

CONFIRMATION HEARING ON THE NOMINATIONS
OF DANIEL J. BRYANT TO BE ASSISTANT
ATTORNEY GENERAL, OFFICE OF LEGAL POL-
ICY, DEPARTMENT OF JUSTICE AND RENE
ALEXANDER ACOSTA TO BE ASSISTANT ATTOR-
NEY GENERAL, CIVIL RIGHTS DIVISION, DE-
PARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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JULY 23, 2003
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Serial No. J-108-28

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Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

91-833 PDF

WASHINGTON : 2004

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**CONFIRMATION HEARING ON THE NOMINA-
TIONS OF DANIEL J. BRYANT TO BE ASSIST-
ANT ATTORNEY GENERAL, OFFICE OF
LEGAL POLICY, DEPARTMENT OF JUSTICE
AND RENE ALEXANDER ACOSTA TO BE AS-
SISTANT ATTORNEY GENERAL, CIVIL
RIGHTS DIVISION, DEPARTMENT OF JUS-
TICE**

WEDNESDAY, JULY 23, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:14 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Sessions, Leahy, Kennedy, Biden, and Feingold.

Chairman HATCH. I apologize for being late. We had a fairly contentious markup this morning in the Judiciary Committee, and I have been trying to catch up ever since. But we are delighted to have all of you here.

I am going to defer my remarks, since I have held up these two wonderful Members of Congress, until after they make their remarks. And so we welcome you, Senator Allen, and we appreciate the leadership you are providing in the Senate. We look forward to hearing your testimony, and then we will listen to Ileana Ros-Lehtinen and go from there.

Ileana, you are an old friend, and we really appreciate having you here and walking all the way over from the other side of the Hill. So we appreciate having you here.

Senator Allen?

Senator ALLEN. Thank you, Mr. Chairman, and I appreciate the courtesy. I am going to extend courtesy to Congresswoman Ileana Ros-Lehtinen. They actually have votes going on now, and I will defer to her. And I know we have a vote coming up ourselves, but I am going to let Ileana go first because I don't want her to miss votes. This introduction is important, but votes are, too.

Chairman HATCH. That would be great.

Ileana?

PRESENTATION OF RENE ALEXANDER ACOSTA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, BY HON. ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Representative ROS-LEHTINEN. Thank you for the Western hospitality as well as the Southern gentlemanliness, so thank you very much to both Senators.

It is a pleasure to be with all of you today, and I am especially proud to introduce to you Alex Acosta, the Presidential nominee to the position of Assistant Attorney General for Civil Rights. Alex is a dynamic and dedicated member of our community. I consider him a South Floridian. Senator Allen considers him a proud Virginian. But he has been an exemplary public servant for many years. His background as a Principal Deputy Assistant Attorney General in Civil Rights and his appointment by the President to the National Labor Relations Board have afforded him the opportunity to fully appreciate and comprehend civil rights issues, and he would make a tremendous asset to the Department of Justice.

Alex's careful and deliberate approach to law enforcement assisted in the successful prosecution of violations of civil rights and laws that help set the tone for the constructive dialogue on civil rights issues. If confirmed as Assistant Attorney General for Civil Rights, Alex would be the first Hispanic Assistant Attorney General to lead the Civil Rights Division at the Department of Justice. As a Hispanic who was raised in Miami, Florida, Alex fully understands the difficulties faced by minorities. He is known by his colleagues for being fair-minded and committed to protecting the civil rights of all Americans. He has consistently embraced not only the members of our Latino community, but has also endeavored to foster a spirit of mutual respect and understanding among all members of society.

Alex has been praised for his ability to bring together diverse groups of people and has been endorsed by such groups as the National Council of La Raza, the National Asian Pacific American Legal Consortium, the Arab American Institute, and the American Association of People with Disabilities, to name a few.

He has been recognized by Attorney General Ashcroft for his outstanding contributions to the Justice Department. He is a dedicated public servant who works tirelessly to ensure that our Nation's civil rights laws are enforced and that the civil liberties of all Americans are protected. His honesty, integrity, and commitment are indeed impressive, and I would like to extend a warm welcome to Mr. Rene Alex Acosta. Estamos muy orgulloso, Alex. We are so very proud of you and your lovely family.

Thank you so much, Senator Hatch, and thank you, Senator Allen, for this time and your courtesy.

Chairman HATCH. Well, thank you, Congresswoman Ros-Lehtinen. We really appreciate you coming over and giving us the benefit of your wisdom and your recommendation. Thanks so much.

Representative ROS-LEHTINEN. Thank you.

Chairman HATCH. We know you have to get back, so we will excuse you. Thank you.

Senator Allen?

PRESENTATION OF DANIEL J. BRYANT, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE AND RENE ALEXANDER ACOSTA, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. I am going to introduce two wonderful individuals to you: Mr. Daniel J. Bryant, to be Assistant Attorney General in the Office of Legal Policy at the United States Department of Justice, and Mr. Rene Alexander Acosta, otherwise known as Alex Acosta, to be Assistant Attorney General in the Civil Rights Division at the Department of Justice.

I will first start with Mr. Bryant, who is well known to you all in this Committee in his current position with the Office of Legal Policy. It was about 2 years ago that I came before this Committee to introduce Mr. Bryant when he was nominated for the position of Assistant Attorney General for Legislative Affairs at the U.S. Department of Justice. Since then he has served with great clarity and effort.

In his new position, opposed to serving as a liaison, he is going to be developing and planning and coordinating major legal policy initiatives of high priority to the Administration and the Department, and they do have a very ambitious agenda, including such issues as class action reform, which I know is something of great interest to you, Mr. Chairman, as well as other legal reforms and justice in our country.

As you well know, Mr. Chairman, from May of 2001 to January of this year, Mr. Bryant carried out the duties as liaison between Justice and Congress. In January of 2003, Mr. Bryant was named counselor and senior adviser to the Attorney General, and since June of this year, Mr. Bryant has served as Acting Assistant Attorney General in the Office of Legal Policy.

He is highly qualified. He has proven his ability over the years to serve as Assistant Attorney General in the Office of Legal Policy. He has served not just in the Department of Justice, but as majority chief counsel to the House Judiciary Committee, Subcommittee on Crime. He served as policy director for the First Freedom Coalition, which is a non-profit organization advocating for responsible changes in the criminal justice system. While at the First Freedom Coalition, Mr. Bryant worked closely with former United States Attorney General Bill Barr, who is a good friend of mine and helped me as Governor abolish parole in Virginia following the lead of folks such as yourself, Senator Hatch, during the Reagan Administration.

Mr. Bryant also has worked with the Senate's Governmental Affairs Committee, Permanent Subcommittee on Investigations, where he focused on domestic and international organized crime, as well as a law clerk and special assistant at the Department of Justice. He is eminently qualified. I know you all moved very quickly back in the spring of 2001, and I hope you will as well in this position. I would like to take a moment to recognize a few of Mr. Bryant's family members who are here today: first and foremost, his bride, Aerin, who is holding little Noah, and Dan is holding Peter,

and Caroline, the daughter, has moved back to the back row. His brother Paul, is back there, I call him “Bear” Bryant. And his father, Pop-Pop, I said you can call him “Papa Bear” Bryant, but it is Pop-Pop, and Carolyn, his wonderful mother, are all here with him.

Chairman HATCH. I have to say, Noah looks like he could be a linebacker for the Green Bay Packers.

[Laughter.]

Senator ALLEN. He is still too sweet. If you hang around here—

Chairman HATCH. It takes the sweetness away. Listen, I lost all of mine this morning, I tell you.

[Laughter.]

Senator ALLEN. Or maybe we will get him on the Raiders or the Redskins.

Now I would like to speak on behalf of Mr. Alex Acosta, who has been nominated to the position of Assistant Attorney General in the Civil Rights Division of the Department of Justice. And I very much commend President Bush for selecting such a well-qualified nominee to fill this very important position. Mr. Acosta is known by his colleagues and all as being committed to protecting the civil rights of all Americans. And what you hear most and read most about Mr. Acosta is that he is fair-minded. You hear about his careful, deliberative approach to law enforcement, helping in the prosecution of violations of civil rights laws, as well as setting the tone for constructive dialogue on civil rights issues.

He is the son of Cuban immigrants. Mr. Acosta’s parents are here with us. His first language was Spanish, but he is a true American success story. We have seen such qualified individuals for all sorts of positions, including the D.C. Court of Appeals, before this Committee. And I feel that you will be making history, clearly, with Alex Acosta being the first Hispanic Attorney General to lead the Civil Rights Division, as Ileana said earlier. But he has a long list of endorsements. It is impressive and indicative of his strong qualifications and his fair nature.

The list of groups supporting Mr. Acosta’s nomination include the following: the National Council of La Raza, the National Asian Pacific American Legal Consortium, the Hispanic Bar Association, the Arab American Institute, the American Association of People with Disabilities, the Hispanic Bar Association of the District of Columbia, the National Asian Pacific American Bar Association, the National Fraternal Order of Police, and the United Brotherhood of Carpenters and Joiners of America. That is a diverse group of entities and organizations, and indeed Mr. Acosta was recently awarded the Mexican American Legal Defense Fund 2003 Excellence in Government Award.

The National Council of La Raza, one of the groups endorsing Mr. Acosta, calls him “a bridge-builder, not only with the Latino community but with other ethnic and racial groups.” The endorsement goes on to say, “We may not agree with everything that Mr. Acosta has done or will do, but we are certain that he is someone who will listen and act in a fair manner.”

Mr. Acosta has already been nominated and confirmed to serve on the National Labor Relations Board where he currently serves. Prior to this appointment, he served as a Principal Deputy Assist-

ant Attorney General in the Civil Rights Division at the Department. He has clerked for the U.S. Court of Appeals for the Third Circuit. He has taught classes in civil rights law, disability-based discrimination law, and employment law at George Mason University's School of Law. And he is outstanding.

Both of these are exceptional nominees, Mr. Chairman, and I know that you will be fair and expeditious in their consideration and action. I again thank you for your time, your courtesy, and your commitment to fairness, equity, and greater justice in this country. These two gentlemen will help us all in our cause.

Finally, I would like to ask that the statement of my colleague, Senator John Warner, in support of both Mr. Bryant and Mr. Acosta be entered into the record.

Chairman HATCH. Without objection.

I really personally appreciate your coming and taking the time and giving this excellent statement on behalf of these two terrific people. So I appreciate you doing it. Thanks, Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

Chairman HATCH. Well, if we could have the two nominees come forward, if you will raise your right hands. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRYANT. I do.

Mr. ACOSTA. I do.

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

Chairman HATCH. Thank you.

Let me make a few comments before I turn the time over to you for any statements you care to make. I want to welcome both of you here. I have really high opinions of both of you. I have followed your careers, I know you both, and I am just very, very enthusiastic about your appointments.

Alex Acosta has been nominated to serve as Assistant Attorney General for Civil Rights, and in this capacity, he will lead the enforcement of Federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. Of course, Mr. Acosta is already familiar with the responsibilities this position entails since he served in the Civil Rights Division in 2001 as a Deputy Assistant Attorney General and then as the Principal Deputy Assistant Attorney General. He has also taught civil rights law as a professor at George Mason Law School. He is widely recognized as an expert in the civil rights arena, and I have no doubt that you, Alex, will serve the Justice Department and the country with distinction upon your confirmation.

I am not alone in my endorsement of Mr. Acosta, as has already been said. He has received accolades from a host of civil rights organizations who extol his many contributions. For example, the Arab-American Institute stated, "At one of the most difficult times in our Nation, Alex reached out to the Arab and Muslim Americans to ensure that we were part of a system and that our rights were protected. His immediate response to our community's concerns provided an important indication of his sensitivity and helped pave

the way for regular meetings with various branches of the Department of Justice.”

Similarly, the National Council of La Raza has stated, “Mr. Acosta has proven himself to be a bridge-builder, not only with the Latino community but with other ethnic and racial groups.” That has been said before, but I thought it needed to be re-emphasized.

The truth of that statement is reflected by the disparity of the groups that are supportive of you. Maybe they are not as disparate as they are diverse. And these are very important groups that we all respect, and I won’t go through all of those again since Senator Allen did.

