Hoffman LaRoche
Salomon Smith Barney Inc.
A. Alfred Taubman
Texaco Inc.
UBS PaineWebber
Warner Lambert Co.
Zuckerman, Spaeder, Goldstein & Taylor (Washington, D.C. law firm)

I am admitted in New York, the District of Columbia and numerous federal courts.

34. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

No. I have been informed that this is not necessary.

As set forth in a letter agreement signed on September 4, 2002, I will recuse myself from all matters in which I have a direct or indirect financial interest and all securities transactions will be pre-cleared with Ethics Counsel pursuant to a reporting arrangement between my financial advisor and Ethics Counsel at the Agency.

35. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

Not applicable.

PART E - ETHICAL MATTERS

36. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

I was an Assistant U.S. Attorney in the Southern District of New York from 1978-1982. I prosecuted a fraud case against a defendant named Gary Zambito. After his conviction and denial of his appeal, Zambito filed a grievance with the District Court of Disciplinary Committee. The grievance was dismissed.

37. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No.

38. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

39. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

Although I do not specifically recall it, I was the named requestor in a Freedom of Information Act request to the United States Department of Justice and the named plaintiff in a follow-on action filed on behalf of a client, NYNEX (now Verizon), in the early 1990s.

Several years ago, a woman filed a complaint in the DC Superior Court against my son arising from an auto accident involving my son. The action, which named me as a co-defendant with my son, was dismissed on res judicata grounds based on a prior favorable in my son's favorr verdict in a Maryland case. I have not been a party in any other proceeding or litigation.

40. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

Yes. I was deposed in a civil action brought against Texaco, Inc. by a former Texaco employee who was disciplined by Texaco for his participation in the withholding of documents called for in a civil rights litigation to which Texaco was a party. I had given Texaco legal advice in connection with the matter. The matter has been resolved.

41. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

PART F - SECURITY INFORMATION

42. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

43. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

I have already taken and passed a polygraph examination in connection with this nomination.

44. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

45. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE DIRECTOR OF CENTRAL INTELLIGENCE, THE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE, THE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT, THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS RESPECTIVELY IN THE OVERSIGHT PROCESS.

As a matter of law and sound public policy, Congress has a significant and important oversight role to play in the intelligence arena to assure, among other things, that the intelligence activities of the United States are conducted in conformity with the Constitution and the laws of the United States. Whatever the precise contours of that role and authority in a particular matter, the DCI, the DDCI, the DDCI for Community Management and the General Counsel of the CIA owe to the Congress, and to SSCI and HPSCI in particular, a duty of full candor and, as a part of the Executive Branch, the duty to faithfully execute the laws of the United States. Under Executive Order 12333, this includes a duty to co-operate with Congress in the conduct of its oversight responsibilities. See also Response to Question 46 below.

46. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

The General Counsel of the CIA is the chief legal officer of the Agency and, in that capacity, has both advisory and compliance responsibilities to the Agency and DCI.

In his capacity as legal advisor to the Agency, the General Counsel's duty is to provide legal advice to enable the Agency more effectively to carry out its mission, consistent with the laws and Constitution of the United States. A central part of this duty is the duty to identify proactively the legal issues that confront the Agency, to help decision makers at all levels understand the extent to which these issues are (or are not) implicated in a particular matter, and to provide timely, objective, creative and independent advice on how the Agency can most effectively carry out its legal and operational responsibilities. In fulfilling this role, it is important not only to make clear what is prohibited but also to insure that the Agency's mission is not inhibited by misconceptions about the applicable rules and laws.

The General Counsel has a duty to assure that Agency executives and personnel are aware of and understand their legal obligations and that the Agency has in place systems designed to avoid violations of law and to detect and report them if they occur. To the extent that the Agency and the DCI (as head of either the Agency or the Intelligence Community) have legal obligations, it is the duty of the General Counsel not only to be sure they are aware of those obligations but to also assist the DCI in their fulfillment. This includes, among other things, the duty to keep Congress "fully and currently informed." While fundamental to his function even in the absence of any written mandate, the General Counsel has specific obligations as provided in Executive Orders 12333 and 12863 to report to the DCI, to the Attorney General and/or to the Intelligence Oversight Board possible violations of law and/or intelligence activities which the General Counsel has reason to believe may be unlawful or contrary to Executive Order or Presidential Directive The General Counsel also has a duty to advise the DCI, in the fulfillment of the President's statutory obligation to ensure that any illegal intelligence activity is reported promptly to the Intelligence Committees as well as any corrective action that has been taken or is planned.

In carrying out these functions, the General Counsel has a responsibility to manage the Agency's internal legal team, to represent the Agency in its interaction with other elements of the Intelligence Community, with law enforcement and other elements of the Executive Branch and with the Congress. As discussed below in response to Question 47, the General Counsel may also have other responsibilities with respect to the Community.

47. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY WITH RESPECT TO THE OTHER AGENCIES WITHIN THE INTELLIGENCE COMMUNITY.

Section 20 of the Central Intelligence Agency Act of 1949 provides that, in addition to serving as the General Counsel of the Central Intelligence Agency, the General Counsel "shall perform such functions as the Director of Central Intelligence may prescribe." The General Counsel's role with respect to the Community is thus established by the DCI in his capacity as head of the Intelligence Community. Subject to the direction of the DCI and particularly in light of the challenges of the current war on terror and the legislative and other changes that are underway as a result, I believe that the General Counsel of the CIA can play a useful role in assisting the DCI and the Community as a whole in accomplishing their joint missions in a coordinated and effective fashion.

48. DESCRIBE THE POSITIONS YOU HAVE HELD INVOLVING THE PRACTICE OF LAW, INCLUDING YOUR PRESENT POSITION, IN PARTICULAR AS THEY RELATE TO THE INTELLIGENCE COMMUNITY AND/OR NATIONAL SECURITY.

See Response to Question 14.

49. DESCRIBE WHAT YOU BELIEVE WILL BE THE MOST CRITICAL LEGAL ISSUES THAT YOU WILL HAVE TO ADDRESS AS GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE AGENCY.

To a large extent, this Committee, the President and the DCI will decide "the most critical issues that I will have to address," and I believe it is premature at this point for me to express an independent view on this issue. At the same time, it is apparent that the Agency, the Intelligence Community and the Nation as a whole now face, simultaneously, a host of related issues that have been brought into sharp focus by the events of September 11 and the increasing risk posed by the proliferation of WMD, including the following:

1. The ongoing re-examination of the structure of our national security capabilities and the relationship between foreign intelligence and domestic law enforcement raises significant issues about the proper balance between crafting tools (new and old) to prevent attacks and disrupt terror networks and WMD proliferation and respecting the rights of U.S. persons. It is critical in

this transition that the relevant rules be simplified, and that lawyers add (and be perceived to be adding) value in the accomplishment of the Community's mission.

2. The events of September 11, the threat of WMD proliferation, globalization and technological advances in the past 20 years necessarily occasion the continuing need to evaluate the rules of engagement and the related laws, Executive Orders and regulations with respect to our adversaries abroad and their domestic presence.

3. One cannot read the Report of this Committee accompanying the "Intelligence Authorization Act for Fiscal Year 2003" without concluding that the Intelligence Community and the Committees would be well served by renewed efforts to foster a relationship of trust and mutual respect between the Community and its Congressional partners.

AFFIRMATION

I, Scott W. Muller, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

September 27, 2002 Scott W. Muller

(Notary)

My Commission Expires June 30, 2007

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be General Counsel of the Central Intelligence Agency, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

Signature

Date: September 27, 2002

ATTACHMENT 1 TO QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES
QUESTION NO. 29
(Scott W. Muller)

	1997	1998	1999	2000	2001
SALARIES	1,329,145	1,624,840	1,762,917	1,734,407	1,718,362
FEES	0	0	0	0	0
ROYALTIES	0	0	0	0	0
DIVIDENDS	18,705	21,849	23,852	29,105	17,008
INTEREST	9,206	15,287	26,866	29,510	39,726
GIFTS	50,000	50,000	70,000	70,000	70,000
RENTS	1,619	861	1,633	1,659	1,589
OTHER	58,555	211,994	24,646	97,404	0
TOTAL	1469227	1926829	1911913	1964085	1848686

NOTES

1. "Salaries" consists of Davis Polk & Wardwell partnership income per Schedule E of Form 1040 plus $600 from Georgetown University Law Center in 1998.

2. "Gifts" are annual gifts from my mother-in-law to me, my spouse and each of my three children and, beginning in 1999, payment of one child's school tuition of approximately $20,000

3. "Rents" are pass through income from Stratford (Conn.) Operational Corp. (now liquidated), Silver Screen Partners III L.P. (now liquidated) and Sembrar LLC.

4. "Other" consists of capital gains income from the sale of publicly traded securities.

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THE GEORGETOWN LAW JOURNAL

VOLUME 63
1974-1975

GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON, D.C.

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320-101

LEGISLATING CIVIL RIGHTS: THE ROLE OF SECTIONS 241 AND 242 IN THE REVISED CRIMINAL CODE

On November 8, 1966, the Congress established the National Commission on Reform of Federal Criminal Laws and charged it "to make recommendations for revision and recodification of the criminal laws of the United States . . . ."[1] The Commission's work,[2] supplemented by voluminous Senate hearings,[3] has resulted in the introduction of three alternative pieces of legislation.[4] Despite the congressional mandate to modernize the federal criminal law, all three proposals now before the Congress recommend the retention of sections 241[5] and 242[6] of title 18 of the *United States Code*, companion civil rights statutes derived from the Civil War era. Section 241 purports to safeguard a citizen's rights and privileges under the Constitution and the laws of the United States against private conspiracies and provides for a maximum imprisonment of 10 years and a maximum fine of $10,000.[7] Section 242 proscribes acts under color of law that deprive an inhabitant of his statutory or constitutional rights and

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1. Act of Nov. 8, 1966, Pub. L. No. 89-801, § 3, 80 Stat. 1516.
2. *See* FINAL REPORT OF THE NAT'L COMM'N ON REFORM OF FEDERAL CRIMINAL LAWS (1971); NAT'L COMM'N ON REFORM OF FEDERAL CRIMINAL LAWS, STUDY DRAFT OF A NEW FEDERAL CRIMINAL CODE (1970) [hereinafter cited as STUDY DRAFT]; I-III WORKING PAPERS OF THE NAT'L COMM'N ON REFORM OF FEDERAL CRIMINAL LAWS (1970) [hereinafter cited as WORKING PAPERS].
3. *See Hearings on Reform of the Federal Criminal Laws Before the Subcomm. on Criminal Law and Procedures of the Senate Comm. on the Judiciary*, 92d Cong. 1st Sess., pts I-II (1971) [hereinafter cited as *Hearings*]; *id.*, 92d Cong. 2d Sess., pts III-IV (1972); *id.*, 93d Cong., 1st Sess., pts. V-IX (1973).
4. *See* S. 1400, 93d Cong., 1st Sess. (1973) [hereinafter cited as Administration bill]; H.R. 10047, 93d Cong., 1st Sess. (1973) [hereinafter cited as Commission bill]; S. 1, 93d Cong., 1st Sess. (1973) [hereinafter cited as McClellan bill].
5. Act of May 31, 1870, § 6, 18 U.S.C. § 241 (1970).
6. Act of Apr. 9, 1866, § 2, 18 U.S.C. § 242 (1970).
7. *See* Act of May 31, 1870, § 6, 18 U.S.C. § 241 (1970). The statute states:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Id.

provides for a maximum imprisonment of one year and a maximum fine of $1,000.[8]

The proposed re-enactment of the anachronistic language of sections 241 and 242 reflects a congressional failure to define its civil rights objectives and may create undesired results. At no time during the judicial expansion of sections 241 and 242 has the Congress explicitly attempted an in-depth analysis of the difficult issues raised by the statutes. A century of experience has revealed a painstakingly slow application of the statutes to basic rights and has been punctuated by a series of prosecutorial failures. Further, fundamental rights fall outside the ambit of the statutes' protections because the Congress has failed to express a clear intent to include those rights. This experience strongly suggests that in order to render federal civil rights policy both complete and effective, the Congress must carefully examine and resolve the basic policy issues raised by the use of federal criminal sanctions to protect specific rights and must embody those policy conclusions in reasonably specific language that will guide courts, prosecutors, and defendants alike.