Your accomplishments are very impressive. You recently received the Excellence in Government Award from the Mexican American Legal Defense and Educational Fund, which is a wonderful award.

Mr. Acosta attended Harvard College and Harvard Law School and clerked for Judge Samuel Alito on the Third Circuit. He has worked as an appellate attorney at Kirkland and Ellis and as project director at the Ethics and Public Policy Center. Most recently, he has been serving as a board member on the National Labor Relations Board.

Given Mr. Acosta’s executive experience, I am confident that he is well equipped to handle the challenges of this crucial post. I am hopeful that the Committee and the Senate as a whole will move quickly to confirm you in this position. And I will do everything in my power to see that that happens as soon as I can. This position needs to be filled, and we need to have an aggressive, hard-working person in that area who is sensitive to the needs of minorities in this country.

Now, we will also consider this afternoon the nomination of a good friend of mine, Dan Bryant—and I shouldn’t have said that; that will probably be an “x” against you with some people—to be Assistant Attorney General for the Office of Legal Policy. Now, this position plays a crucial role in planning, developing, and coordinating implementation of major policy initiatives of high priority to the Justice Department and to the administration. The Office of Legal Policy also provides important legal advice and assistance to the Attorney General and to Department components.

Mr. Bryant comes before the Committee with a very impressive track record of public service. He was unanimously confirmed in 2001 as Assistant Attorney General for the Office of Legislative Affairs, where he was responsible for devising and implementing the Justice Department’s legislative strategy and coordinating all Congressional oversight of the Department. Mr. Bryant performed these duties impeccably and has earned the trust and respect, I think, of many if not all of the Senators during the process.

Even before he assumed his leadership role at the Department of Justice in the Department’s Office of Legislative Affairs, Mr. Bryant was no stranger to Capitol Hill. Prior to joining the Justice Department, he served as chief counsel of the Crime Subcommittee of the House Judiciary Committee. He also served on the staff of the Senate Permanent Subcommittee on Investigations. Mr. Bryant’s experience in Congress, along with his significant experience at the Justice Department, makes him an ideal choice to take the helm at the helm at the Office of Legal Policy. And I have to say

that I am a person who has been very impressed with the way that you have handled yourself over in the House, down there, and elsewhere. You are a terrific person, a terrific nominee, and I look forward to getting you through as quickly as I can, along with Alex Acosta.

Let me again close by expressing my pleasure in having such well-qualified nominees come before the Committee. I look forward to hearing your testimony and, of course, look forward to any questions that may be raised here in the hearing.

Do either of you have any statements you would care to make? We could start with whoever wants to—

Senator BIDEN. Mr. Chairman, may I be so rude as to ask—I apologize for being late and ask the Chairman's indulgence to make a very short comment? I had hoped to be here earlier.

Chairman HATCH. I would be happy to do that.

Senator BIDEN. Because I want to, as they say in the Southern part of my State, brag on a Delawarean for a second here. It is no reflection on the other nominee, if you would give me just a second.

Chairman HATCH. I am very happy to do that, Senator.

PRESENTATION OF DANIEL J. BRYANT, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, BY HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. I want to apologize to Dan and his parents for being late. As Delawareans, you will understand. I was with Senator Carper and Congressman Castle trying to save the VA hospital in Elsmere, Delaware. And you are important, Dan, but the VA hospital is even more important.

I want to thank you, Mr. Chairman, and it is a pleasure for me, I was going to say, to introduce Dan but I understand our colleague from Virginia did, since technically he is a Virginia resident. But once a Delawarean, we don't let them go, and I am flattered that Dan would indicate earlier that he would like to have me introduce him as well.

It seems only like yesterday that I was introducing Dan for a nomination for a different office, the one he now holds, the Office of Legislative Affairs. And as a consequence of that office, all of our staff behind us and all of my colleagues have gotten to know a little bit about Dan, so what I am about to say about him is not going to surprise anybody.

He is a first-rate lawyer, and he is universally recognized as that. And I think he is well poised and well positioned to take on what is an even more important job, and that is the Office of Legal Policy. A lot of very controversial issues are going to be coming out of the Justice Department and relating to Justice decisions relating to policy, and I feel—I always like it, as you do, Mr. Chairman, when you can be supporting strongly the nominee of another party before us. And I do that not just because Dan is a Delawarean, but I do it because I know his work and I know a lot about him. I have had the occasion to work with him over the years in his capacity, as you will remember, Mr. Chairman, since you and I have served almost the same amount of time on this Committee, when he was counsel to the House Subcommittee on Crime. And there he served

Representative McCollum and Henry Hyde, Chairman Hyde, and Congressman Conyers. And I personally worked with Dan, and we worked with him, on our Violence Against Women Act that you and I pushed, the Violence Against Women Act of 2000, the Foreign Narcotics Kingpin Designation Act, and the DNA Backlog Elimination Act, which I am going to want to come back to in your new position and talk more about additional legislation we have on DNA.

Dan is an able lawyer. He is a straight shooter, and I am confident he is going to serve this Department well in this new position, in large part because he has good judgment. Dan was born in Port Jefferson, New York, but he grew up in Wilmington, Delaware, where he attended the Tower Hills School, the second best school in Delaware. I went to the other one. His parents, Gary and Carolyn, are both here today, I believe, sitting back there, and I welcome them, as I am sure they have been recognized already, as well as his older brother and sister and their families, all still living in Wilmington. And he is joined today by his wife, Aerin, and Caroline and Peter and Noah. And as my mother would say, God bless you, dear, having the nerve to take all three out. You are pretty good. They are awful good kids.

While I have been impressed with his work on the juvenile justice bill and my Violence Against Women Act and the great work he has done at the Department, what really brings me here today is his accomplishments in Delaware. I just want to brag on him just a little bit, and I will stop, Mr. Chairman.

He was both an academic and an athletic star back in our home State. He placed first in Delaware's State Spanish oral exam. He was a member of the all-State soccer team. He was a recipient of the DeSabatino Leadership Award, named after a personal friend and a great, great guy at that other school. And, in fact, were it not for his appearance here today, I would be tempted to say Dan peaked a little early in life. He has done so much already.

The fact that he is down here is of great pride to us in Delaware. He has served the Justice Department well thus far, just as he served the House Judiciary Committee well, and I am confident that he will serve the Attorney General well in this new position. And I am also confident he is going to have the obligation of coming forward with some fairly controversial things that are going to be up here. But the one thing I can assure all my colleagues of, and my Democratic colleagues, even if you end up disagreeing with the policy that comes out of the Justice Department, Dan will be straight with you. He will give it to you straight. And that is all that we can ask for in the opposition here.

So I thank you for indulging me and allowing me to talk a little bit about him, but we are proud of him at home, and I am proud that he is about to take on this new job. And I apologize to our other nominee, whom I do not know personally, but I am sure is very well qualified.

I thank you, Mr. Chairman.

Chairman HATCH. Well, thank you, Senator Biden. We really appreciate your kind remarks. I know the Bryant family does in particular.

I am going to put Senator Warner's statement in the record, and also I would like to introduce into the record several letters and press releases endorsing the nomination of Mr. Acosta for Assistant Attorney General for Civil Rights.

Senator BIDEN. Mr. Chairman, one more indulgence, if I may.

Chairman HATCH. Sure.

Senator BIDEN. We are about to have a vote, and then I am—I was going to say co-chairing. I am not co-chairing. I am the Ranking Member on the Foreign Relations Committee, and we are having a very important hearing on Iraq that is supposed to start at 2:30. So if I am not back, that is the reason why. We will have started that hearing. And I have a similar responsibility on the fourth floor beginning very shortly.

Chairman HATCH. Well, thank you, Senator Biden. We know how busy you are, and we know what a great job you do on that committee.

Well, we do have a vote, but I am going to take a few minutes here and allow you folks to—why don't we, since we introduced Alex first, why don't we go with you, Mr. Bryant, and take any statement you would care to make, and then we will take Mr. Acosta's statement.

STATEMENT OF DANIEL J. BRYANT, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE

Mr. BRYANT. Thank you, Mr. Chairman. I don't have a statement that I would plan to make at this time. I would ask to submit one for the record, if I might.

And my family has been graciously introduced a number of times already, so I won't repeat that. But thank you for those courtesies, all of you.

I would just note that I have family up from North Carolina as well. My mother's brother, Edward, and his wife, Sylvia, and daughter, Lynn, and her son, they are all up here.

Further, we are joined by friends from Delaware.

Chairman HATCH. Well, we want to welcome all of you here, and it is good to see you again, Mrs. Bryant, and your father, Mr. Bryant. We are grateful to have all of you here. And I have to admit, those kids, I remember them from the last time. They are great.

Mr. BRYANT. Thank you. I would just repeat, Mr. Chairman, my gratitude for the consideration of this Committee, your courtesies today and over past years. And I would also like to thank the President and the Attorney General for the privilege of being asked to serve in this capacity. So thank you.

[The biographical information follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Daniel James Bryant
2. Address: List current place of residence and office address(es).

Place of Residence:
Falls Church, VA

Office:
Office of Legal Policy
U.S. Department of Justice
950 Penn. Ave., N.W.
Washington, D.C. 20530
3. Date and place of birth.

2/24/65

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

Married to Aerin Dawn Bryant (nee Dunkle), who is not employed outside the home.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

American University (1983-87), B.A., May, 1987.
La Universidad de Sevilla (1986)
American University, Washington College of Law (1988-1992),
J.D., May, 1992.
Oxford University, Keble College (1992-1993), M.St., July,
1993.
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

- U.S. Department of Justice, 1987-1992
(Social Science Program Manager and Special Assistant,
Office of Juvenile Justice and Delinquency Prevention;
Law Clerk/Legal Assistant, Office of Justice Programs
and Criminal Division)
- U.S. Senate, Permanent Subcommittee on Investigations, 1992
(Professional Staff)
- The First Freedom Coalition, Inc. (a non-profit
corporation), 1994
(Policy Director, and through March, 2001, as director)
- The Fourth Presbyterian Church, 1994-5
(College Director, a part-time position)
- U.S. House of Representatives, Committee on the Judiciary,
Subcommittee on Crime, 1995-2001
(Counsel; Chief Counsel)
- U.S. Department of Justice, February, 2001 - May, 2001
(Special Assistant to the Attorney General)
- U.S. Department of Justice, May, 2001 - January, 2003
(Assistant Attorney General, Office of Legislative
Affairs)
- U.S. Department of Justice, January, 2003 - June, 2003
(Counsel and Senior Advisor to the Attorney General)
- U.S. Department of Justice, June, 2003 - present
(Acting Assistant Attorney General, Office of Legal
Policy)

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

No.

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

National Merit Letter of Commendation, 1982
First Place, Delaware State Spanish Oral Exam, 1982
Delaware All-State Soccer Team, 1982
DiSabitino Leadership Award (Tower Hill School), 1982
American Field Service (AFS) Scholarship Student to
Portugal, 1982

Scholarship Student and cum laude graduate, American University
Outstanding Performance Awards, U.S. Department of Justice

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

Member, Maryland State Bar Association
Member, National District Attorney Association, Advanced Prosecutor Research Institute, Research Group on "The Prosecution Strategy for the 21st Century".

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

I am a member of the following organizations, which do not lobby:

Member, Grace Presbyterian Church, Vienna, VA.
Alliance of Confessing Evangelicals (ACE), Philadelphia, PA.
Oxford University Alumni Society, Oxford, England

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

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

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

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

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

"Christianity and Politics: How Shall the Twain Meet?" Modern Reformation, September/October, 1994.

"Crime Policy in the 106th Congress," National League of Cities Annual Conference Talk, Televised on C-Span, March, 2000. (I do not have a transcript.)

Testimony before the Senate Judiciary Committee, May 3, 2001, in connection with my confirmation hearing for the position of Assistant Attorney General for Legislative Affairs, U.S. Department of Justice.

Testimony before the House Government Reform Committee, February 6, 2002, in connection with the Committee's request for Justice Department documents over which the President had asserted executive privilege.

Written statement submitted to the Subcommittee on Criminal Justice, Drug Policy and Human resources, Government Reform Committee, May 15, 2002, in connection with proposed legislation involving bans on human cloning.

"Justice in Wartime" panel discussion hosted by the Virginia Bar Association, in conjunction with Commonwealth Public Broadcasting, May 16, 2002. (I do not have a transcript.)

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

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

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

U.S. Department of Justice, May, 2001 - January, 2003
(Assistant Attorney General, Office of Legislative Affairs)
Appointed by the President of the United States and confirmed by the United States Senate.

15. Legal Career:

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

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

I have not clerked for a judge.

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

I have never practiced alone.

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

The U.S. Department of Justice
950 Penn Ave. N.W.
Washington, D.C. 20530
May, 1987 - May, 1992
Employed as program manager and law clerk

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

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

The U.S. Department of Justice
950 Penn. Ave., N.W.
Washington, D.C. 20530
February, 2001 - May, 2001
Employed as Special Assistant to the Attorney General
May, 2001 - January, 2003
Employed as Assistant Attorney General,

Office of Legislative Affairs
January, 2003 - June, 2003
Employed as Counsel and Senior Advisor to the
Attorney General
June, 2003 - present
Employed as Acting Assistant Attorney
General, Office of Legal Policy

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

While serving the U.S. Department of Justice in varied capacities over the past two and a half years, I have provided legislative, legal and policy counsel to the Attorney General, Deputy Attorney General, and other officials in the Department of Justice and the Executive Branch. In my position at the U.S. House of Representatives Committee on the Judiciary Subcommittee on Crime, I was engaged as a legislative counsel. Prior to that I focused on legislative and policy matters as policy director for a non-profit. And prior to that I served briefly in the Senate as professional staff to a Committee. Throughout law school, I served in the U.S. Department of Justice, including two years as a law clerk. (Please see response to Question #17 for further detail.)

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

My clients have been the government agencies and institutions that have employed me: the U.S. Department of Justice, the U.S. Senate Governmental Affairs Committee, and the U.S. House Committee on the Judiciary.

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

None.

2. What percentage of these appearances was in:
 - (a) federal courts - 0%
 - (b) state courts of record - 0%
 - (c) other courts - 0%
 3. What percentage of your litigation was:
 - (a) civil - 0%
 - (b) criminal - 0%
 4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
None.
 5. What percentage of these trials was:
 - (a) jury - 0%
 - (b) non-jury - 0%
16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representations;
 - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
 - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

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

Attorneys and professionals with whom I have worked in my capacity as a government lawyer include: Jon Dudas, Assistant Undersecretary for Patent and Trademark, U.S. Department of Commerce, (703) 306-4219; Thomas Mooney, General Counsel and Staff Director, Committee on International Relations, (202) 225-5021; Paul McNulty, U.S. Attorney, Eastern District of Virginia, U.S. Department of Justice, (703) 299-3822; Thomas Sansonetti, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, (202) 514-2701; Jeffrey

Taylor, Counsel to the Attorney General, U.S. Department of Justice, (202) 514-2107; Pat O'Brien, Special Counsel, Federal Bureau of Investigation, (202) 324-6500; Carl Thorsen, Administrative Assistant and Counsel to the Majority Leader, U.S. House of Representatives, (202) 225-5951; Michael Chertoff, Judge, U.S. Court of Appeals for the Third Circuit, (202) 216-7056; Jay Bybee, Judge, U.S. Court of Appeals for the Ninth Circuit, (702) 464-5650; Bobby Vassar, Minority Counsel, House Judiciary Committee, Subcommittee on Crime, (202) 225-6739.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

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

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

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

preparation for federal trials.

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

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

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

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

Local Government Law Enforcement Block Grants
 Truth-in-Sentencing Incentive Grants
 The Comprehensive Terrorism Prevention Act
 The Mandatory Victim Restitution Act
 The Punishing Witness Retaliation and Jury Tampering Act
 The Interstate Stalking Punishment and Prevention Act

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

From February, 2001 to the present, I have held various
 positions at the U.S. Department of Justice. As Special
 Assistant to the Attorney General (February, 2001 - May, 2001) I
 worked in the Office of Legislative Affairs, advising the
 Attorney General. As Assistant Attorney General for Legislative
 Affairs (May, 2001 - January, 2003), I was responsible for
 devising and implementing Department legislative strategy,
 articulating the views of the Department on Congressional
 legislative initiatives, coordinating all Congressional oversight
 of the Department, and coordinating all activities in connection
 with the Senate confirmation process for Federal judges and
 Department nominees. While serving as Counsel and Senior Advisor
 to the Attorney General (January, 2003 - June, 2003) and as
 Acting Assistant Attorney General for Legal Policy (June, 2003 -
 present), I have provided the Attorney General, the Deputy
 Attorney General, and other Departmental and Executive Branch
 officials with legal and policy counsel and have been responsible
 for devising and implementing a wide variety of Departmental
 policy initiatives.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

My wife and I participate in the Thrift Savings Plan and currently have between \$55,000 and \$60,000 in the plan.

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

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

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

Yes. I have accepted the offer to teach a course on government lawyering as a adjunct professor at the George Washington School of Law.

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

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

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

See attached Net Worth Statement.

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

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

III. GENERAL (PUBLIC)

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

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

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

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

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

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

No.

SCHEDULES

<u>Assets</u>	<u>Amount</u>
Real Estate:	
Residence (Falls Church, VA)	\$650,000.00
Securities:	
Walt Disney Company	\$50.00
U.S. Government Savings Bond	\$100.00
<u>Liabilities</u>	<u>Amount</u>
Real Estate Mortgage:	
Washington Mutual Bank	\$211,050.00
Chattel mortgages/other liens payable:	
Washington Mutual Bank	\$165,700.00



U.S. Department of Justice

Washington, D.C. 20530

JUL 10 2003

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

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Daniel J. Bryant, who has been nominated by the President to serve as Assistant Attorney General, Office of Legal Policy, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Bryant recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating personally and substantially in any particular matter that could affect his financial interests.

We have advised Mr. Bryant that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating personally and substantially in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party.

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

Sincerely,

A handwritten signature in black ink, appearing to read "PRCorts", with a horizontal line extending to the right.

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

Executive Branch Personnel Public Financial Disclosure Report

SEC 218 (Rev. 04/2000)
 SEC 218 (Rev. 04/2000)
 U.S. Office of Government Ethics

Form Approved
 OMB No. 3203-0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)		Calendar Year Covered by Report		New Entrant, Nominee, or Candidate		Termination Date (If Applicable) (Month, Day, Year)		Fee for Late Filing Any individual who is required to file this report 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 \$500 fee.	
Reporting Individual's Name Bryant		Last Name and Middle Initial Daniel J.		Department or Agency (If Applicable) U.S. Department of Justice		Incumbent <input type="checkbox"/>		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 file the filing extension period. Part II of Schedule D is not applicable.	
Position for Which Filing Assistant Attorney General Office of Legal Policy		Title of Position Assistant Attorney General Office of Legal Policy		Telephone No. (include Area Code) 202-514-4601		Termination Filing Termination Filers: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must file the filing extension period. Part II of Schedule D is not applicable.		Nominees, New Entrants and Vice President: Schedules A, B, C, and D are not applicable.	
Location of Office (for forwarding address) 950 Pennsylvania Ave NW Washington, DC 20530		Address (Number, Street, City, State, and ZIP Code)		Title of Position(s) and Date(s) Held Assistant Attorney General, Office of Legislative Affairs (2001-2003)		Name of Congressional Committee Considering Nomination Judiciary		Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Presidential Nominees Subject to Senate Confirmation Judiciary		Signature of Reporting Individual Daniel J. Bryant		Date (Month, Day, Year) 6/30/03		Signature of Other Reviewer Brent Swan		Date (Month, Day, Year) 7/19/03	
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 Designated Agency Ethics Official/Reviewing Official M. R. C.		Date (Month, Day, Year) 7-9-03		Signature M. R. C.		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).		Office of Government Ethics Use Only		Comments of Reviewing Officials (if additional space is required, use the reverse side of this sheet)		Agency Use Only		OGE Use Only	

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

Reporting individual's Name

Daniel J. Bryant

Page Number

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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 of more than \$200 at the beginning 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 and actual amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).

None

Examples
 Central Airlines Common
 Doc Jones & Smith, Homestead, State
 Kempton Equity Fund
 BA, Heartland 500 Index Fund

BLOCK B

Valuation of Assets at close of reporting period

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*	
Over \$500,001 - \$1,000,000	
Over \$1,000,001 - \$5,000,000	
\$5,000,001 - \$25,000,000	
\$25,000,001 - \$50,000,000	
Over \$50,000,000	

BLOCK C

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

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*	
Over \$500,001 - \$1,000,000	
Over \$1,000,001 - \$5,000,000	
\$5,000,001 - \$25,000,000	
\$25,000,001 - \$50,000,000	
Over \$50,000,000	

Dividends	
Rent and Royalties	
Interest	
Capital Gains	
Excepted Investment Fund	
Qualified Trust	

Other Income Type & Actual Amount	
Date (Mo., Day, Yr.)	
Only if Honoraria	
Law Retaining Office	

* 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.

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

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U.S. Office of Government Ethics

Reporting Individual's Name

Daniel J. Bryant

SCHEDULE B

Page Number

Part I: Transactions

Report any purchase, sale, or exchange of property used solely as your personal residence or a transaction solely between you, your spouse, or dependent child, 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. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

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

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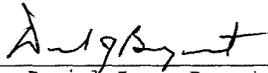
SCHEDULE D		Page Number		
Reporting Individual's Name Daniel J. Bryant				
Part I: Positions Held Outside U.S. Government Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, general manager, partner, proprietor, shareholder, member, trustee, or 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.				
	Name of Organization (Do not include name and address)	Type of Organization (Non-profit, educational, law firm)	Position Held (President, Director)	From (Mo./Yr.) To (Mo./Yr.)
1	First Freedom Coalition Alexandria, VA	Non-profit education	Director	6/1/95 3/01
2				
3				
4				
5				
6				
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 source. (Name and Address)			Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.	
	Name of Source (Do not include name and address)	Type of Source (Legal services, university, construction)	Brief Description of Duties	
1	Doi Jones & Smith, Hometown, State Metro University (client of Doi Jones & Smith), Moneypenny, State	Legal services		
2				
3				
4				
5				
6				

Print Editions Cannot Be Used.

AFFIDAVIT

I, Daniel James Bryant, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/11/03
(DATE)


Daniel James Bryant

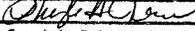

(NOTARY)

Washington, District of Columbia

Subscribed and sworn to before me, in my presence,

this 11th day of JULY, 2003

by PHYLLIS A. JOHNSON

 Notary Public

My Commission Expires _____

PHYLLIS A. JOHNSON
Notary Public, District Of Columbia
My Commission Expires October 14, 2007

Chairman HATCH. Thank you.
Mr. Acosta?

**STATEMENT OF RENE ALEXANDER ACOSTA, NOMINEE TO BE
ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION,
DEPARTMENT OF JUSTICE**

Mr. ACOSTA. Thank you, Mr. Chairman. I, too, do not have an opening statement and would like to submit one for the record, if I may, but I have some brief introductions.

Chairman HATCH. Without objection.

Mr. ACOSTA. I would like to introduce my parents, Rene and Delia.

Chairman HATCH. So happy to have you here. You must be proud of your son.

Mr. ACOSTA. I want to acknowledge—we had tried to fly my grandmother up for the hearing today. She's 94, and that was a little bit too much to ask for. We did try, but I want to acknowledge her and her sister, Delia and Rosalia. Rosalia is 99, both living in Miami.

Chairman HATCH. We expect you to serve a long time.

[Laughter.]

Mr. ACOSTA. That is quite a while.

I also want to acknowledge, I know that several senior members of the Civil Rights Division staff are here, and I want to acknowledge them. They are experienced, dedicated litigators who have dedicated a good part of their life to serving the Division and to enforcing the civil rights laws. I think it's important that they're here, and I want to thank them for coming.

Chairman HATCH. Happy to have them.

Mr. ACOSTA. Finally, I want to thank this Committee for taking the time to hold this hearing, the Attorney General and the President for their confidence in this nomination.