THE CONSTITUTIONAL FRONTIER

In view of judicial willingness to uphold far-reaching civil rights legislation when supported by a constitutional provision that would protect the right invaded,[9] analysis of the scope of sections 241, 242, and the new proposals must begin with a discussion of the parameters of congressional authority in the civil rights area. Congressional power over both private and state action in the civil rights area emanates from a number of constitutional sources. Read with the necessary and proper clause,[10] the commerce clause[11] authorizes the Congress to devise a regulatory scheme prohibiting activity, whether private or official, where there is a rational basis for a congressional

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8. *See* Act of Apr. 9, 1866, § 2, 18 U.S.C. § 242 (1970). The statute states:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

Id.

9. *See* Griffin v. Breckenridge, 403 U.S. 88, 104 (1971) (section 1985(3) of title 18 of *United States Code* reaches private conspiracy to interfere with right to interstate travel); Action v. Cannon, 450 F.2d 1227, 1233 (8th Cir. 1971) (en banc) (section 1985(3) reaches private conspiracy to interfere with private church service).

10. U.S. CONST. art. I, § 8, cl. 18.

11. *Id.* art. I, § 8, cl. 3.

finding that the chosen regulatory scheme is necessary for the protection of interstate commerce.[12] The Supreme Court repeatedly has recognized the Congress's plenary power over federal elections[13] and its authority to protect the right to travel interstate from private interference.[14] An indefinite number of personal rights and corresponding protective powers are implicit in the Constitution[15] or flow from the privileges and immunities clause or article IV.[16] Moreover, section two of the thirteenth amendment, the amendment's analogue to the necessary and proper clause of article I, empowers the Congress to enact legislation deemed necessary to eradicate the "badges and incidents of slavery" imposed either by private individuals or by the state.[17]

In contrast to the necessary and proper clause and section two of the thirteenth amendment, the fourteenth and fifteenth amendments traditionally have provided no federal authority to regulate or punish wholly private conduct.[18] Recently, however, the Supreme Court

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12. *See* Katzenbach v. McClung, 379 U.S. 294, 304 (1964). The triviality of the proscribed activity's putative affect on commerce is generally irrelevant, even where the activity is wholly intrastate. *See* Perez v. United States, 402 U.S. 146, 154 (1971); Wickard v. Filburn, 317 U.S. 111, 127-28 (1942). *See generally* Comment, *The Scope of Federal Criminal Jurisdiction Under the Commerce Clause*, 1972 U. ILL. L. FORUM 805.

Congressional reliance on the commerce clause generally obviates the need for case-by-case determinations of constitutionality, for the Congress need not establish the nexus to commerce in every conceivable case but instead may find that certain types of activities generally evince the required affect on commerce. *See* Perez v. United States, *supra* at 153-56 (loan sharking activities); Katzenbach v. McClung, *supra* at 299 (racial discrimination in restaurants). Thus, the constitutionality of statutes enacted under the commerce clause need not be tested against the peculiar facts of individual cases.

13. *See* United States v. Classic, 313 U.S. 299, 317 (1941) (primary elections vital to electoral process; subject to congressional regulation); *Ex parte* Yarborough, 110 U.S. 651, 657-58 (1884) (criminal sanction for interference with voting rights valid); U.S. CONST. art. I, §§ 2, 4. Power to regulate elections also is based on the fifteenth amendment. *See* South Carolina v. Katzenbach, 383 U.S. 301 (1966) (congressional abolition of literacy test requirements valid).

14. *See, e.g.*, Griffin v. Breckenridge, 403 U.S. 88, 105-06 (1971); Shapiro v. Thompson, 394 U.S. 618, 629-33 (1969); United States v. Guest, 383 U.S. 745, 757-60 (1966).

15. *See, e.g.*, *In re* Quarles, 158 U.S. 532, 536 (1895) (power to protect federal informants); Logan v. United States, 144 U.S. 263, 294 (1892) (power to protect prisoner in federal custody); Commonwealth v. Local 542, Operating Eng'rs, 347 F. Supp. 268, 297 (E.D. Pa. 1972) (power to enjoin harassment of federal litigants).

16. *See* United States v. Cruikshank, 92 U.S. 542, 552-53 (1875) (right to assemble peaceably to petition national government); U.S. CONST. art. IV, § 2. *See generally* Feuerstein, *Civil Rights Crimes and the Federal Power to Punish Private Individuals for Interference with Federally Secured Rights*, 19 VAND. L. REV. 641, 651-67 (1966) (discussion of the rights of national citizenship).

17. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 438-39 (1968).

18. *See* Civil Rights Cases, 109 U.S. 3, 25 (1883) (fourteenth amendment); United States v. Reese, 92 U.S. 214, 221 (1875) (fifteenth amendment). State action, however peripheral, has been a prerequisite to judicial and congressional pro-

has re-examined the fourteenth and fifteenth amendments as sources for legislative authority. In *United States v. Guest*[19] the Court upheld an indictment under section 241 of six individuals who allegedly had conspired to deprive blacks of their right to use state-operated facilities.[20] Although the Court read into the indictment an allegation of state action,[21] six Justices expressed the view that section five of the fourteenth amendment authorizes legislation proscribing wholly private conduct.[22] Subsequently, in *Katzenbach v. Morgan*[23] the Court construed section five as a source of congressional authority to enact laws that Congress, in its discretion, deems necessary for the protection of fourteenth amendment rights.[24] Read together, *Morgan* and *Guest* suggest that by appropriate legislation[25] the Congress can proscribe private interference with fourteenth amendment rights.[26]

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tection of fourteenth amendment rights. *See, e.g.*, United States v. Price, 383 U.S. 787 (1966) (state action where private citizens act in concert with law officers); Evans v. Newton, 382 U.S. 296 (1966) (state action where private individuals perform functions governmental in nature); Shelley v. Kraemer, 334 U.S. 1 (1948) (state action where state court enforces racially discriminatory covenant).

19. 383 U.S. 745 (1966).

20. *Id.* at 757.

21. *Id.* at 756-57.

22. *Id.* at 762 (Clark, Black & Fortas, JJ., concurring); *id.* at 782 (Warren, C.J., Brennan & Douglas, JJ., concurring and dissenting). Section five of the fourteenth amendment provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

23. 384 U.S. 641 (1966).

24. *Id.* at 651. In *Morgan* the Supreme Court upheld the constitutionality of section 4(e) of the Voting Rights Act of 1965, barring the use of certain state literacy tests. *Id.* at 643; *see* 42 U.S.C. § 1973b(e) (1970). Prior to the passage of the Voting Rights Act, the Court had refused to find that literacy requirements similar to those in *Morgan* amounted to an unconstitutional denial of equal protection. *See* Lassiter v. Board of Elections, 360 U.S. 45, 53 (1959).

Guest and *Morgan* both dealt with the fourteenth amendment's equal protection clause. Since section five of the fourteenth amendment clearly modifies both the equal protection and due process clauses, there is no reason to believe that congressional power to enforce the due process clause is less extensive than congressional power to enforce the equal protection clause.

25. The appropriateness of congressional legislation under section five of the fourteenth amendment is measured by the standard articulated for the necessary and proper clause by Chief Justice Marshall: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819). Courts will sustain congressional legislation under the fourteenth amendment where there is a perceptible basis upon which the Congress might predicate its judgment that the law is necessary to the protection of fourteenth amendment rights. *See* Katzenbach v. Morgan, 384 U.S. 641, 653 (1966).

26. *See* Action v. Cannon, 450 F.2d 1227 (8th Cir. 1971) (en banc) (power to remedy private interference with a private church service); Commonwealth v. Local 542, Operating Eng'rs, 347 F. Supp. 268, 296 (E.D. Pa. 1972) (power to proscribe private interference with fourteenth amendment right of access to federal courts). *But cf.* Hughes v. Ranger Fuel Corp., 467 F.2d 6, 10 (4th Cir. 1972) (holding in

Although the Constitution may impose limits on congressional power to proscribe all facets of private conduct,[27] no serious constitutional objections to the enactment of far-reaching civil rights legislation presently exist. Therefore, the Congress should tailor its legislative determinations in the civil rights area to the dictates of policy rather than to the possible strictures of the Constitution.[28] Further, the doctrine of strict judicial construction of statutes that approach constitutional frontiers,[29] coupled with judicial deference to legislative determinations,[30] forces the legislative branch to consider carefully the policy implications of its far-reaching legislation.

THE PROPOSALS

Sections 241 and 242 of the present federal criminal code purport to safeguard all rights and privileges secured by the Constitution or laws of the United States. Although historically these two broadly

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Action v. *Gannon* limited to racial discrimination). *See generally* Cox, *The Supreme Court, 1965 Term—Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. (1966); Note, *Federal Power to Regulate Private Discrimination: The Revival of the Enforcement Clauses of the Reconstruction Era Amendments*, 74 COLUM. L. REV. 449, 505-17 (1974); Note, *Congressional Power Under the Civil War Amendments*, 1969 DUKE L.J. 1247. The Supreme Court has not specifically held that the Congress has the power to proscribe private conduct under the fourteenth amendment. *See* District of Columbia v. Carter, 409 U.S. 418, 424 n.8 (1973); Griffin v. Breckenridge, 403 U.S. 88, 107 (1971).

27. The thirteenth amendment, for example, prohibits involuntary servitude, and legislation under section two of that amendment probably must bear some relationship to racial discrimination. *See* Griffin v. Breckenridge, 403 U.S. 88, 105 (1971). The fifteenth amendment refers specifically to "race, color, or previous condition of servitude" and probably is similarly limited. The scope of congressional power under the fourteenth amendment is unclear. *See* Cox, *supra* note 26, at 115-18 (possible limits on congressional power under section five of the fourteenth amendment).

28. Tailoring legislation to policy rather than to the Constitution is not a novel approach. The enactment of section 245 of title 18 of the *United States Code* in reliance on *Guest* and *Morgan* illustrates congressional willingness to exercise its full constitutional authority when policy dictates. *See* Act of Apr. 11, 1968, § 101(a), 18 U.S.C. § 245 (1970); *Hearings*, *supra* note 3, pt. IIID, at 3167; S. REP. No. 721, 90th Cong., 1st Sess. (1968). Section 245, which interdicts private interferences with the right to receive certain federal benefits, relegates the traditional concept of state action to a subordinate position since the prospective defendant need have no relationship to the state. *See* 18 U.S.C. § 245 (1970).

29. *See, e.g.*, United States v. Bass, 404 U.S. 336, 347-50 (1971); Rewis v. United States, 401 U.S. 808, 812 (1971); United States v. Five Gambling Devices, 346 U.S. 441, 449-50 (1953). By applying a doctrine of strict construction when a statute's jurisdictional scope is unclear, the Court forces the Congress to clarify its intent. Where statutes unambiguously manifest an intent to exercise full constitutional authority, congressional debate over policy implications should become more intense. The resultant product then should more clearly reflect the consensus of legislative opinion and more squarely present the judicial issue of constitutionality.

30. *See, e.g.*, Perez v. United States, 402 U.S. 146, 154-57 (1971); Katzenbach v. Morgan, 384 U.S. 641, 653 (1966); Katzenbach v. McClung, 379 U.S. 294, 303-04 (1964).

worded statutes have provided the basis for most civil rights prosecutions,[31] recently the more specific provisions of section 245 have supplemented them.[32] Despite the apparent trend toward specific legislation evidenced by section 245 and by several sections in the three legislative proposals,[33] the bills advocated by the Nixon Administration (Administration bill), the National Commission on Reform of Federal Criminal Laws (Commission bill), and Senator McClellan (McClellan bill) also envision enactment of broadly worded civil rights provisions derived from sections 241 and 242.[34]

THE SCOPE OF PROTECTION

Constitutional Rights. By recommending retention of companion statutes proscribing private and state action, the authors of the three proposals now before the Congress have failed to recognize that sections 241 and 242, which deal respectively with private conduct and with acts under color of law, are redundant. At the same time, the draftsmen of the various proposals apparently have made no attempt to clarify the extent to which section 241 goes beyond section 242 by protecting new substantive rights against wholly private conduct.

Until recently, sections 241 and 242 were considered mutually exclusive. Construing section 242's "under color of law" limitation as synonymous with the fourteenth amendment's state action requirement, courts consistently have held that section 242 protects rights implicit in the due process and equal protection clauses of the fourteenth amendment.[35] In contrast, section 241 contains no "under color of law" limitation and, as a statutory matter, does not require a showing of state action.[36] Viewing the absence of a state action requirement in section 241 as an indication that the Congress did not

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31. *See* II WORKING PAPERS, *supra* note 2, at 769-72; Cressman, *The Unhappy History of Civil Rights Legislation*, 50 MICH. L. REV. 1323, 1344-45 (1952).

32. *See* United States v. Price, 464 F.2d 1217 (8th Cir.), *cert. denied*, 409 U.S. 1040 (1972) (conviction for use of violence to prevent black from using federal recreational facility); 18 U.S.C. § 245 (1970).

33. *See* Administration bill § 1511 (interference with an election); *id.* § 1521 (obstructing an election); *id.* § 1522 (obstructing registration); Commission bill § 1521 (unlawful detention or use of excessive authority in making an arrest, search, or seizure); *id.* § 1531 (safeguarding elections); McClellan bill § 2-7F5 (five specified acts consummated under color of law); *id.* § 2-6H1 (election fraud).

34. *See* Administration bill §§ 1501-02; Commission bill §§ 1501-02; McClellan bill § 2-7F1.

35. *See, e.g.*, United States v. Williams, 341 U.S. 70, 78 (1951) (due process rights); United States v. Ramey, 336 F.2d 512, 515 (4th Cir.), *cert. denied*, 379 U.S. 840 (1964) (fourteenth amendment right to freedom from false arrest); Apodaca v. United States, 188 F.2d 932, 935 (10th Cir. 1951) (privilege against self-incrimination).

36. 18 U.S.C. § 241 (1970).

intend the statute to apply to state-sponsored action,[37] the Supreme Court refused to apply section 241 where state officials were involved.[38]

The absence of an explicit state action requirement in section 241 also prompted the Court to conclude that the Constitution demanded the exclusion of fourteenth amendment rights from the statute's reach. Because judicial thinking about the fourteenth amendment focused on the requisite identification of state action, judges found it difficult to conceive of deprivations of fourteenth amendment rights by private persons.[39] Further, the Congress was deemed powerless to proscribe private interference with rights that the Constitution protected only against state action.[40] Thus, since section 241 was directed at private persons, courts construed the statute to protect only those constitutional or statutory rights existing independent of the fourteenth amendment.[41] The Congress purportedly built this constitutional limitation into section 241 by limiting the section's protection to rights "secured" by the Constitution, whereas section 242 protected rights "secured or protected" by the Constitution.[42] Consequently, the abridgement of any rights protected by the fourteenth amendment simply fell outside the scope of section 241.

Both the constitutional and statutory rationales for limiting the ambit of section 241 were eliminated by two recent Supreme Court

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37. *See* United States v. Williams, 341 U.S. 70, 75-76 (1951).

38. *Id.* at 81-82. Only four members of the *Williams* court actually agreed that section 241 did not apply where state action was present. Justice Black concurred in the final result on other grounds. *See id.* at 85 (Black, J., concurring). Four Justices dissented. *See id.* at 87 (dissenting opinion).

39. *See* Griffin v. Breckenridge, 403 U.S. 88, 97 (1971).

40. *See, e.g.*, United States v. Wheeler, 254 U.S. 281, 297-98 (1920) (private conspiracy to force persons to leave state not within scope of section 241); United States v. Powell, 212 U.S. 564, 565 (1909) (per curiam) (private lynch mob not within scope of section 241); Hodges v. United States, 203 U.S. 1, 18 (1906) (private conspiracy to force persons to give up jobs and leave state not within scope of section 241); *cf.* United States v. Williams, 341 U.S. 70, 77-78 (1951) (dictum) (fourteenth amendment applies only to states; section 241 limited to rights guaranteed against private interference).

41. *See, e.g.*, *In re* Quarles, 158 U.S. 532, 536 (1895) (right to inform federal authorities of federal crimes protected by section 241); Logan v. United States, 144 U.S. 263, 285 (1892) (right of prisoner in federal custody to protection against private violence protected by section 241); United States v. Lancaster, 44 F. 885, 890-91 (W.D. Ca. 1890) (right of federal litigants to avail themselves of federal machinery protected by section 241). *See generally* Feuerstein, *supra* note 16, at 641-68.

The history of section 1985(3) of title 42 of the *United States Code* presents an analogous example of strict statutory construction resulting from doubts about congressional power to condemn private conduct. *Compare* Collins v. Hardyman, 341 U.S. 651, 658 (1951) (construing section 1985(3) to require action under color of law) *with* Griffin v. Breckenridge, 403 U.S. 88, 95-96 (1971) (abandoning the construction adopted in *Collins v. Hardyman* in light of the evolution of constitutional law); *see* 42 U.S.C. § 1985(3) (1970).

42. 18 U.S.C. §§ 241-42 (1970); *see* United States v. Williams, 341 U.S. 70, 78 (1951).

cases. In *United States v. Guest*[43] the Supreme Court, by indicating a willingness to abandon its traditional preoccupation with the state action requirement for congressional legislation, removed some of the constitutional difficulties underlying the exclusion of fourteenth amendment rights from section 241.[44] In *United States v. Price*[45] the Court found that the legislative history of section 241 failed to justify the conclusion that either state action or fourteenth amendment rights were excluded from the statute's coverage.[46] Announcing that the statute should be accorded a sweep as broad as its language,[47] the Court held that section 241, like section 242, protects fourteenth amendment rights when the defendant has acted under color of law.[48]

Under the *Price* statutory construction, section 242 was essentially rendered superfluous because section 241 protects at least as many rights as section 242 and applies to infringement of those rights by persons acting under color of law as well as by private persons. Despite *Price*, the draftsmen of the three bills now before the Congress retain the language by which sections 241 and 242 describe the rights they protect[49] and preserve the state action-private conduct distinction.[50] While the Commission's versions of sections 241 and 242 retain those features that presently distinguish the statutes,[51] the draftsmen of the McClellan bill have eliminated many of these differences[52] and have thereby foreclosed argument that retention of the companion statutes is warranted.[53]

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43. 383 U.S. 745 (1966).

44. *Id.* at 762 (Clark, Black & Fortas, JJ., concurring); *id.* at 782 (Warren, C.J., Brennan & Douglas, JJ., concurring and dissenting).

45. 383 U.S. 787 (1966).

46. *Id.* at 801-06.

47. *Id.* at 801; *see* United States v. Guest, 383 U.S. 745, 753 (1966).

48. 383 U.S. at 798.

49. The Commission and McClellan versions of section 241 safeguard "any right or privilege secured . . . by the Constitution or laws of the United States." Commission bill § 1501; McClellan bill § 2-7F1(a)(1)-(2). The Commission and McClellan versions of section 242 protect "rights, privileges or immunities secured or protected by the Constitution or laws of the United States." Commission bill § 1502; McClellan bill § 2-7F1(a)(3)(i). By adding the word "immunity" to section 1501, the Administration bill's analogue to section 241, and deleting the phrase "or protected" from its version of section 242, the Administration bill eliminates the differences between the phraseology of the two sections. *See* Administration bill §§ 1501-02. The changes have no substantive effect. *See* II WORKING PAPERS, *supra* note 2, at 808-09.

50. *See* Administration bill §§ 1501-02; Commission bill §§ 1501-02; McClellan bill § 2-7F1.

51. The Commission bill essentially retains the language of present law. *See* 18 U.S.C. §§ 241-42 (1970); Commission bill §§ 1501-02.

52. *See* note 74 *infra* and accompanying text. Section 241 safeguards the rights of "citizens" while section 242 protects "inhabitants." *See* 18 U.S.C. §§ 241-42 (1970). The McClellan bill's version of section 241, like the Administration bill, abandons the citizenship limitation. *See* Administration bill § 1501; McClellan bill § 2-7F1. This variation from the original language is laudable. The citizenship limitation in section 241 was the product of now irrelevant historical conditions;

The draftsmen of the proposals also have failed to take advantage of the opportunity presented by *Guest* to extend explicitly section 241 to private interferences with fourteenth amendment rights. Since the Supreme Court has not squarely decided whether section 241 protects fourteenth amendment rights against wholly private interference, the full impact of *Guest* is unclear. As an exercise of congressional power under section five of the fourteenth amendment, section 241 could be construed to transform fourteenth amendment rights enforceable against the states into rights enforceable against private individuals,[54] whether or not they are acting with a racially discriminatory intent.[55]

By obviating the need for case-by-case adjudication of the source and scope of the constitutional power that applies to a given application of the statute, such a construction would prevent the substantive content of the statute from "varying with the particular constitutional

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section 241 initially was intended to protect newly created fifteenth amendment voting rights and to supplement the privileges and immunities clause of the fourteenth amendment. *See* United States v. Price, 383 U.S. 787, 807-20 (1966) (appendix to opinion of the Court) (legislative history); United States v. Williams, 341 U.S. 70, 83 (1951) (appendix to opinion of Justice Frankfurter) (comparative table of successive versions of sections 241 and 242); Act of May 31, 1870, ch. 114, § 6, 16 Stat. 140, *as amended*, 18 U.S.C. § 241 (1970); Gressman, *supra* note 31, at 1345. The change would avoid the injustice occasionally produced by the citizenship limitation in section 241. *See* Baldwin v. Franks, 120 U.S. 678, 690-91 (1887) (section 241 inapplicable to conspiracy to drive citizen of China from his California home).

Unfortunately, the McClellan bill's analogue to section 241 retains the inhabitant limitation and thereby imposes an unwarranted territorial restriction on the statute's scope by making the section inapplicable to transient aliens and citizens living abroad. *See* McClellan bill § 2-7F1(a)(3).

53. The National Commission's consultant on civil rights recommended that sections 241 and 242 be merged into a single statute. *See* STUDY DRAFT, *supra* note 2, at 147; II WORKING PAPERS, *supra* note 2, at 806-08.

Because the Administration bill's analogue to section 242 focuses on the result of an official's conduct, while the analogue to section 241 focuses on a private person's intent, the Administration bill's retention of companion statutes has some reasonable policy basis. *See* note 79 *infra*.

54. *See* 383 U.S. at 779 (Warren, C.J., Brennan & Douglas, JJ., concurring and dissenting). The remaining members of the *Guest* Court, apparently rejecting this broad construction of section 241, concurred in the opinion that "the statute does not purport to give substantive, as opposed to remedial, implementation to any rights secured by [the equal protection clause]." *Id.* at 754-55, 761 (Clark, Black & Fortas, JJ., concurring); *id.* at 762 (Harlan, J., concurring and dissenting).

55. When a defendant has acted with racially discriminatory intent, the thirteenth amendment provides a source of congressional power, and the state action limitation of the fourteenth amendment is inapplicable. Thus, section 241, if construed as substantive legislation under the enabling clause of the thirteenth amendment, could be read as proscribing private acts of racial discrimination. *Cf.* Griffin v. Breckenridge, 403 U.S. 88 (1971) (section 1985(3) reaches private discriminatory interference with right to interstate travel). In any event, section 241 probably does proscribe private discriminatory interferences with equal protection rights. *See* notes 69-72 *infra* and accompanying text.

provision that is the source of the right" in question.[56] In the past, the substantive variations of section 241 have resulted in incomplete protection of many basic constitutional rights. For example, section 241 appears to punish private interference with individual rights when racial motivation is a factor since the power to prevent racial discrimination is unquestionably granted to the federal government by the thirteenth amendment.[57] Authority to prevent nondiscriminatory deprivations of constitutional rights, however, exists only to the extent that the fourteenth amendment is held to apply to private persons[58] or when the protected right exists independent of the fourteenth amendment. Similarly, section 241 protects free speech from private interference only if the speech is addressed to the national government.[59] A clear legislative determination under the authority of section five of the fourteenth amendment to protect specific rights against private interference would eliminate the possibility of such anomolous results. By remaining silent on the intended scope of section 241, the Congress has failed to eliminate potential variations in the statute's application and has lost an important opportunity to grant complete protection to basic individual rights.