[The biographical information follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
Rene Alexander Acosta
2. Address: List current place of residence and office address(es.)
Alexandria, VA 22314

NLRB
1099 14th Street, NW
Washington, DC 20005
3. Date and place of birth.
January 16, 1969
Evanston (Chicago), IL
4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

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

Harvard Law School, 9/91 to 6/94, J.D. granted 6/94
La Sorbonne, 7/88 to 8/88, summer language program
Harvard College, 9/86 to 6/90, A.B. granted 6/90

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

6/90 – 8/91 Lehman Brothers Investment Banking – Analyst
 6/92 – 8/92 Skadden, Arps, Slate, Meagher & Flom – Summer Associate
 9/92 – 6/94 Harvard College, Dept. of Economics – Teaching Fellow
 6/93 – 8/93 Foley, Hoag & Elliott – Summer Associate
 8/94 – 8/95 The Honorable Samuel A. Alito,
 U.S. Court of Appeals for the Third Circuit – law clerk
 9/95 – 3/97 Kirkland & Ellis – Associate
 4/97 – 12/00 Ethics & Public Policy Center – Fellow / Project Director
 1/98 – 6/00 George Mason Law School – Adjunct Professor / Lecturer
 9/00 – 1/01 Comité Hispano de Virginia – Board Member
 1/00 – 1/01 SQ, Inc. – Board Member
 (This start-up internet venture was incorporated but never funded. The corporation thus remained inactive. I served on the Board of Directors.)
 1/01 – 12/02 U.S. Department of Justice
 Deputy Assistant Attorney General,
 Civil Rights Division (1/01 – 8/01)
 Principal Deputy Assistant Attorney General,
 Civil Rights Division (9/01 – 12/02)
 12/02 – 8/03 National Labor Relations Board
 Board Member (12/02 – term expires Aug. 27, 2003)

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

No.

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

Mexican-American Legal Defense and Educational Fund
 Excellence in Government Award – June 2003.

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

American Bar Association	1993-present
District of Columbia Bar Association	1995-present
Hispanic National Bar Association	2002-present
Hispanic Bar Association of the District of Columbia	2002-present
Pennsylvania Bar Association	1995-present

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

Organizations to which I belong that may be active in lobbying:

LULAC (League of United Latin American Citizens)
 NALEO (National Association of Latino Elected Officials)

Other organizations to which I belong:

Army/Navy Club of the District of Columbia
 The Federalist Society

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

Since July 1996, I have been an active member in good standing District of Columbia Bar. In addition, since February 1995, I have been a member in good standing of the Pennsylvania State Bar, although I am currently inactive in that bar.

In addition, I am, or have been, a member of the following federal bars:

US District Court for the District of Columbia	Oct. 1996 to Oct. 1999
(Bar membership lapses after 3 years; chose not to renew)	
US Court of Appeals for the Third Circuit	May 1995 to present
US Court of Appeals for the Fourth Circuit	Oct. 2000 to present
US Court of Appeals for the Ninth Circuit	July 1996 to present
US Court of Appeals for the DC Circuit	Apr. 1996 to present

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

Revealing the Inadequacy of the Public Forum Doctrine: International Society for Krishna Consciousness, Inc., v. Lee, 16 HJLPP 269 (Winter 1993).

Bursting Bubbles and Burdens of Proof: The Deepening Disagreement on the Summary Judgment Standard in Disparate Treatment Employment Discrimination Cases, 2 TRLP 207 (Spring 1998).

"Clinton's judicial flip-flop," *The Washington Times* (October 10, 1997).

"In 2000, Supreme Court Is at Stake Too," *The Wall Street Journal* (Aug. 23, 1999).

"Judicious Maneuvers," *National Review Online* (October 4, 2000).

In addition, while working at the Ethics and Public Policy Center I gave several speeches, and participated in some radio/television discussions regarding judicial nominations and the role of the judiciary within our system of separation of powers. I spoke on these topics before groups, including chapters of the Civitas Forum, Federalist Society, the Heritage Foundation, the National Conference of State Legislators and Talk of the Nation.

I spoke to these groups from notes, which I have not kept. In one case, however, I was asked to publish my remarks. These are attached:

"The Judiciary and Citizenship," Speech before the *Civitas* Forum (Winter 1997), republished in *Law & A Free Society* (Center for Economic and Policy Education, 1988).

In a second instance, I am aware of a transcript of my radio remarks. This transcript is attached:

Talk of the Nation with Ray Suarez (November 19, 1997), transcript available at 1997 WL 15382361.

In my capacity as an adjunct professor/lecturer at George Mason Law School I also occasionally spoke on employment and disability discrimination issues before the Federalist Society (I think I spoke twice, once as the moderator). I spoke from notes, which I have not kept.

Further, while at the Department of Justice, I spoke on civil rights issues. I spoke from notes, which I have not kept. The subjects typically were:

- (i) Executive Order 13166 (access by language minorities to government-funded services)
- (ii) Section 203 of the Voting Rights Act (access by language minorities to voting); or

Groups to whom I have spoken on these issues include: The Hispanic Bar Association, the League of United Latin American Citizens, the National Asian-Pacific Bar Association, the National Association of Latino Elected Officials, and the National Council of La Raza.

I also, while at the Department of Justice, signed the Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (Jun. 12, 2002).

In addition, while at the Department of Justice, I spoke on the issue of trafficking in persons to international groups in Guatemala and in the Dominican Republic. The remarks made in the Dominican Republic and Guatemala were based on text prepared for me by staff. My eventual remarks were substantially different. I have nonetheless provided the staff-prepared remarks. I have also attached detailed press coverage of my remarks:

“Ayuda para Frenar la Trata de Personas,” El Caribe (a Spanish-language newspaper published in the Dominican Republic) (September 26, 2002) at page 2.

More recently, while at the National Labor Relations Board, I have spoken often on labor law issues. Groups to whom I have spoken include the American Bar Association, the AFL-CIO National Lawyers’ Convention, the Chamber of Commerce, the Cleveland Bar Association, the Federalist Society, and the Wharton Center for Human Resources. My remarks to these groups are a variation of the same speech. Originally, I spoke from notes. In April, I asked staff to prepare a standard speech based on my prior remarks. I have since used that standard speech, extemporaneously adapting it to the group to which I am speaking. I have attached this standard speech. Please note that my actual remarks differ both in length and substance from the staff-prepared draft.

Finally, I recently spoke when accepting MALDEF annual Excellence in Government Award. While my intent was to speak from a prepared text, at the dinner I extemporize significantly. I’ve attached my prepared text, however.

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

Excellent health. My blood pressure, cholesterol, etc., were all within normal limits as of my April 2000 physical.

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

Member, National Labor Relations Board
Presidential Appointment; Senate Confirmed by U.C. Dec. 2002 - present

Principal Deputy Assistant Attorney General,
US Department of Justice, Civil Rights Division
Appointed by the Attorney General Sept. 2001 – Dec. 2002

Deputy Assistant Attorney General,
US Department of Justice, Civil Rights Division
Appointed by the transition office Jan. 2001 – Aug. 2001

15. Legal Career:

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

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

I served as a law clerk to the Honorable Samuel A. Alito, on the United States Court of Appeals for the Third Circuit from Sept. 1994 until Aug. 1995.

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

I have not established a sole practitioner law practice.

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

Kirkland & Ellis
655 Fifteenth Street, NW
Washington, D.C. 20005
Sept. 1995 - March 1997
Associate.

Ethics & Public Policy Center
1015 15th Street, NW
Suite 900
Washington, D.C. 20005
April 1997 – Dec. 2000
Fellow / Project Director.

George Mason School of Law
3410 N. Fairfax Dr.
Arlington, VA 22201
Spring 1998 – Spring 2000
Adjunct Professor / Lecturer

U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Ave., NW
Washington, D.C. 20035
Deputy Assistant Attorney General, Jan. 2001 – Aug. 2001
Principal Deputy Assistant Attorney General, Sept. 2001 - Dec. 2002

National Labor Relations Board (NLRB)
1099 14th Street, N.W.
Washington, D.C. 20005
Member, Dec. 2002 – present

- B.
1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While at Kirkland & Ellis, my legal practice focused on writing appellate briefs for the U.S. Courts of Appeals and the U.S. Supreme Court. I drafted several briefs on labor and employment matters. My typical clients included the U.S. Chamber of Commerce, General Motors, and Hughes Aircraft.

While at the Ethics & Public Policy Center, I wrote and spoke publicly regarding judicial nominations and the role of the judiciary within our system of separation of powers. I did not practice before courts in my capacity at the Center.*

While at the George Mason School of Law, I taught classes on Disability-Based Discrimination Law, Employment Law and an Advanced Civil Rights Seminar. I also occasionally spoke publicly on employment and disability discrimination issues. I did not practice before courts in my capacity as an adjunct professor/lecturer at the Law School.

I joined the Department of Justice as a member of President Bush's transition team on January 22, 2001. From January until August, 2001, I served as the transition's senior point of contact between the Department's leadership offices and the Civil Rights Division. Following confirmation of the Assistant Attorney General in August 2001, I became the Principal Deputy. I was nominated to the National Labor Relations Board two months later, in October 2001. I remained at the Division until confirmed by the Senate. During this time, I was responsible for implementation of special projects, including those concerning Executive Order 13166 (access by language minorities to government-funded services), Section 203 of the Voting Rights Act (access by language minorities to voting), and unlawful trafficking in persons. With the exception of the case listed below in Question #16, I did not significantly participate in in-court litigation.

I was nominated by President Bush to be, and confirmed by the Senate (on a unanimous consent motion) as one of five Members of the National Labor Relations Board, an independent federal agency responsible for administering and interpreting the National Labor Relations Act, the principal private-sector national statute regulating labor relations. Board Members typically sit in panels of three members, to hear appeals of decisions issued by administrative law judges, regional directors or hearing officers. I have participated in and issued over 125 decisions as an NLRB Board Member since December 2002.

* I did undertake a brief (less than one week's time) research project on an Indian treaty issue as a consultant for the law firm of Cooper, Carvin & Rosenthal, PLLC (1500 K Street, N.W., Suite 200, Washington, DC 20005).

- C.
1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
 2. What percentage of these appearances was in:
 - (a) federal court;
 - (b) state courts of record;
 - (c) other courts.
 3. What percentage of your litigation was:
 - (a) civil;
 - (b) criminal.
 4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 5. What percentage of these trials was:
 - (a) jury;
 - (b) non-jury.

My practice has been entirely federal, civil and non-jury. One exception is my involvement and supervision with the Criminal Section of the Civil Rights Division, specifically my involvement in human trafficking issues (see question #17). As is typical with an appellate practice, I rarely appeared in court and tried no cases to verdict.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. My role in litigated matters at the Department of Justice was supervisory, and I did not substantially participate in the litigation of individual cases.

An exception is ProEnglish v. Bush, which was litigated before the United States District Court for the Eastern District of Virginia and in the United States Court of Appeals for

the Fourth Circuit. This lawsuit challenged the legal authority underlying the Justice Department Guidance designed to ensure that persons with limited English proficiency (LEP) receive meaningful access to federally-funded services, programs and activities. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (Jun. 12, 2002). As the Principal Deputy Assistant Attorney General for Civil Rights, I was responsible for overseeing the development and implementation of this Guidance.

I likewise took an active role in the defense of this Guidance, including participation in litigation strategy meetings, review of the briefs, and attendance at the district court proceedings. The District Court dismissed plaintiffs' suit. After I left the Department, the Fourth Circuit affirmed the District Court order.

The case was filed in the District Court for the Eastern District of Virginia on March 12, 2002 (CASE #: 02-CV-356, Leonie M. Brinkema, J.). The United State filed its brief with the Court of Appeals on November 25, 2002. The Court of Appeals issued its order on May 15, 2003. I represented the United States throughout the district court proceeding, and until I left the Department of Justice in December 2002.

Co-Counsel at the Department of Justice included:

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Charlotte Burrows
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
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Opposing Counsel representing Plaintiff ProEnglish et al. were:

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Barnaby Zall, Esq.
Weinberg & Jacobs, L.L.P.
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(301) 468-5500

Because I did not substantially participate in the litigation of other cases, I am providing the Committee with information about significant NLRB decisions in which I have participated.