Statutory Rights. In addition to safeguarding constitutional rights, sections 241 and 242 purport to penalize interferences with rights secured by the laws of the United States.[60] In *United States v. Johnson*[61] the Supreme Court held that section 241 could be used to punish a private conspiracy to intimidate three blacks who were exercising their right to patronize a restaurant.[62] Relying on the

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56. United States v. Guest, 383 U.S. 745, 781 (1966) (Warren, C.J., Brennan & Douglas, JJ., concurring and dissenting).

57. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 438-39 (1968); U.S. CONST. amend. XIII, § 2.

58. *Compare* Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971) (en banc) (section 1985(3) reaches private conspiracy to interfere with private church service) *with* Hughes v. Ranger Fuel Corp., 467 F.2d 6 (4th Cir. 1972) (in absence of discriminatory motivation, section 1985(3) does not reach private conspiracy).

59. *See* United States v. Cruikshank, 92 U.S. 542, 552 (1875) (dismissal of indictment under predecessor of section 241 where indictment failed to allege that victims were petitioning the national government); Wilkins v. United States, 376 F.2d 552, 560-61 (5th Cir. 1967) (upholding conviction under section 241 where private person murdered participant in a protest march concerning the right to register to vote in federal election); Powe v. United States, 109 F.2d 147, 151 (5th Cir.), *cert. denied*, 309 U.S. 679 (1940) (sustaining demurrers to indictment alleging private interference with citizen's right to publish his views on general topics in local newspaper).

The Congress and the revisers afford limited statutory protection to first amendment rights. *See* 18 U.S.C. § 245 (1970) (protecting civil rights speakers from discriminatory interference); Administration bill § 1513; Commission bill § 1515; McClellan bill § 2-7F4(a)(3).

60. *See* 18 U.S.C. §§ 241-42 (1970).

61. 390 U.S. 563 (1968).

62. *Id.* at 565-66.

sweeping language of *Price*,[63] the Court found that the right to patronize a public facility had been granted by section 201 of the Civil Rights Act of 1964,[64] and was therefore protected by section 241 as a right secured by the laws of the United States.[65] The dissenters, unconcerned with section 241's incorporation of the statutory right, disagreed only with the majority's finding that the Congress had intended section 201's civil remedy to be nonexclusive.[66] Thus *Johnson* established that where the victim of a civil rights crime has been deprived of a statutorily granted personal right[67] and where that right is not protected by an exclusive noncriminal remedy,[68] courts should uphold indictments under sections 241 and 242.

Each of the three proposals now before the Congress retains the language of present law purporting to incorporate statutory rights by reference. Because the draftsmen of the proposals presumably endorse the *Johnson* rationale, the new statutes, like their predecessors, protect by criminal sanction an indefinite number of statutory rights. However, the *Johnson* rationale may add an undesired dimension to the statutes. Because sections 1981, 1982 and 1985(3) of title 42 of the *United States Code*[69] create personal rights[70] and

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63. *See id.* at 566; United States v. Price, 383 U.S. 787, 798 (1966). In *Price* the Court noted that sections 241 and 242 both protected all the rights conferred by "*all* of the Constitution and laws of the United States." *Id.* at 797.

64. 390 U.S. at 565-66; *see* 42 U.S.C. § 2000a (1970).

65. *See* 390 U.S. at 565-66.

66. *See id.* at 567-69 (Stewart, Black & Harlan, JJ., dissenting).

67. Although the *Johnson* Court did not explain its implicit conclusion that the Civil Rights Act of 1964 had created a personal right that could be incorporated into section 241, the creation of a personal right by the statute to be incorporated clearly is a preliminary issue. *See* United States v. DeLaurentis, 491 F.2d 208, 211 (2d Cir. 1974) (dismissing indictment alleging denial of right not to sit in under section seven of National Labor Relations Act); United States v. Bailes, 120 F. Supp. 614, 630-31 (S.D.W.Va. 1954) (dismissing indictment alleging denial of right to refrain from joining a labor union under section seven of the National Labor Relations Act); United States v. Berke Cake Co., 50 F. Supp. 311, 313 (E.D.N.Y.), *appeal dismissed*, 320 U.S. 807 (1943) (sustaining demurrer to an indictment alleging deprivation of rights under Fair Labor Standards Act of 1938). The *Bailes* and *Berke Cake* holdings rested on narrow pre-*Price* readings of the scope of section 241. *See* United States v. Bailes, *supra* at 631; United States v. Berke Cake Co., *supra* at 313.

68. *See* II WORKING PAPERS, *supra* note 2, at 771; Feuerstein, *supra* note 16, at 649; *e.g.*, United States v. DeLaurentis, 491 F.2d 208, 212-13 (2d Cir. 1974) (procedures under the National Labor Relations Act exclusive); United States v. Guest, 246 F. Supp. 475 (M.D. Ga. 1964), *rev'd on other grounds*, 383 U.S. 745 (1966) (civil remedies accompanying section 207(b) of the Civil Rights Act of 1964 exclusive); United States v. Berke Cake Co., 50 F. Supp. 311 (E.D.N.Y.), *appeal dismissed*, 320 U.S. 807 (1943) (remedies accompanying section 16(b) of Fair Labor Standards Act of 1938 exclusive).

69. *See* Civil Rights Act of 1866, § 1, 42 U.S.C. §§ 1981, 1982 (1970); Civil Rights Act of 1871, § 2, 42 U.S.C. § 1985(3) (1970).

70. *See* Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431, 435 (1973) (section 1981); Jones v. Alfred H. Mayer Co., 392 U.S. 409, 420 (1968) (sections 1981 and 1982); *cf.* Griffin v. Breckenridge, 403 U.S. 88, 105 (1971) (section 1985(3) is substantive legislation under thirteenth amendment).

carry civil remedies arguably not intended to be exclusive,[71] sections 241, 242, and the new proposals may render activities such as discriminatory denial of the right to contract or discriminatory refusal to sell real property[72] criminal although Congress arguably does not intend to impose criminal penalties for such common, though reprehensible, conduct. The likelihood of inadvertent creation of criminal law, unacceptable in any circumstance, thus is increased by retention of the sweeping language describing the rights protected by sections 241 and 242.[73]

CONDUCT PROSCRIBED

While both the Administration and McClellan proposals have eliminated the conspiracy requirement from section 241,[74] each retains

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71. The original version of section 242 explicitly incorporated the rights now enumerated in sections 1981 and 1982. *See* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 422-26 (1969); Act of Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27 (forerunner of sections 1981 and 1982); *id.* § 2 (forerunner of section 242). However, the *Jones* Court noted that section 242 had been limited to acts under color of law in order to ensure that criminal penalties would not apply to private violations of sections 1981 and 1982. 392 U.S. at 422-26. The civil remedies arguably are exclusive, therefore, when the prospective defendant has not acted under color of law.

72. *See* 42 U.S.C. § 1981 (1970) (right to contract); 42 U.S.C. § 1982 (1970) (right to enter real property transactions).

73. *See* United States v. DeLaurentis, 491 F.2d 208 (2d Cir. 1970) (condemnation of Government's "unjustifiable" attempt to use federal law to convert an unfair labor practice under National Labor Relations Act into a criminal conspiracy via section 241). *Compare id. with* United States v. Mary Helen Coal Corp. (E.D.N.Y. 1938) (unreported opinion) (sustaining indictment alleging unfair labor practice under National Labor Relations Act), *noted in* Feuerstein, *supra* note 16, at 649 n.46.

74. *Compare* 18 U.S.C. § 241 (1970) *with* Administration bill § 1501 *and* McClellan bill § 2-7F1(a)(1).

Under the conspiracy provision of section 241 the prosecution does not have to show an overt act; simple agreement is sufficient. *See* United States v. Marado, 454 F.2d 167, 169 (5th Cir. 1972), *cert. denied*, 406 U.S. 917 (1973); Williams v. United States, 179 F.2d 644, 649 (5th Cir. 1950), *aff'd*, 341 U.S. 70 (1951). If the conspiracy provision is removed from section 241, the general conspiracy statute will apply to violations of sections 241 and 242 by groups of two or more persons. Conviction under the general conspiracy statute requires proof of an overt act. *See* United States v. Rabinowich, 238 U.S. 78, 86 (1915); United States v. Carlton, 475 F.2d 104, 106 (5th Cir.), *cert. denied*, 414 U.S. 942 (1973); Crimes and Criminal Procedure § 371, 18 U.S.C. § 371 (1970). *See also* Administration bill § 1002; Commission bill § 1004; McClellan bill § 1-2A5.

Deletion of the conspiracy element from section 241 manifests a recognition that the conspiracy requirement resulted from the concern of the original draftsmen with racial violence perpetrated by marauding bands of Ku Klux Klan members. *See* United States v. Mosely, 238 U.S. 383, 387 (1915). Curiously, the McClellan bill retains references to "going in disguise on the highway" and entry "onto the premises of another" although the language of the original version of section 241 suggests that proof of such activity was intended to evidence the unlawful conspiracies with which the legislators were concerned. *See* Act of May 31, 1870, § 6, 16 Stat. 141, *codified at* 18 U.S.C. § 241 (1970).

Excision of the conspiracy element also erases another difference between sections 241 and 242 and reinforces the argument that the proposed statutes are largely redundant. *See* notes 49-53 *supra* and accompanying text.

language criminalizing acts that "injure, oppress, threaten or intimidate" the free exercise of protected rights.[75] Thus, the operative terms of the proposed replacements for section 241 do not preclude prosecution for acts of economic or other nonviolent coercion.[76] Similarly, the term "deprivation of . . . rights" in the McClellan bill's version of section 242[77] implies no limitation to acts or threats of physical force.[78] The Administration bill's analogue to section 242, section 1502, on the other hand, largely confines prosecutions to situations where the offensive conduct has entailed use of force or threats of force.[79] However, this limitation on the scope of section 1502 is undermined to the extent that section 1501, the Administration's analogue to section 241, protects the same rights as section 1502, but is not limited to violent acts.[80]

Retention of the language of present law criminalizing the use of nonviolent coercion to deprive citizens and others of their rights is unfortunate. The language is inconsistent with the policy manifested by the Congress in its 1968 decision to limit the application of section 245 to acts of force or threats of force.[81] Although section 245, a criminal provision that prohibits interference with the right to receive benefits under certain federal programs, grew out of congressional concern with racial violence,[82] consideration has been given to expanding the section to interdict economic coercion. The arguments that such an expansion would create enforcement difficulties because of the breadth and ambiguity of the concept of

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75. *See* Administration bill § 1501; McClellan bill § 2-7F1(a).

76. *Cf.* United States v. Welch, 243 F. 996 (D.R.I. 1917) (threat to "cause sentence to be pronounced" in a criminal proceeding against prospective voter); United States v. Wilcox, 243 F. 993 (D.R.I. 1917) (threat to withdraw business from local merchant). The coercion must be of sufficient severity to influence a person of ordinary firmness. *Id.* at 995.

77. McClellan bill § 2-7F1(a)(3)(i).

78. *Cf.* United States v. Senak, 477 F.2d 304 (7th Cir.), *cert. denied*, 414 U.S. 858 (1973) (exaction of excess fees from indigent clients by public defender); United States v. Ramey, 336 F.2d 512 (4th Cir.), *cert. denied*, 379 U.S. 840 (1964) (false arrest); United States v. Barr, 295 F. Supp. 889 (S.D.N.Y. 1969) (false signing of affidavits of service causing default judgments).

79. *See* Administration bill § 1502. Section 1502 provides that a person acting under color of law who knowingly commits a federal offense against person or property also is guilty of violating the civil rights law if his conduct causes a deprivation of constitutional or statutory rights. *Id.* Most of the federal crimes against person or property in the Administration bill are explicitly limited to acts or threats of force. *See, e.g.*, *id.* § 1613 (battery); *id.* § 1614 (menacing); *id.* § 1722 (extortion). *But see id.* § 1723 (criminal coercion). Provisions in the Administration's personal and property crimes chapters, which are not limited to violent acts, are arguably irrelevant to the scope of section 1502 because of explicit jurisdictional limitations. *See, e.g.*, *id.* § 1617 (criminal harassment); *id.* § 1623 (restraint); *id.* § 1731 (theft).

80. *See* notes 49-53, 60-73 *supra* and accompanying text.

81. *See* 18 U.S.C. § 245 (1970).

82. *See* S. REP. No. 721, 90th Cong., 1st Sess. (1968).

economic coercion and because of the possibility that false or baseless complaints would be lodged[83] seem equally relevant to the broader provisions of sections 241 and 242. Futher, the failure to limit the prohibitions to violent activity exacerbates the due process dangers created by the vagueness of the present statutes.[84] Little would be lost by limiting the new versions of sections 241 and 242 to violent activity, for past prosecutions under sections 241 and 242 usually have been limited to situations involving violence,[85] and federal civil sanctions may more appropriately apply to the type of nonviolent coercion the statutes now proscribe.[86]

THE REQUIREMENT OF SPECIFIC INTENT

With the exception of the Administration's version of section 242, all of the proposed statutes attempt to protect all federal constitutional and statutory rights against all forms of interference. The result is a collection of statutes that have been said to "violate virtually every canon of criminal law draftsmanship"[87] and that skirt the elusive borders of unconstitutional vagueness. The interplay between the void-for-vagueness doctrine[88] and sections 241 and 242 has imposed severe limitations on the effectiveness of present legislation and has highlighted the need for congressional re-examination of the decision to rely on such loosely worded statutes.

In *Screws v. United States*,[89] a striking example of the problems created by the vagueness of the statutes, a Georgia sheriff was indicted and convicted under section 242 for depriving a citizen of his life and of his right to a jury trial without due process of law.[90] Presented with a void-for-vagueness challenge to section 242, the Supreme Court upheld the validity of the statute by requiring the prosecution to prove that the defendant acted with a specific intent

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83. *See* FINAL REPORT OF THE NAT'L COMM'N ON REFORM OF FEDERAL CRIMINAL LAWS 157-58 (1971); II WORKING PAPERS, *supra* note 2, at 779-80.

84. *See* notes 106-114 *infra* and accompanying text; *cf. Hearings*, *supra* note 3, pt. IIIB, at 1462-63 (American Civil Liberties Union urging that section 245 not be expanded to include economic coercion because selective abuse by United States attorneys of such an open ended provision was foreseeable).

85. *See Hearings*, *supra* note 3, pt. IIID, at 3163.

86. *See* II WORKING PAPERS, *supra* note 2, at 780-81.

87. II WORKING PAPERS, *supra* note 2, at 809.

88. Under the void-for-vagueness doctrine, courts will declare a criminal statute unconstitutional when its provisions are so vague that "men of common intelligence must necessarily guess at its meaning and differ as to its application." Connally v. General Constr. Co., 269 U.S. 385, 391 (1926). *See generally* Note, *The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960).

89. 325 U.S. 91 (1945).

90. *Id.* at 94. Some evidence indicated that the sheriff, who beat his handcuffed prisoner to death, held a personal grudge against his victim. *Id.* at 92-93. One of his defenses, in essence, was that his act constituted murder, not deprivation of life without due process of law. *See id.* at 114 (Rutledge, J., concurring).

to deprive a person of a right expressly ensured by the Constitution, federal statutes, or judicial decisions interpreting them.[91] The Supreme Court incorporated the dual requirement of *Screws*—that the right in question be definite and that the defendant act with specific intent to deprive his victim of that right—into section 241 in *Guest v. United States*.[92]

Practical Problems Created by the Specific Intent Test. The specific intent element added by *Screws* and *Guest* represents a significant practical limitation on the usefulness of sections 241 and 242. Requiring the prosecution to prove the elusive element of specific intent exacerbates the problems caused when grand and petit juries are sympathetic to local defendants.[93] As a result, civil rights prosecutions are infrequent and often unsuccessful[94] and therefore have little, if any, deterrent effect.[95] While the mere instigation of prosecutions arguably serves an important educational function by publicizing the existence of federal criminal sanctions for violations of civil rights,[96] the high rate of acquittal almost completely undermines any potential deterrent effect of this education.[97] Frequent unsuccessful prosecutions may promote disrespect for the criminal provisions at issue and for the rule of law generally by engendering the belief that the law can be violated with only minor consequences. At the same time, failure to prosecute because the poor quality of the applicable statute makes conviction difficult allows persons to act with impunity.

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91. *Id.* at 104. Partially personal motivation is not inconsistent with the requirement of specific intent. *See* Crews v. United States, 160 F.2d 746, 749 (5th Cir. 1947).

92. 383 U.S. 745, 753-54 (1966).

93. *See* Clark, *A Federal Prosecutor Looks at the Civil Rights Statutes*, 47 COLUM. L. REV. 175, 182-83 (1947); Fraenkel, *The Federal Civil Rights Laws*, 31 MINN. L. REV. 301, 311 (1947).

94. *See Hearings*, *supra note* 3, pt. IIID, at 3160 (1972); *id.* pt. IX, at 6774; Fraenkel, *supra* note 93, at 311. *See generally* Shapiro, *Limitations in Prosecuting Civil Rights Violations*, 46 CORNELL L.Q. 532, 535 (1961).

The paucity of successful federal prosecutions does minimize federal intrusion into the traditionally state-dominated arena of criminal law enforcement. Decreased federal activity was a consequence of the specific intent test foreseen by the *Screws* majority and cited as one of the test's advantages. *See* Screws v. United States, 325 U.S. 91, 105 (1945). Fears that the criminal civil rights laws would generate massive federal incursions into state penal jurisdiction had been voiced when the Congress first adopted the civil rights provisions. *See* H. FLACK, ADOPTION OF THE FOURTEENTH AMENDMENT 22-38 (1908); CONG. GLOBE, 39th Cong., 1st Sess., 474-607 (1866).

Sections 241 and 242 still permit entry of federal authorities into traditionally state dominated areas, however. *See* United States v. Delerme, 457 F.2d 156, 161 (3d Cir. 1972) (Seitz, C.J., dissenting).

95. *See* S. REP. No. 721, 90th Cong., 2d Sess. (1968).

96. *See* Comment, *Federal Civil Action Against Private Individuals For Crimes Involving Civil Rights*, 74 YALE L.J. 1462, 1463 (1965).

97. *See* Shapiro, *supra* note 94, at 535. Sheriff Screws was ultimately acquitted, for example. *See* Fraenkel, *supra* note 93, at 311.

By adopting the broad language of sections 241 and 242, the draftsmen of the Administration, Commission, and McClellan bills have failed to remedy these well-recognized problems.[98] Instead, they have relegated to the judiciary the essentially legislative decision of which statutory and constitutional rights encompassed by sections 241 and 242 are worthy of protection by federal criminal sanction and have manifested a willingness to accept the specific intent test as the price of such delegation. The continued ineffectiveness of the sanctions and the possible proscription of conduct the Congress does not desire to penalize will result.

Due Process Problems Surviving the Specific Intent Test. Criminal laws that fail to give potential defendants adequate warning of the particular conduct proscribed generally are thought to be unconstitutionally vague.[99] Because the requirement of specific intent cannot clarify otherwise vague language,[100] arguments that the specific intent requirement satisfies any constitutional requirement of notice arguably are unsupportable. However, in view of the fact that few potential civil rights violators are likely to consult the statutes before acting, the notice rationale provides an inadequate explanation for the voiding of vague statutes.[101]

In one sense, the void-for-vagueness doctrine may be a judicial safeguard against the danger of ex post facto expansion of criminal laws.[102] A statute that gives a reasonable man notice of what conduct is proscribed also provides a definition of criminal conduct that cannot be

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98. *But see* Administration bill § 1502; notes 113-114 *infra* and accompanying text.

99. *See* note 88 *supra*.

100. *See* Note, *supra* note 88, at 87 n.98. The purported relationship between vagueness and specific intent is puzzling. Some have suggested that the specific intent requirement was merely a means by which the Court in *Screws* expressed its predeliction to uphold section 242 despite possible constitutional problems with its application. *See* 325 U.S. 91 (1945); Nott, *Can the Intent to Violate the Federal Civil Rights Statutes Be Established By a Presumption*, 40 GEO. L.J. 566, 571-73 (1952). *See also* Note, *supra* note 88, at 87 n.98. It also is possible that the Court construed "willfully" to mean "specific intent to deprive a person of a right made definite" in order to find statutory authority for the limitation to previously defined rights. Screws v. United States, *supra* at 103. Moreover, the specific intent requirement ensures that the jury is instructed in terms of a specific right and forces the prosecutor and the judge to have a specific right in mind.

101. *See* Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (dictum). *See generally* Note, *supra* note 88.

102. *See* United States v. Williams, 179 F.2d 644, 647 (5th Cir. 1950), *aff'd*, 341 U.S. 70 (1951); J. HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 63 (1960); *cf.* Bouie v. City of Columbia, 378 U.S. 347 (1964) (retroactive judicial expansion of criminal statute violates due process); U.S. CONST. art. I, § 9.

The concern with ex post facto application of section 242 previously had moved Justice Douglas, the author of the *Screws* opinion, to file a vigorous dissent in *United States v. Classic*, where the Court first held that the right to vote in federal elections includes the right to have votes counted in a primary. *See* 313 U.S. 299, 329-41 (1941) (Douglas, J., dissenting).

drastically expanded by the judges and juries who later apply the statute to a given set of facts. The specific intent test requires that the right in question be definite and precludes the application of sections 241 and 242 to deprivations of "emerging" rights.[103] Thus, the specific intent test does resolve the due process problems arising from the danger of ex post facto expansion of the statutes. In *United States v. O'Dell*,[104] for example, the Sixth Circuit overturned a conviction based in part on a jury determination that seven sheriffs and a bail-bondsman had deprived prisoners of their due process rights by failing to bring the prisoners before a magistrate promptly after arrest, by refusing to allow the prisoners to place post-arrest telephone calls, and by setting a $350 bond for drunken driving violations. These rights, the court noted, were not as yet guaranteed by the federal constitution.[105]

The contention that the void-for-vagueness doctrine is rooted in the need to limit the discretionary powers of prosecutors, judges, and juries provides the most compelling explanation for the doctrine's use.[106] An impermissibly vague law delegates excessive policymaking authority to law enforcement officials, judges, and juries by allowing them to decide on an ad hoc, subjective basis what conduct is deserving of criminal condemnation.[107] Criminal sanctions should

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103. *See* United States v. O'Dell, 462 F.2d 224, 230 & n.7 (6th Cir. 1972). When the provisions of sections 241 and 242 refer to statutory rights or rights that appear on the face of the Constitution, the danger of retroactive enforcement is small and general criminal intent tests probably could apply. *See* United States v. Nathan, 238 F.2d 401, 407 (7th Cir. 1956), *cert. denied*, 353 U.S. 910 (1957); United States v. Bailey, 120 F. Supp. 614, 622 (S.D.W.Va. 1954). The problem of determining what is sufficiently definite and what constitutional rights appear on the face of the Constitution understandably troubled the dissenters in *Screws*, however. *See* Screws v. United States, 325 U.S. 91, 150 (1945) (Roberts, Frankfurter & Jackson, JJ., dissenting). The major problem involves due process rights and the concomitant lack of an ascertainable standard of guilt. It might have been argued at one time that a statute penalizing deprivations of due process is not unconstitutionally vague because every reasonable man is presumed to know what rights are so rooted in the traditions and conscience of our people as to be branded fundamental. *See* Snyder v. Massachusetts, 291 U.S. 97, 105 (1934). However, such a presumption could not be maintained in view of the close decisions on due process emanating from the Supreme Court. *See* Screws v. United States, *supra* at 157 (Roberts, Frankfurter & Jackson, JJ., dissenting).