1. Aesthetic Designs, Inc., 339 NLRB No. 55 (2003) (Members Liebman & Acosta; Member Schaumber dissenting).

In this representation election case, a mail-ballot election was conducted under the Regional Director's supervision. Of eligible voters, 5 voted for union representation, 5 against, with 2 challenged ballots. One ballot was challenged because a voter cast his vote on, and sent in, a sample ballot rather than an official ballot. The Hearing Officer recommended that the sample ballot be counted because it was apparent from looking at the ballot that the intent of the voter was clearly a "yes" vote.

I, joined by Member Liebman, held that the ballot should be counted because under Board precedent (i) a voter, by voting, evinces an intent to participate in the election and register a preference and (ii) a voters' preference must be given effect whenever possible. My colleague disagreed, arguing that the ballot should not be counted.

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Perry, Shapiro, Quindel, Saks, Charlton & Lerner, S.C.
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(414) 272-7400

2. Radio Free Asia, 5-RC-15565 (May 28, 2003) (per curiam; Member Acosta, dissenting).

The employer in this case is a private corporation that broadcasts native-language radio programming. A substantial number of its employees are native language speakers. A representation election had been scheduled.

The employer requested that the election material, including the notice of election and the actual ballots, be translated to ensure that all employees understood their rights and their votes. The Regional Director denied this request.

The Board, per curiam, denied review of the Regional Director's decision. I dissented, and would have granted review to consider when translations are appropriate.

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For Respondent, Radio Free Asia:
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Hogan and Hartson
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3. Double D Construction Group, 339 NLRB No. 48 (2003) (Members Liebman & Acosta; Member Acosta, concurring; Member Schaumber dissenting).

In this discriminatory discharge case, the Administrative Law Judge discredited the testimony of employee Tomas Sanchez, an assumed undocumented worker, on the ground that Sanchez knowingly used a false social security number to obtain employment. The ALJ wrote: Sanchez "admitted that when he applied for work with Respondent, he used a false Social Security number.... There are certain similarities between using a false Social Security number and giving untrue testimony. Both obviously involve the element of falsehood, but more than that, they both entail a substantial legal risk. The punishment for using a false Social Security number is quite significant, and so is the penalty for perjury..... If Sanchez demonstrated a willingness to use a false government document to obtain work, notwithstanding the risk, he may also be willing to offer false testimony to obtain reinstatement, notwithstanding the risk. To the extent that Sanchez's testimony conflicts with [employer's witness], I credit [employer's witness]." The judge dismissed the discriminatory discharge allegation as unsupported by evidence.

I joined the majority decision, and also concurred separately to "express my substantial disagreement with the judge's reasoning and to emphasize the consequences that could result were the judge's holding permitted to stand." "The Board's continued commitment

to prosecuting unfair labor practices directed against undocumented workers requires an understanding of the workplace and life realities faced by these individuals."

My colleague dissented, arguing that the judge's decision to discredit Sanchez should be upheld.

For General Counsel, NLRB:
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For Respondent, Double D Construction:
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Double D Construction Group, Inc.
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(305) 666-0610

For Charging Party, International Association of Bridge, Structural, Ornamental & Reinforcing Workers, Local 272:
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4. Denver Theatrical Stage Employees' Union, 339 NLRB No. 33 (2003) (Members Schaumber, Walsh and Acosta; Member Acosta dissenting in part).

In this case, the Board unanimously affirmed an Administrative Law Judge's ruling that a local union violated its duty of fair representation because its business representative ran a hiring hall based on "subjective determinations" as to the experience, skills and abilities of job applicants. Most notably, the business representative divided employees into a "core group" and a "non-core group," and referred core group employees first. Employees were not told in which group they were placed, and there was no procedure for disputing that placement. The judge found that the business representative "subjectively determined" who qualified as a core group employee and pertinently found that "the Respondent maintains no written standards as to how an individual is selected to be in the core referral group." Rather, this was done by "mental filtering" by the business representative.

I dissented, in part, with respect to the remedy. I argued that the nondiscriminatory operation of an exclusive hiring hall is critically important to applicants for work – they rely on this for their livelihood. I would thus have required the business agent to establish written objective criteria to be utilized prospectively when making referrals.

For General Counsel, NLRB:
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S. Kato Crews
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For Respondent:
Thomas B. Buescher
Brauer, Buescher, Valentine, Goldhammer, Kelman & Eckert, P.C.
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5. Comcast Cablevision-Taylor, 338 NLRB No. 166 (2003) (Members Liebman, Walsh & Acosta; Member Acosta concurring).

This case came before the Board after the Sixth Circuit declined to uphold a 1999 NLRB order requiring the company to bargain with the union. The company argued that it need not bargain because the union had tainted the union certification election by offering employees a free trip to Chicago worth approximately \$50. The Board unanimously remanded this case without comment to the Regional Director, to continue proceedings consistent with the Sixth Circuit's ruling.

I wrote separately to point out that the Board Order was based only on law of the case and did not resolve the inconsistency in Board precedent that had caused the Sixth Circuit to deny enforcement previously on two separate occasions. I argued that the Board should address and reconcile the case law on this issue.

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Stuart M. Israel
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Communications Workers of America
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6. Daimler-Chrysler Corporation, 338 NLRB No. 148 (2003) (Members Liebman, Walsh & Acosta; Chairman Battista and Member Schaumber dissenting).

The issue in this case was whether, in an election with a one vote margin, a ballot clearly marked with a "X" in the "YES" square with a handwritten question mark next to it should be counted as a "YES" vote in favor of union representation. I joined Members Liebman and Walsh to hold that the ballot should be counted.

Our majority opinion followed Board precedent, which has established basic principles to guide our decisions in the voting context: (i) a voter, by voting, evinces an intent to participate in the election and register a preference; (ii) a voter's preference must be given effect whenever possible; and (iii) the Board should avoid speculation or inference regarding the meaning of atypical "X"s, stray marks, or physical alterations on a ballot. Guided by these principles, we held that the voter's intent to register a preference should be counted, included the ballot in the tally, and certified the union.

My dissenting colleagues argued that the ballot should not be counted and would not have certified the union.

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For Respondent, Daimler Chrysler:
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Senior Staff Counsel
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(248) 576 5741

7. Onan Corporation, 338 NLRB No. 139 (2003) (Chairman Battista & Member Acosta; Member Liebman dissenting).

I joined with Chairman Battista to find that an employer did not invalidate a rerun of a union election by announcing its pre-election settlement of a class-action pension litigation lawsuit. The employer had consistently informed employees of developments in the lawsuit and settlement negotiations and consistent with that approach, the employer announced the settlement agreement on the day it was reached with the representatives of the class. We found that because of the regular nature of the employer's communications related to the lawsuit, reaching the settlement and announcing it ten days before the union election did not amount to improper conduct.

My dissenting colleague argued that the employer did not meet its burden of demonstrating that the timing of the announcement had a legitimate explanation.

For Petitioner:
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For Employer:
Gregory T. McGuire
Haynesworth Baldwin Johnson & Greaves LLC
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Raleigh, NC 27605
(919) 233-4600

8. Teamsters Local 557 (General Motors et. al), 338 NLRB No. 133 (2003) (Chairman Battista, Members Liebman & Acosta; Member Liebman, concurring; Member Acosta, concurring).

In this case, the Board unanimously affirmed the decision of an Administrative Law Judge finding that a union had engaged in unlawful picketing. The employer, which had previously utilized a series of haulers whose employees were unionized, entered into a hauling contract with a hauler whose employees were not represented. The union then staged a protest at the employer's administration building where no officers of the new contractor were present. Under the longstanding concept of "neutrality" in the National Labor Relations Act, the employer was entitled to be free from protests aimed at making it change its contractor.

Member Liebman agreed that current law compelled this result, but concurred separately to suggest that the concept of "neutrality" as applied in certain labor disputes has become strained. I wrote separately in response, suggesting that there was no need to alter the current definition of neutrality, which was first established by the Supreme Court in 1951 and has survived scrutiny since then.

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For General Counsel, NLRB:
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9. Gun Hill Road Meat Corp., 338 NLRB 104 (2003) (Members Liebman, Shaumber & Acosta).

The Board in this case unanimously granted the General Counsel's motion for default summary judgment against the respondent employer, which failed to file a timely answer.

The employer had claimed that failure to comply with the Board's requirements was impaired by the fact that he is not a native English speaker. The Board found that, under the circumstances, the lack of language services did not give rise to good cause. The

employer's written submissions and telephone communications with counsel for the General Counsel established that he had sufficient comprehension of the English language to understand the need to file a response to the complaint.

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For Respondent, Gun Hill Road Meat Corp.:
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In addition, I have included ten professional references

1. John Irving
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2. Ralph Boyd
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3. Merrily Friedlander
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5. Larry Gonzalez
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6. Marisa Demeo
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7. Robert Battista
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8. Wilma Liebman
Member
National Labor Relations Board
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9. Judy Scott
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Service Employees International Union
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10. David Fortney
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Washington, DC 20036
(202) 689-1200

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I presently serve as one of five Members of the National Labor Relations Board, the independent federal agency responsible for administering and interpreting the National Labor Relations Act, the principal private-sector national statute regulating labor relations. Board Members typically sit in panels of three members, to hear appeals of decisions issued by administrative law judges, regional directors or hearing officers. Since December 2002, I have participated in and issued over 125 decisions. My most significant decisions are listed earlier, in Question #16.

As Principal Deputy Assistant Attorney General in the Civil Rights Division, I had primary responsibility for implementation of special projects, including those concerning Executive Order 13166 (access by language minorities to government-funded services), Section 203 of the Voting Rights Act (access by language minorities to voting), and unlawful trafficking in persons.

- (i). Ensuring that Limited English Proficient Persons Have Meaningful Access to Federal and Federally-Funded Programs and Services

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." See 67 Fed. Reg. 41455 (Jun. 12, 2002).

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. See 67 Fed. Reg. 41455 (Jun. 12, 2002).

I had primary responsibility for the development of the Department of Justice's Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (Jun. 12, 2002). This Guidance implements Executive Order 13166, establishing the Federal Government's commitment to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English.

The Guidance makes clear that in certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law.

I likewise had primary responsibility for implementing this Guidance. The Civil Rights Division lead implementation of this Guidance, establishing a Spanish-language website (http://www.usdoj.gov/crt/index_esp.htm) and translating national-origin discrimination information into more than 15 languages. To ensure consistent, government-wide implementation, the Civil Rights Division established an Interagency Working Group on LEP which included representatives of more than 35 agencies. As a result of this effort, many federal agencies have published their own guidance to recipients of federal funds. This Group also created a website at <http://www.lep.gov> as a central repository for information about this initiative.

The Mexican-American Legal Defense and Educational Fund recently honored my work in this area with their Excellence in Government Award this June 2003.

(ii) Ensuring that Limited English Proficient Persons Have Appropriate Access to the Electoral Process.

Under Section 203 of the Voting Rights Act, jurisdictions that meet certain specific statutory demographic criteria must provide bilingual access to all stages of their electoral process for designated language-minority communities. After each census, the Director of the Census determines which jurisdictions are required to provide this access. Based on the latest determinations, more than 220 jurisdictions are now required to provide access to their elections in Spanish; more than 100 jurisdictions are required to provide access to their elections to American Indians and Alaskan Natives in the appropriate language; and more than 15 jurisdictions are required to provide access to their elections for Asian Americans in the appropriate language. Nearly 80 jurisdictions were covered for the first time as a result of the 2000 census.

During 2002, I was primarily responsible for ensuring that Department of Justice aggressively enforced Section 203 on a consistent basis. This required more than enforcement. The original Census Bureau target for release of the determinations was early 2003. This would have been too late to provide access to LEP citizens voting in the fall 2002 elections. Shortly following the transition, the Civil Rights Division began to work closely with the Director of the Census to reprioritize data processing and to release the determinations at the earliest possible date. As a result, the determinations were published on July 26, 2002.

Following publication, I designed and supervised the Division's outreach effort on this issue. The outreach effort was massive and sustained. This outreach effort was closely coordinated with local government officials and national and local minority groups. I spoke on this subject at meetings of several groups, including the Asian-Pacific American Bar Association, the League of United Latin American Citizens and the National Association of Latino Elected Officials. Attorneys I supervised made presentations to numerous other groups and traveled to nearly all of the approximately eighty newly-covered jurisdictions to meet with local officials and minority groups about ways to effectively ensure access for the November 2002 elections. Where jurisdictions resisted implementation, career attorneys were authorized to consider lawsuits. This effort was successful. To my knowledge, substantially all jurisdictions undertook good-faith efforts to comply with the requirements of Section 203.