104. 462 F.2d 224 (6th Cir. 1972).

105. *Id.* at 230.

106. *See* Packer, *Mens Rea and the Supreme Court*, 1962 SUP. CT. REV. 107, 122-25; Note, *supra* note 88, at 81. The dissenters in *Screws* argued that "because misuse of the criminal machinery is one of the most potent and familiar instruments of arbitrary government, proper regard for the rational requirement of definiteness in criminal statutes is basic to civil liberties." Screws v. United States, 325 U.S. 91, 145 (Roberts, Frankfurter & Jackson, JJ., dissenting).

107. *See* Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972). The delegation of legislative authority to prosecutors must be distinguished from prosecutorial discretion. The former concerns the power to determine what conduct is deserving of punishment. The latter deals with the power to determine whether a particular actor alleged to have engaged in the proscribed conduct should be prosecuted.

not be imposed in the absence of a specific determination of the need for such penalties by the responsible policymaking organs of society. To the extent that concern about the dangers inherent in excessive law enforcement discretion underlies the void-for-vagueness doctrine, substantial due process problems survive the specific intent test.[108]

One means of limiting the danger of discriminatory prosecution and the definition of crime by prosecutors, judges, and juries is to provide criminal sanctions only for acts or threats of force.[109] Only the Administration bill's version of section 242 has adopted this approach, however.[110] The alternative of confining sections 241 and 242 to certain defined rights deserving of federal criminal protection in limited circumstances was rejected by all the proposals, except to the extent that they recommend new specific provisions on elections violations and unlawful acts under color of law.[111] Because the draftsmen decided to retain the broad language of the present laws, the Commission and McClellan bills and the Administration bill's version of section 241 include the specific intent requirement.[112]

Section 1502 of the Administration bill adopts a different approach to the specific intent requirement of section 242. Under present law a state police officer who kills his neighbor on election day is not guilty of a civil rights offense unless he specifically intended to deprive his neighbor of the federally secured right to

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108. While the specific intent requirement may reduce the likelihood of conviction, it does not prevent a prosecutor from instituting or threatening to institute proceedings in an almost limitless and unforeseeable number of situations. Nor does it confine the power of policemen, judges, and juries. Because intent can only be inferred from the defendant's manifest acts, the depravity of the defendant's conduct is likely to determine whether the jury finds specific intent. In the abstract, however, the depravity of the defendant's act is irrelevant to the issue of specific intent. *See* Hale, *Unconstitutional Acts as Federal Crimes*, 60 HARV. L. REV. 65, 93 (1947); Note, *supra* note 88, at 87 n.98. Of course, the *Screws* limitation to definite rights does place some restrictions on prosecutorial power. *But see* note 73 *supra* and accompanying text.

109. *See Hearings*, *supra* note 3, pt. IIID, at 3163 (1972); *cf. id.* pt. IIIB, at 1462-63 (American Civil Liberties Union urging that section 245 not be expanded to include economic coercion because of the foreseeability of selective abuse by United States attorneys of such an open ended provision).

110. *See* Administration bill § 1502; note 79 *supra* and accompanying text.

111. *See* note 33 *supra*.

112. *See* Administration bill § 1501, 302(b) (definition of knowingly); Commission bill §§ 1501-02, 302 (definition of intentionally); McClellan bill §§ 2-7F1, 1-2A1(a)(2) (definition of intentionally). In section 1501, the Administration's analogue to section 241, the requirement of specific intent has been reduced so that the defendant need not have a conscious desire to deprive another of his federally secured rights but need only believe or be aware that his conduct will cause the proscribed result. *See* Administration bill §§ 1501, 302(b) (definition of knowingly). This change is salutory from a prosecutorial point of view and, if interpreted to preclude application of the statute to emerging rights, should eliminate the due process danger of ex post facto expansion.

vote. Under section 1502, which contains no specific intent requirement, the same police officer acting under color of law is guilty of a federal crime of murder and a civil rights offense even though he was motivated only by personal hatred.[113]

If the void-for-vagueness doctrine rests on the fear of ex post facto expansion of criminal laws or on the possibility of prosecutorial discrimination in enforcement, section 1502 probably is constitutional. The restriction to acts of force or threats of force confines prosecutorial lawmaking power by limiting the number of situations to which the statute applies. A provision that assures that the judge will decide, as a matter of law, what rights are protected by the statute minimizes the dangers of ex post facto expansion.[114] Although elimination of the specific intent requirement removes a significant practical limitation on the prosecutorial function without undermining the constitutionality of the provision, the improvements in section 1502 are overshadowed by section 1501, which will apply to all of the situations covered by section 1502.

CONCLUSION

Before enacting criminal laws, the Congress must make explicit policy determinations about what conduct it intends to proscribe and what rights it seeks to protect. That the Congress has not made these difficult decisions in the area of civil rights enforcement is apparent from the proposed re-enactment of sections 241 and 242. No determination has been made concerning what rights ought to be protected by these statutes, and little consideration appears to have been given to the fact that criminal penalties may not be the most desirable remedy in many instances.

The argument that the broad language of sections 241 and 242 serves as a backstop necessitated by congressional inability to foresee all possible civil rights crimes[115] could apply to all criminal legislation. It inheres in the limitations of language and in the ingenuity of criminals. These difficulties cannot justify the use of vaguely worded statutes that create unacceptable due process problems and seriously impede effective enforcement. Specific statutes should be enacted that can be amended by reasonably clear remedial legislation when the need appears. This ad hoc approach is preferable to an attempt to comprehend in broad language all possible kinds of invasions of rights.[116] The Congress must ask probing policy questions

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113. *See* Administration bill §§ 1601, 1502.
114. *See id.* § 1502(b).
115. *See* II WORKING PAPERS, *supra* note 2, at 809-10.
116. *Id.*

about every protected right. Failure to do so results in unintentional proscription of some conduct, protection of rights the Congress may not wish to protect by federal criminal process, and ineffective protection of those rights that the Congress does desire to safeguard.

Scott W. Muller

SEARCHES INCIDENT TO ARREST: THE EXPANDING EXCEPTION TO THE WARRANT REQUIREMENT

The United States Supreme Court recently examined the proper scope of a warrantless search incident to a lawful arrest. In the companion cases of *United States v. Robinson*[1] and *Gustafson v. Florida*,[2] the Court held that a law officer may conduct a full search of the arrestee's person as an incident to a custodial arrest for the commission of a traffic offense.[3] The Court found a full search justified by the single fact of lawful custodial arrest.[4] Three months later in *United States v. Edwards*[5] the Court upheld a law officer's warrantless seizure of an arrestee's clothing 10 hours after the arrest, while the arrestee was in police custody.[6] Additionally, the *Edwards* Court sanctioned the subjection of the seized clothing to a warrantless laboratory analysis.[7] Terming the search and seizure a "normal incident" to custodial arrest and finding the 10-hour delay from arrest to search and seizure reasonable, the Court treated the police's conduct as squarely within the "search incident to arrest" exception to the warrant requirement of the fourth amendment.[8] Although *Robinson*, *Gustafson*, and *Edwards* dealt with previously unresolved issues of fourth amendment law,[9] the Court characterized its holdings

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1. 414 U.S. 218 (1973).
2. 414 U.S. 260 (1973).
3. *Id.* at 223-24; 414 U.S. at 234-35. A full search of the person includes a search of "areas such as behind the collar, underneath the collar, underneath the waistband of the trousers, the cuffs, the socks and shoes," and examination of objects removed from the arrestee. *Id.* at 221-22 n.2. A full search is distinguishable from a frisk or limited weapons search, which involves a mere pat-down of the suspect's outer clothing and removal of such weapons as the officer reasonably believes to be in the person's possession. *Id.* at 227.
4. 414 U.S. at 234-35.
5. 415 U.S. 800 (1974).
6. *Id.* at 805.
7. *Id.* at 806-07.
8. *Id.* at 805. The fourth amendment prohibits unreasonable searches and seizures. *See* U.S. CONST. amend. IV. In all but a few specifically established exceptional situations, warrantless searches are per se unreasonable. A search incident to arrest is one recognized exception to the warrant requirement. *See* Katz v. United States, 389 U.S. 347, 357 (1967).
9. The Court acknowledged that its previous statements about the scope of a personal search incident to arrest were dicta and thus had not resolved the issue. 414 U.S. at 230. The Court also was required for the first time to delineate the time period within which a personal incidental search properly may be conducted. *Cf.* Coolidge v. New Hampshire, 403 U.S. 443 (1971) (time period delineated for postarrest search of motor vehicle).

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

September 6, 2002

The Honorable Bob Graham
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510-6475

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Scott W. Muller, who has been nominated by President Bush for the position of General Counsel, Central Intelligence Agency.

We have reviewed the report and have also obtained advice from the Central Intelligence Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter from Mr. Muller to the agency's ethics official dated September 4, 2002, outlining the steps which Mr. Muller will take to avoid conflicts of interests. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Muller is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosures

SF-278 (Rev. 01/2000)
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: Muller			First Name and Middle Initial: Scott W.	
Position for Which Filing	Title of Position: General Counsel			Department or Agency *(If Applicable)*: Central Intelligence Agency	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Davis Polk & Wardwell, 1300 I St., N.W., Washington, D.C. 20005			Telephone No. *(Include Area Code)*: 202-962-7170	
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: Select Committee on Intelligence			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: Scott W. Muller			Date *(Month, Day, Year)*: 9/5/02	
Other Review (If desired by agency)	Signature of Other Reviewer			Date *(Month, Day, Year)*	
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			Date *(Month, Day, Year)*: 9/5/02	
Office of Government Ethics Use Only	Signature: Marilyn L. Glynn			Date *(Month, Day, Year)*: 9/5/02	

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

(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 the 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.

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

Reporting Individual's Name: Muller, Scott W.

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

Block A	Block B: 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	Block C Type: Dividends	Rent and Royalties	Interest	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: Coastal Airlines Common				x												x						x										
Doe Joint/A Smith, Hampton Mate			x																												Law Partnership Income $130,000	
Kempstone Equity Fund					x								x										x									
IRA: Heartland 500 Index Fund							x						x											x								
1 AES CORP. COMMON		x																		x												
2 AMERICAN EXPRESS COMMON			x													x					x											
3 AMERICAN INT'L GROUP COMMON				x												x						x										
4 ANADRAKO PETROLEUM COMMON				x												x						x										
5 AOL TIME WARNER COMMON				x																x												
6 AUTOMATIC DATA PROCESSING					x											x			x						x							

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

Reporting Individual's Name: Muller, Scott W.

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
1	AVAYA INC. COMMON	x																			x												
2	BARRETT INT'L FUND SHARES	x												x						x				x									
3	BELLSOUTH COMMON				x												x			x					x								
4	BRISTOL MYERS SQUIBB COMMON		x														x					x											
5	CISCO SYSTEMS COMMON						x													x					x								
6	CITIGROUP INC. COMMON			x													x						x										
7	CHASE MANHATTAN TIER 1 MON. MKT.		x											x					x			x											
8	COLGATE PALMOLIVE COMMON			x													x			x			x										
9	COMCAST CORP. COMMON			x																	x												

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SF 278 (Rev. 04/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Muller, Scott W.

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
1	COMPAQ COMPUTER COMMON			x													x					x											
2	COMPUTER SCIENCES CORP. COMMON				x																x												
3	CT. STATE BOND (3/15/09)	x																	x	x				x									
4	CT. STATE REV. BOND (2/11/12)			x															x					x									
5	CT. SPEC. OBL. BOND (9/1/12)			x															x					x									
6	CORNING INC. COMMON		x																		x												
7	CVS CORP. COMMON			x													x					x											
8	DEVELOPPERS DIV. REALTY COMMON			x													x								x								
9	DISNEY CO. COMMON		x														x			x				x									

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
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Reporting Individual's Name: Muller, Scott W.

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	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
1	DOVER CORP. COMMON (RESTRICTED)				X												X						X										
2	EMC CORP. COMMON			X																	X												
3	ELAN CORP. COMMON		X																		X												
4	EMERSON ELECTRIC COMMON				X												X							X									
5	EXXON MOBIL COMMON			X													X			X				X									
6	FANNIE MAE BOND (11/15/11)		X																X				X										
7	FANNIE MAE BOND (11/15/11)		X																X				X										
8	FIRST DATA CORP. COMMON			X													X			X				X									
9	FIRST UNION BANK COMMON	X															X					X											

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

Reporting Individual's Name: Muller, Scott W.

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
1	FREDDIE MAC COMMON				X												X						X										
2	GANNETT CO. COMMON				X												X						X										
3	GENERAL ELECTRIC COMMON					X											X			X							X						
4	GENENTECH COMMON				X																X												
5	GILETTE CO. COMMON			X													X			X						X							
6	HEWLETT PACKARD COMMON			X																X				X									
7	HONEYWELL INTERNATIONAL COMMON		X														X			X					X								
8	INTEL CORP. COMMON					X											X			X								X					
9	JEFFERSON PILOT CORP. COMMON				X												X							X									

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U.S. Office of Government Ethics

Reporting Individual's Name: Muller, Scott W.

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	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
1	JOHNSON & JOHNSON COMMON					X											X						X										
2	JPM INTERMEDIATE TAX FREE FUND SHARES			X										X					X				X										
3	JPM TAX FREE SELECT FUND SHARES					X								X					X					X									
4	KELLOGG COMPANY COMMON			X													X						X										
5	LUCENT TECHNOLOGIES COMMON		X																		X												
6	MCDATA CORP. COMMON		X																		X												
7	MEDTRONIC, INC. COMMON					X											X			X				X									
8	MELLON FINANCIAL CORP. COMMON				X												X						X										
9	MERCK & CO. COMMON			X													X						X										

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Reporting Individual's Name: Muller, Scott W.

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
1	MERRILL LYNCH BANK				x														x						x								
2	MICROSOFT COMMON						x														x												
3	NETWORK APPLIANCE INC. COMMON	x																		x				x									
4	NOKIA CORP. COMMON		x														x			x					x								
5	NORTEL NETWORKS CORP. COMMON	x																			x												
6	ORACLE CO. COMMON				x																x												
7	PAYCHEX INC. COMMON		x														x					x											
8	PEPSICO INC. COMMON			x													x					x											
9	PFIZER INC. COMMON				x												x							x									

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Reporting Individual's Name: Muller, Scott W.

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	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
1	PNC FINANCIAL SERVICES CORP. COMMON			X													X							X									
2	PROCTOR GAMBLE CO. COMMON				X												X							X									
3	PROVIDENT INST. MUNI FUND			X										X					X					X									
4	PUERTO RICO BONDS (6/1/11)			X															X					X									
5	SBC COMMUNICATIONS CORP. COMMON			X													X						X										
6	SOUTHWEST AIRLINES COMMON			X													X				X												
7	STATE STREET CORP. COMMON					X											X			X					X								
8	STRYKER CORP. COMMON					X											X				X												
9	SUN MICROSYSTEMS COMMON			X																	X												

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Prior Editions Cannot Be Used.

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Reporting Individual's Name: Muller, Scott W.

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
1	SYMBOL TECHNOLOGIES COMMON			x													x					x											
2	3M COMPANY COMMON			x													x					x											
3	TYMPONICS CO. COMMON (RESTRICTED SHARES)	x															x					x											
4	UNITED PARCEL SERVICE COMMON					x											x						x										
5	U.S. TREASURY BONDS (2/15/07)	x																	x				x										
6	SOUTH CENTRAL CT. BOND (8/1/29)		x																x				x										
7	UBSPAINEWEBBER TAX EXEMPT FUND		x											x					x			x											
8	UBS PAINEWEBBER MON. MKT FUND		x											x					x			x											
9	UBS PAINEWEBBER CASH FUND				x									x					x			x											

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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	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
1	U.S. TREASURY BOND (5/15/16)		x																x					x									
2	U.S. TREASURY NOTE (2/15/11)		x																x				x										
3	VERIZON COMMUNICATIONS CORP. COMMON			x													x						x										
4	WACHOVIA CORP. COMMON			x													x						x										
5	WYETH CO. COMMON			x													x			x					x								
6	CITIBANK CHECKING ACCOUNTS					x													x					x									
7	CITIBANK SAVINGS/CD ACCOUNT							x											x							x							
8	PHOENIX COMPANIES COMMON		x																		x												
9	PHOENIX LIFE INSURANCE (CASH VALUE)					x											x		x						x								

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Reporting Individual's Name: Muller, Scott W.

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
1	ANCHOR nATIONAL LIFE POLICY AL446572 (CASH VALUE)				x														x					x									
2	ANCHOR NATIONAL LIFE POLICY 7627115A (CASH VALUE)					x													x						x								
3	MASS. MUTUAL GROUP UNIVERSAL POLICY (CASH VALUE)		x																		x												
4	CITIBANK INS. TRUST CHECKING ACCOUNT		x																		x												
5	DAVIS POLK & WARDWELL (LAW PARTNERSHIP INCOME)	x																												x		[illegible]	
6	DAVIS POLK & WARDWELL RIGHT TO WITHDRAWAL PAYMENT									x																						[illegible]	
7	DAVIS POLK & WARDWELL CAPITAL ACCOUNT ("2% PARTNERS")				x														x					x									
8	NATIONAL LIFE (VERMONT) LIFE POLICY (CASH VALUE)			x													x		x				x										
9	UNUM GROUP TERM $1.5 MILLION LIFE POLICY (CASH VALUE)	x																			x												

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Reporting Individual's Name: Muller, Scott W.

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
1	MSIFT FIXED INCOME 1 FUND (HR-10 AND 401K)					x								x							x												
2	MONTAG C AND GROWTH 1 FUND (HR-10 AND 401K)			x										x							x												
3	DIA EQUITY VALUE FUND (HR10 AND 401K)		x											x							x												
4	FIDELITY RETIREMENT MONEY FUND (HR10 AND 401K)			x										x							x												
5	SPARTAN U.S. EQUITY INDEX FUND (HR-10 AND 401K)							x						x							x												
6	FIDELITY DIVERSIFIED INTERNATIONAL FUND (HR 10 AND					x								x							x												
7	STRATFORD OPERATIONAL CORP. (SUB S CORP. OWNED CONN. MALL) Greenwich, CT	x																							x							liquidating distribution	
8	WARES REIT (DPW P'SHIP WITH INT IN STORES LEASED TO WAL-MART) Rockville, MD		x																		x												
9	SEMBRAR LLC (PRIV. CO. WITH INT. IN HOTEL PROPS) (AT COST) Stratton,		x																		x												

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Reporting Individual's Name: Muller, Scott W.

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
1	Stetson Cap. Fund LP (P'ship invested in # 2-9 below and #8 on p. 15) (at 12/31/01)		x																		x												
2	BARKSDALE GROUP VENTURES (PART OF STETSON FUND LP)	x																			x												
3	DIGITAL MEDIA CAMPUS (PART OF STETSON FUND LP)	x																			x												
4	UNEXT.COM (PART OF STETSON FUND LP)	x																			x												
5	MSDW VENTURE INVESTORS IV (PART OF STETSON FUND LP)	x																			x												
6	FRANSISCO PARTNERS (PART OF STETSON FUND LP) technically buy out company		x																		x												
7	ENSIM CORPORATION (PART OF STETSON FUND LP)	x																			x												
8	DLJMB III (PART OF STETSON FUND LP) technology company		x																		x												
9	FINANCIAL TECHNOLOGY VENTURES II LP (PART OF STETSON FUND LP)	x																			x												

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Reporting Individual's Name: Muller, Scott W.

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	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
1	AGERE SYSTEMS INC		x																		x												
2	AMGEN INC				x																x												
3	IBM				x												x							x									
4	LOCKHEED MARTIN				x												x					x											
5	LINEAR TECHNOLOGY CORP		x																		x												
6	L3 COMMUNICATIONS HOLDINGS CORP.			x																	x												
7	RESIDENCE IN GREENWICH, CONNECTCUT									x								x									x						
8	MED VEN AFFILIATES IV, L.P.	x																			x												
9																																	

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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: Muller, Scott W.

SCHEDULE B

Part I: Transactions

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.

None ☐

	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	x			2/1/99			x									
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

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.

None ☐

	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: Muller, Scott W.

SCHEDULE B continued
(Use only if needed)

Part I: Transactions

	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
1																	
2																	
3																	
4																	
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9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	

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Reporting Individual's Name: Muller, Scott W.

SCHEDULE C

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	Category of Amount or Value (x): $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.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1989	10%	on demand					x						
1	NATIONAL LIFE (VERMONT)	BORROWING AGAINST CASH VALUE OF INSURANCE POLICY	1985	5%	life	x										
2	UBSPAINEWEBBER	MARGIN BORROWING	2002	@8%	ON DEMAND			x								
3	STETSON CAPITAL PARTNERS FUND LP	POSSIBLE FUTURE CASH CALL OBLIGATION	1999	0%	continuing		x									
4																
5																

*This category applies only if the 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 receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	UPON LEAVING DAVIS POLK & WARDWELL, I WILL BE ENTITLED TO PAYMENTS IN RESPECT OF AMOUNTS BILLED PRIOR TO MY DEPARTURE FROM FIRM. PAYOUT IN INSTALLMENTS OVER 3-6 MONTHS WILL OCCUR	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	8/02
2	PURSUANT TO DAVIS POLK & WARDWELL PARTNERSHIP AGREEMENT, I WILL RECEIVE FOUR ANNUAL INSTALLMENTS TOTALLING APPROXIMATELY $1.5 MILLION	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	8/02
3	MY NR-10 AND 401(k) RETIREMENT ACCOUNTS (CURRENTLY INVESTED IN FIDELITY FUNDS) WILL CONTINUE TO BE ADMINISTERED BY DAVIS POLK & WARDWELL. NO CONTRIBUTIONS WILL BE (CAN BE MADE AFTER MY WITHDRAWAL FROM THE FIRM	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	8/02
4	I AM OBLIGATED TO CONTRIBUTE AN ADDITIONAL $43,400 TO STETSON CAPITAL FUND LLP IF REQUESTED TO DO SO	STETSON CAPITAL FUND LLP, NEW YORK, NEW YORK	6/99
5	UPON MY WITHDRAWAL FROM DAVIS POLK, I WILL BE PERMITTED TO WITHDRAW MY NON NR-10 PARTNERSHIP CAPITAL CONSISTING OF APPROXIMATELY $89,000 INCLUDING INTEREST.	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	8/02
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Muller, Scott W.		19 of 21

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	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	LAW FIRM	PARTNER	01/1985	Present
2	BOYS & GIRLS CLUBS OF AMERICA, ATLANTA, GA.	NON-PROFIT	NATIONAL TRUSTEE	06/1996	Present
3	ST. ALBANS SCHOOL, WASHINGTON, D.C.	EDUCATIONAL INSTITUTION	GOVERNING BOARD MEMBER	09/2000	Present
4	CENTER FOR THE COMMUNITY INTEREST, NEW YORK, NEW YORK	NON-PROFIT	BOARD MEMBER, BOARD CHAIR	09/1996	Present
5	PATRICIA MULLER TRUSTS FOR PETER MULLER AND JAN MULLER FINN	CO-TRUSTEE (UNCOMPENSATED)	TRUSTS	09/1986	Present
6	LOIS P. LINES TRUST FOR THE FAMILY OF STEPHEN LINES	CO-TRUSTEE (UNCOMPENSATED)	TRUST	03/2002	Present

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	DAVIS POLK & WARDWELL, NEW YORK, NEW YORK	SERVICE AS LAW FIRM PARTNER
2	IMCLONE SYSTEMS INC., N.Y.,N.Y. (FIRM CLIENT)	LEGAL SERVICES
3	PHILLIP MORRIS COMPANY, N.Y., N.Y. (FIRM CLIENT)	LEGAL SERVICES
4	QWEST COMMUNICATIONS INC., DENVER, CO. (FIRM CLIENT)	LEGAL SERVICES
5	A ALFRED TAUBMAN, BLOOMFIELD HILLS, MICH. (FIRM CLIENT)	LEGAL SERVICES
6	PFIZER INC., N.Y., N.Y. (FIRM CLIENT)	LEGAL SERVICES