The Mexican-American Legal Defense and Educational Fund recently honored my work in this area with their Excellence in Government Award this June 2003.

(iii) Combating Trafficking in Persons and Protection of Victims of Trafficking

Trafficking in persons, also referred to as "human trafficking," involves the acquisition of human beings, through the use or threat of force, fraud or coercion, for the purpose of sexual exploitation or forced labor. Traffickers prey on vulnerable groups in poor countries. Some victims are kidnapped or abducted, while others are tricked with promises of husbands or good jobs. It is one of the most egregious human rights abuses of our time. Its existence is intolerable and repugnant. Human trafficking is a multi-faceted and transnational issue, involving organized crime and corruption, human rights, economics, migration, labor, public and individual health, and social services.

As the senior civil rights transition team member, I had a substantial role in the Attorney General's March 2001 announcement that human trafficking cases would be a major priority for the Department. This included the creation of the Special Counsel for Trafficking position in the Division's Criminal Section. I sought to ensure that the Civil Rights Division significantly increased investigations and prosecutions of these crimes. In 2001, for example, the Division prosecuted twice as many trafficking cases as in 2000.

Prosecution was only one step, however. Prevention and protection of victims both are critical. Toward this end, I worked with other agencies domestically and internationally

to bring attention to this matter. I worked closely with representatives of other government agencies, including the State Department and the CIA, to arrange the opening of the Migrant Smuggling and Trafficking in Persons Coordination Center to assist prosecutors and investigators. I was also substantially involved in the Department's efforts to issue regulations allowing special "T Visas" to allow victims to live and work in the United States while their cases are investigated and prosecuted. These regulations were published in the Federal Register on January 31, 2002. At the invitation of the Department of State, I traveled to Guatemala and the Dominican Republic during the summer of 2002 to meet with government and law enforcement officials there to discuss the prosecution, protection and prevention of trafficking in persons.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

U.S. Government, Thrift Savings Plan (current value is approximately \$11,000)

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

In the event of a potential conflict of interest, I will consult with the Department of Justice ethics officials.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

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

See Attached SF-278.

5. Please complete the attached financial net worth statement in detail.

See Attached Net Worth Statement.

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

Indianapolis, Indiana, Mayor Stephen Goldsmith organized several informal committees to advise him on domestic policy issues during his service with President George W. Bush's 2000 campaign. I served as a member of his civil justice advisory committee during 1999 and 2000. The committee met by conference call every few months, to discuss legal issues.

III. GENERAL (PUBLIC)

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

(i) From 1998 to 2000, I taught several classes as an adjunct professor / lecturer at the George Mason School of Law. These include classes on disability-based discrimination, employment law and an advanced civil rights seminar. The salary paid to adjuncts is minimal. Teaching, instead, is a way to mentor students interested in entering the legal profession. As an adjunct, I spent substantial time meeting with students in small groups. Typically, I would try to have lunch or dinner with nearly all students, to get to know them personally.

(ii) In 2000, I joined the Comité Hispano de Virginia. Founded in 1967, the Comité has 35 professionals from 11 Latin American countries and the U.S, who offer to the Northern Virginia Hispanic community programs and services, in a wide range of areas, including education, immigration and information on how to deal with government agencies. The Comité has offices in Fairfax County at Bailey's Crossroads, in Arlington County near the Courthouse, and in the City of Alexandria. We also have small satellite offices in Reston/Herndon and Springfield, Virginia.

I was asked to join the Comité's Board of Directors and to served as a Board Member in September 2000. In February 2001, I was asked to resign from the Comité by the Department of Justice ethics office, to prevent possible conflicts of interest.

(iii) In 2001, I joined the Hispanic Bar Association mentor / mentee program. I was not assigned a mentee that year. I was assigned a mentee in 2002 and continue to work with him.

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

No.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	\$22,000	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule (July 2003 options in XMSR)	\$5,000	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends*	\$20,000	Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned- (personal residence in Alexandria, VA)	\$350,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property		Credit Card Debt (Chase Mastercard)*	\$20,000
Cash value-life insurance		Personal Residence Mortgage with McCaughan Mortgage	\$215,000
Other assets itemize:		Student Loans	\$68,000
TIAA CREF 403(b) Account	\$12,000	Personal Residence credit line (Bank of America)	\$7,000
US Gov. TSP Account	\$11,000		
		Total liabilities	\$310,000
		Net Worth	\$110,000
Total Assets	\$420,000	Total liabilities and net worth	\$420,000
CONTINGENT LIABILITIES	None	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No
On leases or contracts		Are you a defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

*I use my Chase Mastercard as a revolving credit line for my parents. They withdraw money when needed, and pay it back when they can. The current amount owed is approximately \$20,000.



U.S. Department of Justice

JUN 27 2003

Washington, D.C. 20530

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

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Rene Alexander Acosta, who has been nominated by the President to serve as Assistant Attorney General, Civil Rights Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Acosta recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating personally and substantially in any particular matter that could affect his financial interests.

We have advised Mr. Acosta that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party.

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

Sincerely,

A handwritten signature in cursive that reads "Paul R. Corts" with a flourish at the end.

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SCHEDULE D

Reporting Individual's Name: **Acosta, Rene Alexander** Page Number: **5 / 5**

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 (Name and Address) organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

Line	Organization (Name and Address)	Type of Organization	Position Held		From (Mo./Yr.) To (Mo./Yr.)	
			President Partner Project Director / Senior Fellow	President Partner Project Director / Senior Fellow	From (Mo./Yr.) 09/2 2002	To (Mo./Yr.) 12/31 2003
1	Example: Natl. Assn. of Book Collectors, NY, NY Doe Jones & Smith, Alexandria, State	Non-profit education Law Firm				
2	Ethics & Public Policy Center, Washington, DC	non-profit			03/97	01/01
3	Comite Hispano de Virginia, Arlington, VA	non-profit			09/00	01/01
4	SD, Inc., New York, NY	Corporation (inactive, i.e., registered with state but no business was conducted)			01/00	01/00
5						
6						

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 Source (Name and Address) Brief Description of Duties

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

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 Source (Name and Address) Brief Description of Duties

Line	Source (Name and Address)	Brief Description of Duties
1	Example: Doe Jones & Smith, Hometown, State Metro University (Client of Doe Jones & Smith), Moneysown, State Ethics & Public Policy Center	Legal services Legal services in connection with university construction Member / School. Faculty receives fees for salary during the five weeks of 2001 plus several weeks accrued vacation pay.
2		
3		
4		
5		
6		

Form 278 (Rev. 02/2003)
 U.S. Office of Government Ethics
 OGE/PaperEdge, version 1.0.4 (5/21/03)

AFFIDAVIT

I, R. Alexander Acosta, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 30, 2007
(DATE)

R. Alexander Acosta
(NAME)

Sharon D. West
(NOTARY)

SHARON D. WEST
Notary Public of District of Columbia
My Commission Expires October 14, 2007

Chairman HATCH. Well, thank you so much. We will begin with some questions. There will be some Senators coming, and we will in just a few minutes leave for a vote. But let me start with you, Mr. Bryant.

We have heard about the importance of the PATRIOT Act tools in conducting anti-terrorism investigations. I want to ask you about one specific tool, and that is the ability to delay giving notice of the execution of a search warrant. Specifically, the PATRIOT Act added a new subsection (b) to Section 3103(a) of Title 18 to authorize the court to delay giving notice of the execution of a search warrant where there is reasonable cause that such notice would endanger the life or physical safety of an individual, create a risk of flight, destruction of evidence, witness intimidation, or compromise an ongoing investigation.

Now, it is important to keep in mind that this provision authorized only a delay, not elimination of the notice requirement, and specifically requires court approval in order to enforce this provision.

Can you explain how this authorization is used and how it assists in conducting terrorism investigations?

Mr. BRYANT. Thank you, Mr. Chairman. As this Committee well knows, having carefully crafted Section 213 of the USA PATRIOT Act, which, of course, would be very substantially affected, rescinded, in effect, by the amendment that the Chairman refers to, the authority to delay notice of a search warrant already existed prior to the USA PATRIOT Act. That wasn't a new authority put in place by the Act.

All that Section 213 did—and it did it very carefully—is it established a uniform statutory standard that applied around the country. It had previously been left to circuits and to districts to prescribe the precise standards that would apply before an agent could seek from a judge a search warrant. This created a uniform national statutory standard.

Importantly, this authority can only be used upon the issuance of a court order by a judge. And even then, it requires reasonable cause to believe that immediate notice of the warrant could result in death or physical harm, flight from prosecution, evidence tampering, or witness intimidation. That is the standard that this Committee took the lead in putting into place in Section 213.

The Department has used this a number of times since 9/11. It has always been granted by a judge when this authority to delay notice of a search warrant has been asked for. Put simply, the amendment offered yesterday in the House would not simply undo Section 213, it would take us back well before where we stood in terms of the law on September 11th, and it would prevent law enforcement from being able to do what they had long been able to do, and that is to seek a search warrant from a judge, and additionally, upon the showing, to be able to delay the notice of the service of that warrant. To not allow in certain circumstances a delayed notice of a warrant would be to require that the Federal agents involved tip off the terrorists that they are conducting the search. It would deprive law enforcement of this historic power that they had, and I would note, Section 213, which the Senate crafted, with the leadership of this Committee, actually raised the

safeguards by including the specific requirements of showing in Section 213 as compared to the ad hoc safeguards which have been developed in a variety of districts prior to September 11th. So it would take away those safeguards as well.

Just consider, if you had to give notice to a recipient of a search warrant at the time of the warrant, if a terrorist immediately learned that his property has been searched, he could flee or escape prosecution. A terrorist, upon receiving notice of a contemporaneous search may well destroy computer equipment containing information about which targets he plans to strike. A terrorist might alert his associates that an investigation is under way, enabling them to go into hiding. A terrorist may stop communicating with other members of his cell, preventing law enforcement from learning who else is participating in a plot to kill Americans.

So it doesn't take much thought to identify some potentially very serious consequences of vitiating Section 213, which the Senate passed by a vote of 98 to 1, following the leadership of this Committee, which crafted, in the judgement of the Department, a well-balanced provision that law enforcement continues to need.

Chairman HATCH. Thank you. That, I think, should answer a lot of the critics, who have not quite realized how important the PATRIOT Act is, at least in that one respect and in so many others, that the FBI Director talked about this morning in enforcing the laws against terrorism in our country and otherwise.

I think we had better go vote, and we have about 3 minutes left. So with that, we will just recess for the time until I can get over there and get back, and then we will have some more questions for you.

With that, we will recess until we can get back from the vote.
[Recess from 2:47 p.m. to 3:00 p.m.]

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. I have a brief opening comment and a privilege to welcome Mr. Acosta to the Committee and commend him for his nomination to be assistant attorney general of the Civil Rights Division.

That position is one of the most important positions in our Government, since it was created 45 years ago. It has been at the forefront of our continuing struggle to guarantee equal justice for all Americans. Much of the progress we have made in recent decades has come because of the genuine and sustained commitment of the division to vigorously enforce our civil rights laws.

We are proud of the progress we have made, but civil rights is still the unfinished business of the Nation. It is extremely important that the leader of the division have strong credentials, strong commitment to equal opportunity.

Many of us have been concerned about the recent direction of the Division in the past 2 years. It has changed its position on a significant discrimination case, adversely affecting the interests of large numbers of women, African Americans, Hispanics and Asians. It has sought to release politically connected defendants from important consent decrees, it has transferred long-time managers and changed hiring practices in the division. It has signifi-

cantly reduced its litigation in a number of areas, sometimes ignoring the recommendations of career managers.

So these are serious challenges, and I hope we can deal with them effectively, and I look forward to hearing from Mr. Acosta today, and I congratulate him and look forward to inquiring of him.