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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	SCHEDULE D	Page Number
Muller, Scott W.		20 of 21

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					
2					
3					
4					
5					
6					

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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	CHEVRON TEXACO INC., HOUSTON, TEX. (FIRM CLIENT)	LEGAL SERVICES
2	ZUCKERMAN SPAEDER GOLDSTEIN & TAYLOR, WASH., D.C. (FIRM CLIENT)	LEGAL SERVICES
3	JAMES McDERMOTT, N.Y., N.Y. (FIRM CLIENT)	LEGAL SERVICES
4	ROCHE HOLDINGS AND F. HOFFMAN LAROCHE, BASEL, SWITZ. (FIRM CLIEI	LEGAL SERVICES
5	PRUDENTIAL INSURANCE COMPANY, NEWARK, N.J. (FIRM CLIENT)	LEGAL SERVICES
6	BANCO SANTANDER CENTRAL HISPANO, MADRID, SPAIN(FIRM CLIENT)	LEGAL SERVICES

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5 C.F.R. Part 26.54
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
Muller, Scott W.		21 of 21

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 ☐

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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	LEONARD JUDD, PHOENIX, ARIZ. (FIRM CLIENT)	LEGAL SERVICES
2	WORLDCOM CORP., WASH. D.C. (FIRM CLIENT)	LEGAL SERVICES
3	ARTHUR ANDERSON & COMPANY (FIRM CLIENT)	LEGAL SERVICES
4		
5		
6		

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SCOTT W. MULLER
202 962 7170
SCOTT.MULLER@DPW.COM

September 4, 2002

John A. Rizzo, Esq.
Designated Agency Ethics Official
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Rizzo:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of General Counsel, Central Intelligence Agency.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests of which I have knowledge are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment to the extent I have knowledge of the interest.

Moreover, I pledge to inform you promptly, as the Designated Agency Ethics Official (DAEO), of any acquisitions or sales of securities or other interests by my wife, my children, or me after the filing of my nominee financial disclosure statement. I also pledge to inform you of any changes in the assets held by the trusts that I do not control or have daily knowledge of, when I learn of such changes, likely upon the receipt of the quarterly statements provided by the trusts. I do understand, however, that to the extent I do have knowledge of changes in assets of any trust, because, for instance, my wife acts as a trustee, then I must inform you of those changes promptly.

I understand that you will put in place a screening arrangement to ensure that I do not take any action on matters that pose a conflict of interest. To facilitate the effectiveness of this screening arrangement, I will arrange to have the trusts in which I hold beneficial interests send quarterly statements directly to you for a conflict of interest review.

I understand that in the event of a conflict of interest, I will disqualify myself from taking any official action that would have a direct and predictable effect on the financial interests of that company or other entity. In addition, if you, as DAEO, determine that recusal and screening is not a viable option to preclude a conflict of interest under applicable Office of Government Ethics regulations, I will take the further steps you deem necessary to eliminate the conflicting interest.

I will remain on the board of directors of St. Albans School of Washington, DC and the Center for the Community Interest of New York, New York. I also will remain a national trustee of the Boys & Girls Clubs of America. I am not compensated for my service on the boards of any of these non-profit entities. I will continue to serve as an uncompensated trustee for three trusts: the Patricia H. Muller Trust for Peter Muller, the Patricia H. Muller Trust for Jan Muller Finn and the Lois P. Lines Trust for the family of Stephen Lines. Furthermore, as General Counsel, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the interests of which I have knowledge of any of these organizations, unless I first obtain a written waiver or qualify for a regulatory exemption.

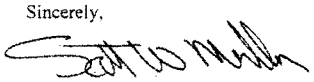
Upon confirmation, I will withdraw from the partnership of Davis Polk & Wardwell (Davis Polk). Following my withdrawal, I will receive a payment of approximately $600,000 (based upon an estimate through 31 July 2002) as compensation for work completed before my withdrawal. The firm will pay this amount to me over the six months following my withdrawal as bills are paid. Upon my withdrawal, in accordance with the partnership agreement, Davis Polk also will return my capital invested in the firm; as of 31 May 2002, that amount was $72,848, plus interest of $1,962. In addition, in accordance with the partnership agreement, I will receive from the firm a withdrawal payment of approximately $1.8 million that will be paid by my firm to me in annual installments over the next four years. I will continue to hold my interests in the Davis Polk HR-10 and 401K plan, administered by Fidelity Investments. Neither the firm nor I will make any other contributions to my account in that plan following my withdrawal.

Pursuant to 18 U.S.C. § 208, so long as I have outstanding withdrawal payments due from Davis Polk, I will not participate personally and substantially as General Counsel in any particular matter that will have a direct and predictable effect on the ability or willingness of Davis Polk to fulfill its contractual obligations under the partnership agreement by completing withdrawal payments.

Furthermore, pursuant to 5 C.F.R. § 2635.502, until the last installment of the withdrawal payment, I will not participate in any "particular matter involving specific parties" in which Davis Polk is a party or represents a party, unless I am authorized to participate.

Finally, pursuant to 5 C.F.R. § 2635.502, for one year after my withdrawal from the Davis Polk partnership, I will not participate in any "particular matter involving specific parties" in which any of the clients I represented at Davis Polk is a party or represents a party, unless I am authorized to participate.

Sincerely,



Scott W. Muller

Central Intelligence Agency

Washington, D.C. 20505

Office of General Counsel

5 September 2002

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

Dear Director Comstock:

I have reviewed the Public Financial Disclosure Report (SF 278), dated 5 September 2002, submitted by Scott W. Muller in connection with President Bush's nomination of Mr. Muller to serve as General Counsel to the Central Intelligence Agency (CIA). As part of my review of Mr. Muller's report, I have examined the duties and responsibilities of the General Counsel as reflected in various statutes and executive orders. A description of the position of General Counsel summarizing the statutory duties and responsibilities is enclosed with this letter and submitted for your review.

Based on my review of Mr. Muller's Report and upon the specific commitments he has made in his 4 September 2002 letter to me, also enclosed, it is my opinion there is no unresolved conflict of interest under the applicable laws and regulations and I have so certified.

Screening Arrangement

Mr. Muller understands that I will put in place a screening arrangement to ensure that he does not take any action on matters that pose a conflict of interest. Mr. Muller has pledged to inform me promptly, as the Designated Agency Ethics Official (DAEO), of any acquisitions or sales of securities or other interests by his wife, his children, or him after the filing of his nominee financial disclosure statement. He also

Director Comstock

pledges to inform me of any changes in the assets held by the trusts that he does not control or has daily knowledge of, when he learns of such changes, likely upon the receipt of the quarterly statements provided by the trusts. He does understand, however, that to the extent he does have knowledge of changes in assets of any trust, because, for instance, his wife acts as a trustee, then he must inform me of those changes promptly.

To facilitate the effectiveness of this screening arrangement, he will arrange to have the trusts in which he holds beneficial interests send quarterly statements directly to me for a conflict of interest review. I, or my successor DAEO, will then determine whether any of these entities are involved in particular matters before the Office of General Counsel.

In the event of a conflict of interest, Mr. Muller has pledged to disqualify himself from taking any official action that would have a direct and predictable effect on the financial interests of those companies or other interests. In addition, if I, as DAEO, determine that recusal and screening is not a viable option to preclude a conflict of interest under applicable Office of Government Ethics regulations, Mr. Muller will take the further steps I deem necessary to eliminate the conflicting interest.

Please contact me on 703-482-1954 if you need additional information concerning the Report, my opinion based on my review of the Report, or the 4 September 2002 letter from Mr. Muller.

Sincerely,

John A. Rizzo
Designated Agency Ethics Official

Enclosure

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October 8, 2002

The Honorable Bob Graham
Chairman
Select Committee on Intelligence
United States Senate
211 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

As required by Federal ethics regulations at 5 C.F.R. 2634.606, I am submitting the following supplemental information in connection with my nomination to serve as General Counsel of the Central Intelligence Agency.

As you know, section 2634.606(a) requires me to update my financial disclosure statement to list any earned income outside of my employment at Davis Polk & Wardwell or any honoraria that I or my spouse have received since I filed that statement on September 5, 2002. Neither my wife nor I have received outside earned income or honoraria since that date. Accordingly, there are no amendments to my report of the type specified by section 2634.606(a).

I have sent an original of this letter to Vice Chairman Shelby as well. Please do not hesitate to contact me if you need any additional information.

Sincerely,

Scott W. Muller

COMMITTEE BUSINESS MEETING TO VOTE ON THE NOMINATION OF SCOTT W. MULLER TO BE GENERAL COUNSEL OF THE CENTRAL INTELLIGENCE

WEDNESDAY, OCTOBER 16, 2002

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The Committee met, pursuant to notice, at 12:26 p.m., in room S–216, The Capitol, the Honorable Bob Graham (Chairman of the Committee) presiding.

Committee Members Present: Senators Graham, Levin, Rockefeller, Wyden, Shelby, Kyl, Hatch, Roberts, and DeWine.

Committee Staff Members Present: Al Cumming, Staff Director; Bill Duhnke, Minority Staff Director; Vicki Divoll, General Counsel; Kathleen McGhee, Chief Clerk; Melvin Dubee, Lorenzo Goco, Jim Hensler, Hyon Kim, Matt Pollard, Michal Schafer, Linda Taylor, and Jim Wolfe.

Chairman GRAHAM. Member, we now have a quorum of nine present.

The Committee will consider the nomination of Mr. Scott W. Muller for the position of General Counsel of Central Intelligence Agency. Pursuant to Rule 5 of the Committees rules, I move the Committee vote to report favorably to the Senate the President's nomination of Mr. Scott W. Muller to be CIA General Counsel.

Is there a second?

Vice Chairman SHELBY. Second, Mr. Chairman.

Chairman GRAHAM. The Clerk will call the roll.

Mrs. MCGHEE. Mr. Levin.

Senator LEVIN. Aye.

Mrs. MCGHEE. Mr. Rockefeller.

Senator ROCKEFELLER. Aye.

Mrs. MCGHEE. Mrs. Feinstein.

Chairman GRAHAM. Aye by proxy.

Mrs. MCGHEE. Mr. Wyden.

Senator WYDEN Aye.

Mrs. MCGHEE. Mr. Durbin.

Chairman GRAHAM. Aye by proxy.

Mrs. MCGHEE. Mr. Bayh.

Chairman GRAHAM. Aye by proxy.

Mrs. MCGHEE. Mr. Edwards.

Chairman GRAHAM. Aye by proxy.

Mrs. MCGHEE. Ms. Mikulski.

Chairman GRAHAM. Aye by proxy.
Mrs. MCGHEE. Mr. Kyl.
Senator KYL. Aye.
Mrs. MCGHEE. Mr. Inhofe.
Vice Chairman SHELBY. Aye by proxy.
Mrs. MCGHEE. Mr. Hatch.
Senator HATCH. Aye.
Mrs. MCGHEE. Mr. Roberts.
Senator ROBERTS. Aye.
Mrs. MCGHEE. Mr. DeWine.
Senator DEWINE. Aye.
Mrs. MCGHEE. Mr. Thompson.
Vice Chairman SHELBY. Aye by proxy.
Mrs. MCGHEE. Mr. Lugar.
Vice Chairman SHELBY. Mr. Lugar, aye by proxy.
Mrs. MCGHEE. Mr. Shelby.
Senator KYL. Aye.
Mrs. MCGHEE. Mr. Graham.
Chairman GRAHAM. Aye.
Mrs. MCGHEE. Seventeen ayes.

Chairman GRAHAM. The ayes are seventeen, the nays are zero. The ayes have it. Mr. Muller's nomination for CIA General Counsel will be reported favorably.

[Whereupon, at 12:28 p.m., the Committee adjourned.]

○