I am concerned, and this is in the area of employment, employment cases, concerned that the Civil Rights Division over the last 2 years has not been vigorously enforcing the Nation's civil rights laws. I am particularly concerned about the work of the Department to enforce the Nation's equal employment laws in the past few years. The Justice Department's employment case, and particularly its pattern and practice cases, have been important in remedying discrimination, particularly in State and local civil service employment.

Through Republican and Democratic administrations, the Division has brought an average of about 12 to 14 cases a year. In the last two-and-a-half years, however, the Division has only brought seven Title VII cases. That is an average of only three a year, and only one of these cases was a pattern and practice suit.

The Department has withdrawn from a number of longstanding pattern and practice employment cases affecting interests of Latinos, African Americans, and women, and high-level officials of the Employment Section have been involuntarily transferred. All of the Department's actions raise serious doubt about the strength of its commitment to end the forms of discriminatory employment practices.

You were number two in the Civil Rights Division until December of last year. In that role, you oversaw all 10 of the Division's litigating sections. Why do you think that more cases have not been filed, and what more do you think should be done to strengthen the enforcement of our Nation's employment laws?

MR. ACOSTA. Thank you for the question, Senator.

As an initial matter, let me say pattern and practice cases are important. When the Department is determining how to allocate its resources, when the Division is determining that, we should think not only about the impact on the particular case, but also the deterrent value of pursuing that litigation. To that extent, pattern and practice cases, high-profile cases, cases that will serve to not only remedy wrongs in that particular instance, but as a deterrence to others who would discriminate are important and are critical.

It is my understanding, I believe this came up in a recent House oversight hearing, and it is my understanding that the Division has several investigations underway in this area. If confirmed as assistant attorney general, I do want to assure the Senator, number one, the employment cases will be pursued, and they will be pursued vigorously. That includes pattern and practice cases, that includes disparate impact cases.

This Congress has made clear that those cases or those situations are unlawful. For those of us who believe in the rule of law, that means we have to believe in vigorous enforcement. The rule part of the rule of law requires that we enforce the laws vigorously, and it would be my intent to use all of the resources at our disposal in the employment area to enforce those cases.

Senator KENNEDY. Well, that is a very positive response, in terms of looking prospectively. Can you help me out about what conclusions you have drawn, if any, about the reduced numbers and cases in the more recent years. You were involved in those cases. How would you explain the fact that there has been an important drop in just the numbers of cases. I mean, you can fiddle with the statistics, and we are all familiar with that, but if you looked over the recent numbers of cases in these pattern and practice, you would see a Side A decline in the number of cases.

You indicate there are a number that are under consideration at the present time. Perhaps that explains some of it. Can you help me understand why there was a slackening off in terms of the numbers of the other years?

Mr. ACOSTA. Certainly, Senator.

I do not have the full information or up-to-date information on that matter, but it is my understanding from what I have heard that there were several cases that were settled, and as a result of the settlement, litigation need not or was not filed.

Senator KENNEDY. Well, I might just submit additional questions on that to try and get a better understanding about what the status is of some of those cases that you have mentioned here and some further explanations of the reductions in the numbers.

This is on a different area on the questions of personnel. There have been troubling changes in personnel practices at the Division. Several high-level managers have been involuntarily transferred. In May, the chief of the Housing Enforcement was demoted and involuntary transferred last year. While you were the number two at the division, three career managers, including the chief of the Employment Litigation Section, Kay Baldwin, and the high-level deputies, Richard Ugelow—was that the right pronunciation?

Mr. ACOSTA. Ugelow.

Senator KENNEDY. Ugelow. —and Robert Libman were involuntarily transferred from the Employment Section. I realize you were at the NRLB when the chief of the Housing Section was demoted, but what was your role in the involuntary transfers in the employment section and what did you recommend about any of these transfers?

Mr. ACOSTA. Certainly, Senator. I had discussions with Mr. Boyd regarding his personnel decision with respect to the section chief of the Employment Section. I did not have discussions in detail regarding the other decisions. Those discussions were between myself and Mr. Boyd. He made the decision on how to best allocate the Division's resources.

If I could say, I think the career staff is important to the division. We political appointees come and go. They are the ones that have devoted a good part of their life to the work of the Division. There are several career, senior members of the career staff here today. I mentioned earlier that I thought it was important for them to be here because this nomination concerns them.

During the transition, I got to know most, if not all, of the senior members of the career staff. I think, and hope, that we have a good working relationship, a relationship that I look forward to continuing. We do not always agree, but it is important to have mu-

tual respect. It is important to listen, and it is important to work together.

Senator KENNEDY. Well, I think that is certainly an appropriate recognition of the career staff and their commitment and dedication. I am trying to get at the point about the reason for the transfers of the employees, whether it was a result of their actions in various cases and, if not, why were they transferred?

Mr. ACOSTA. Thank you, Senator. I believe this came up at a hearing where Mr. Boyd testified. And as he indicated, he thought that Ms. Baldwin's expertise and knowledge could be well used in a task force that was being put together to try to harmonize the Civil Division and the Civil Rights Division's litigating strategies on employment matters.

Senator KENNEDY. Is it your understanding, then, that they were not transferred because of their positions with regards to any of the cases they were involved in?

Mr. ACOSTA. It is my understanding that they were transferred in order to staff this task force, yes.

Senator KENNEDY. The current administration eliminated the decades old Attorney General Honors programs, which new attorneys are hired to work at the Civil Rights Division. Under the former system career attorneys played a central role in determining which applicants should be hired with the Assistant Attorney General for Civil Rights having final approval. Under the new system all hiring of career attorneys is done directly by the Assistant Attorney General in the front office, and career employees are shut out.

I am concerned that the new system unduly politicizes the hiring practice. Indeed the new system bears a disturbing resemblance to changes called for in a National Review article published last year, which stated that Republican political appointees should seize control of the division's hiring process in order to ensure that attorneys from progressive civil rights organizations are not hired.

Did you have any involvement in the decision to end the honors program?

Mr. ACOSTA. Senator, the honors program, the Attorney General's Honors program, those decisions were made at a Department-wide level. They were made by the leadership offices. I was not consulted on that issue.

Senator KENNEDY. Do you have any opinion about the honors program itself? Had you formed any opinion about it?

Mr. ACOSTA. Senator, I was not involved in the decisions at the time. I think the honors program, however, is an important program. It is how the division gets many, if not most, of its young energetic litigators.

Let me say more broadly, more generally if I could, referring to the hiring process. The Assistant Attorney General had and always has had a final say over the hiring process. I was involved in the lateral hiring process. The lateral hiring process includes, I believe currently, and if confirmed as Assistant Attorney General, will include consultation by both career and noncareer staff. It's important that individuals be interviewed by several members at various levels of the division to ensure that they have good exposure to the work of the division to ensure that staff feels comfortable with and

can work with new hires, and to ensure we get the best qualified individuals. So with respect to the lateral hiring process, which is within the division, I was involved in that, and I do think it is important to consult both career and noncareer staff in the lateral hiring process.

Senator KENNEDY. What is your sense about how you can avoid the hiring process becoming over politicized? Are you concerned about that, worried about it?

Mr. ACOSTA. I would hope that the hiring process looks for the best qualified individuals. The way to avoid that, I would think, is by ensuring that those who are participating in the process, those who do the interviewing understand what the role is and what the role is not. That's something that I think should be emphasized to all participants in the hiring process, and certainly if confirmed I would do that.

Senator KENNEDY. You know, there been concerns raised about declining morale in the division. For instance, half of the Employment Litigation Section career attorneys have left or have been detailed elsewhere. Do you consider the decline in career attorneys a problem, and why do you think that is happening, and what would you do to try and address this?

Mr. ACOSTA. Senator, I'm not familiar with the numbers that you're referring to. Let me say this if I could. I think that the career attorneys are the bedrock of the division. They do the work. As with any organization that involves several hundred people, morale is important, morale is critical.

The job of Assistant Attorney General is at heart to provide leadership, to provide leadership on issues, to provide leadership for the division, to provide leadership to the country on the civil rights front. To the extent that a morale problem arises, any Assistant Attorney General should address that, should investigate it and should work with section chiefs and career staff to address that.

Senator KENNEDY. There are large numbers of, as I understand it, career attorney vacancies in the division at the present time. So that is going to be a major challenge for you when you assume the position. This will be enormously important that we get the kind of quality people in those positions which have sort of marked and have been the character of the division over a period of many years with Republicans and Democrats alike, and I hope you will give that a good deal of focus and attention.

I just have one more, if I could, and I thank my colleagues.

As you know, there has been this issue of hate crimes. There has been a dramatic rise in hate crimes since September 11th. Muslim and Arab-American leaders remain very concerned about the growing tie to violence directed at their communities. As I understand, the Civil Rights Division has looked into the number of backlash cases across the Nation. Yet when it comes to investigating and prosecuting hate crimes under the current law, the Division has one hand tied behind its back because of the outdated Federal Protected Activity requirements. I have been asking the Department to give me its position on our bipartisan hate crimes bill, but it steadfastly refused to say anything. We have strong bipartisan legislation that is before the Senate. As a matter of fact, it is pending amendment on the State Department Reauthorization bill, and the

Chairman is knowledgeable and interested in this as well. We have been working with him, but we have been unable to get any kind of comment from the Justice Department, against the background where we have seen significant escalation of hate crimes against gays and lesbians, and a good deal of increase against Muslims and a good deal of increase against Jews as well.

Do you think that we need to strengthen the existing hate crimes law? Have you discussed the issue with the prosecutors that handle any of the hate crimes cases?

Mr. ACOSTA. Certainly, Senator. After 9/11, as the Senator alluded to, I was involved in the Department's efforts to work to reduce backlash, to reduce hate directed against the Arab-Americans, the Muslim-Americans, the Sikh-Americans; met several leaders in that community during that time; traveled to and did community fora; and I think that is an important and a critical issue. I'm aware of the Senator's interest and leadership in this issue. I know that there are discussion in the Department on this. I have not participated in them.

Senator KENNEDY. I suppose I could ask your opinion about expanding your own view about it, but I think I know what the answer is going to be, but let me give it a try anyway.

Mr. ACOSTA. Certainly. As you guessed, I think that is something that I would have to discuss with the Department.

Senator KENNEDY. Thank you, Mr. Chairman. We have had a good opportunity to inquire, and I appreciate your courtesy in letting me question, and the Senator here for letting me run past my time.

Chairman HATCH. Very happy to do it. You can see what all that seniority does. He picked just the right time so he can not be limited by a 5-minute or 10-minute rule.

[Laughter.]

Chairman HATCH. I have learned a lot from Senator Kennedy, I want you to know, and it has all been good.

Let me just ask one question and then I will turn to Senator Feingold.

Some of our colleagues have relied upon media reports that have criticized the current Assistant Attorney General of the Civil Rights Division as having politicized the unit. They have second-guessed his personnel decisions as well as his investigative actions. I realize you have not worked at the Department of Justice for over a year and that you were not in charge of the unit while these events occurred. Nevertheless, I am concerned that some might want to turn your nomination hearing into an oversight hearing concerning current Civil Rights Division practices, and I do not think this is the time or place for that, but at this time there is only one relevant question, as I see it, for you, and that is, will you keep these allegations in mind as you execute the responsibilities of this post?

Mr. ACOSTA. Certainly, Senator. As I mentioned, I believe that the rule of law requires vigorous enforcement of the law, that is, fair-minded enforcement, that is enforcement with an eye to doing what is right, what the law requires. When I received the nomination Mr. Boyd warned me that it is a tough job, and that often criticism arises from all sides, and I think Mr. Boyd was careful to do

what he thought was right throughout his tenure. I think that is a model that is admirable and a model that I would try to follow. When you take that oath to uphold and defend the Constitution of the United States, it is a serious oath and it obligates you to enforce the law as a member of the Executive Branch.

Chairman HATCH. Well, thank you. I am going to turn to Senator Feingold at this time and then to Senator Sessions.

Senator FEINGOLD. Thank you and Senator Sessions for your courtesy. I was looking forward to referring to Senator Kennedy as Mr. Chairman again, but did not quite make it.

[Laughter.]

Senator FEINGOLD. Welcome back though, Mr. Chairman.

Welcome to the hearing, Mr. Acosta and Mr. Bryant. I want to thank the Chairman in particular for postponing this hearing from its originally scheduled time to give the Committee members adequate time to prepare and make sure the Democratic Senators could attend and question the nominees, and, Mr. Chairman, I do sincerely appreciate that.

Mr. Acosta, you have been nominated to a very important position. The Civil Rights Division at the Department of Justice of course has a long and important history. I believe it is a part of the Department that serves our country in a way quite unlike any other Government agency or Department. The protection of civil rights for all Americans, and you will carry out your duties in a way that will bring great credit to you and to the Department.

Mr. Bryant, I thoroughly enjoyed working with you during your tenure in the Office of Legislative Affairs. While you may not have responded to all of my questions as quickly as I would have liked, which is an ongoing issue at the Department, I think you did carry out your duties of the position very well, and I congratulate you on your nomination.

I have a few questions. Mr. Acosta, last month in response to the President's February 2001 directive to the Attorney General to review and provide recommendations on ending racial profiling, the Department issued its guidelines regarding the use of race by Federal law enforcement agencies. I am pleased that the administration has taken this important step and that the Department's definition of racial profiling is actually similar to that in the bill that Representative Conyers and I have sponsored to ban racial profiling. I do, however, have some concerns, including the fact that the guidelines are not binding and do not apply to State and local law enforcement.

If you are confirmed, what steps will you take to ensure that this policy is understood and implemented by Federal law enforcement officers and agencies?

Mr. ACOSTA. Thank you, Senator. My understanding is that the guidelines were issued at the directive, as the Senator mentioned, of the President. The President is the Chief Executive Officer. These guidelines were issued at his directive. Federal agencies should and must follow them. They are not guidelines to be treated as best practices. They are guidelines that should and must be followed.

Senator FEINGOLD. All right. I appreciate that answer. In light of the fact that you said that they have to follow them, I under-

stand that, but what other enforcement mechanisms would you provide to victims of racial profiling by Federal law enforcement officers?

Mr. ACOSTA. Certainly, Senator. The guidelines, as the Senator mentioned, were the result of well over a year of study, of consideration by Department officials. I assume that part of that consideration was careful consideration of the degree to which this was a problem at the Federal level, the degree to which remedies were required, and these guidelines embodied the conclusions of the various individuals at the Department who studied this matter. I think that before sort of shooting from the hip, so to speak, it would be important for me to speak with those officials, to become privy to the expertise that has been developed in the Department on this matter.

Senator FEINGOLD. I look forward to talking with you after you have done that, because I do think, although obviously having the officials themselves follow these guidelines is important, but I do believe there needs to be other ways in which citizens can seek redress in situations of inappropriate racial profiling.

What steps would you take to ensure that a ban on racial profiling applies to State and local law enforcement? I would hope you would agree that racial profiling has been and continues to be an issue for State and local law enforcement, and that Federal leadership is critically needed?

Mr. ACOSTA. Certainly, Senator. I certainly agree that racial profiling is immoral, it is wrong, it should be ended. The President has said so. He said so when issuing his directive. Again, I think that this issue is being looked at the Department. There are several experts that have considered this issue, and before opining as to what additional steps would or should be taken. I think it would be important to speak with them, to learn what they have concluded over at the Department.

Senator FEINGOLD. I look forward to ongoing conversations with you about this. Let me switch to a different subject.

As you know, last month the Inspector General released a report in the treatment of individuals detained on immigration violations in connection with the investigation into the terrorist attacks of September 11th, 2001. While I commend everyone in law enforcement who has been involved in this and related investigations. I believe we need to remain committed to understanding what occurred, address abuses of power and ensure that they do not occur again in the future. As important as uncovering what happened is the assurance that it will not happen again, or if such abuses occur, that there is a clear, swift process to which the individuals responsible be held accountable for their actions.

According to the IG's report, I understand that a number of complaints of physical and verbal abuse were determined to be insufficient to be the basis of criminal prosecutions. Other investigations are ongoing, and perhaps some cases would be ripe for civil or administrative action. What steps will you take to ensure that the Civil Rights Division will investigate those individuals who mistreat detainees and hold them responsible for their actions? And what can the Division do above and beyond adhering to the recommendations in the Inspector General's report to ensure that the

rights of individuals detained in future terrorism investigations are protected?

Mr. ACOSTA. Certainly, Senator. As an initial matter I want to emphasize the Department of Justice should not and does not tolerate abuse. It does not tolerate unlawful action by its officials or by Federal officials. If confirmed as Assistant Attorney General for Civil Rights, certainly if any allegations, if we receive credible information that individuals' civil rights have been violated, if there are statutory violations, we will pursue those and we will investigate those.

Senator FEINGOLD. I thank you.

Now I am going to ask some questions of Mr. Bryant. in a December 23rd, 2003 to Senator Leahy in response to his inquiry regarding DOJ monitoring of individuals' library records, you wrote, quote, "Any right of privacy possessed by library and bookstore patrons and such information is necessarily and inherently limited, since by the nature of these transactions the patron is reposing that information in the library or bookstore and assumes the risk that the entity may disclose it to another. Whatever privacy interests may have are outweighed by the Government's interest in obtaining information in cases where the FBI can show the patron's relevance to an authorized full investigation to protect against international terrorism or clandestine and intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution." End of quote.

Mr. Bryant, do you really believe that Americans who go to libraries or bookstores assume the risk that their private reading information will be disclosed to law enforcement or anyone else? How do you think the balance should be struck between personal privacy and law enforcement in the case of libraries and bookstores?

Mr. BRYANT. Thank you, Senator. You refer of course to Section 215 of the USA PATRIOT Act, which gave the authority for the FISA Court to order the production of any tangible things, business records, or as you say, library records. That authority exists only in the limited category of investigations into international terrorism or espionage. So Section 215 authority is limited accordingly.

As you well know, the same ability to obtain such records has always been available on the criminal side of the ledger through a grand jury subpoena, and it is not limited to the category of international terrorism or espionage, and unlike the criminal side where the Court is not involved, because it's a grand jury subpoena, with Section 215 the order has to be granted by the FISA Court. A court actually has to issue the order.

In addition to the narrow scope of 215 only applying in connection with international terrorism or espionage, there is specific guarding of First Amendment rights by providing that no investigations of U.S. persons can occur solely on the basis of First Amendment protected activities. Further, Congress wisely provided, in connection with Section 215, that there be Congressional oversight, regular ongoing required Congressional oversight of how Section 215 is implemented, specifically through a reporting requirement that the Department provide to the Congress every 6

months a report on the usage of that section. And as you know, the House Judiciary Committee recently, in reviewing that submission by Congress, put out a press statement indicating that it believed there was no concern that the Department has been abusing its Section 215 authority.

Senator FEINGOLD. Before my time expires I just want to make a point and see if you agree. You mentioned the grand jury standard, the criminal standard. Is it not a fact that that is a higher standard, a standard of relevance, and that Section 215 has a lower standard which is simply that information is, quote, "sought" in connection with investigation? Is that not a distinction of some significance?

Mr. BRYANT. It is, although on the criminal side, as previously noted, the standard is evaluated only by the grand jury and not by a judge. In the FISA context the relevant showing has to be established before a judge will issue the order.

Senator FEINGOLD. My time is up, and I just want to indicate that a number of members of both houses are looking at revisions to Section 215. Some simply suggest eliminating the ability to access the library records. What I am looking at is a piece of legislation that would try to have a somewhat higher standard but still provide for the kind of situations you are talking about, and over time, I would be interested in your reaction, and see if we can get the Department to come together on a bipartisan agreement that perhaps 215 is too loose, but that we recognize the unique circumstances that 9/11 has led to.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you. I am proud of both of you, and I have to go to the White House, so Senator Sessions is going to complete this hearing, and I am very grateful to him for being willing to do this on such short notice. He has always been willing to assist on this Committee, and I am very, very grateful to have him on the Committee.

I just want to personally congratulate both of you. You have my support. We will do everything in our power to get you through as quickly as we can, and I think the country is going to be greatly benefited by having both of you in these very important positions down at Justice. I just want to commend you and tell you how proud I am of both of you.

So I understand Senator Leahy is coming, and there may be one or two others, so I would wait for a little while longer, and we ask any other members of the Committee who want to question, to please get over here. So it is in your hands.

Senator SESSIONS. [Presiding] Thank you, Mr. Chairman, and I would join with you, Mr. Chairman, in my expression of confidence in these two nominees. You have, one, our support and affection over the years as members of this body from previous positions that you have held. I know, Mr. Acosta, you were Principal Deputy Assistant Attorney General for Civil Rights, and Mr. Bryant, in your Legislative Affairs and Senate Affairs, you are well known and respected here too. I think that is important.

I just wanted to ask a couple of things. I will start with you, Mr. Acosta. Section 5 of the Voting Rights Act was raised this morning in the confirmation markup for Bill Pryor, the Attorney General of

Alabama, who had made some comments about certain parts of Section 5 as needing reform. He was criticized for that. I notice no one mentioned that the Democratic Attorney General in Georgia himself, an African-American, had made some of the same comments. Back in the 1960's when the Voting Rights Act was passed, there was indeed blatant discrimination against African-American voters. They were denied the right to vote in many parts of the country systematically through legal and other manipulations. But at this point we have an extraordinary burden on the State and local communities, and we might as well talk about it. I am not afraid to mention it, and I do not think it means that anyone could suggest discussing this issue rationally would be any attempt to undermine voting rights.

For example, in a county in Alabama, that may be, let us say, all white, if a voting precinct, there is a desire to move a voting precinct across the street from where it is today, they have to get approval from a person in the Department of Justice, and sometimes they do not know this and they do not do this, and they forget, and then they get challenged and it causes legal confusions and that sort of thing.

Have you had the occasion to look at it—and I am just asking this generally—do you think we could improve that act and make it more rational without in any way undermining the protections it provides to every American for their right to vote?

Mr. ACOSTA. Certainly, Senator. Thank you for the question. As Assistant Attorney General if confirmed, I would be responsible for approving or objecting to, on behalf of the Attorney General, redistricting plans. Certainly, one step that is within the authority of the Civil Rights Division to do to improve and to ease the delays that you speak about, is to ensure that that submissions to the Division receive priority, that they are looked at promptly and immediately, that we try to use the resources at our disposal to move them quickly, so that when subdivisions submit changes in voting procedure or do submit redistricting plans or other matters that do need Section 5 approval, that we can respond promptly and efficiently so we do not hold up local elections.

Senator SESSIONS. A redistricting proposal is a serious thing, and it is worthy of review and consideration. But I am talking about a circumstance in which the voting place had been on one side of the road, and they simply wanted to move it to another building on the other side of the road. They have to get approval for that also. Not changing a district's line, just the physical location of the voting place 50 feet is just one example of the things that States covered by the Voting Rights Act have to beg your permission for.

Do you think there could be any improvement of that? And I will just ask it this way: Would you be willing to give a fair evaluation to concerns in that regard and be willing to consider change if change makes sense?

Mr. ACOSTA. Senator, as Assistant Attorney General, if confirmed, my job would be to enforce whatever law this Congress adopted. I would be more than—I would not only be willing, but I would readily enforce whatever changes this Congress chose to adopt.

Senator SESSIONS. You don't see any role for the Division in suggesting improvements?

Mr. ACOSTA. The Department and the administration speak with one voice. Any changes on legislation on that matter I think would be a policy judgment that would be made department-wide or administration-wide.

Senator SESSIONS. Do you think, Mr. Acosta, that Adarand remains good law?

Mr. ACOSTA. The Supreme Court has not overruled Adarand.

Senator SESSIONS. And so far as you know, that represents the final decision of the Supreme Court on the issues contained therein?

Mr. ACOSTA. Certainly.

Senator SESSIONS. And would we expect you to enforce that decision as written?

Mr. ACOSTA. Certainly.

Senator SESSIONS. Mr. Bryant, I would just raise one thing to you. Senator Leahy has been around here a long time, and counting my tenure in the Department of Justice, I have observed a lot also. I think your position is a pretty tough position at times. You will have some tough calls to make. And I remember discussing privately and then on the record with a nominee of the Clinton administration to your position, and I warned them that sometimes you have to say no to the executive branch. You know, executives get things in their minds, and they are convinced it is right, and they don't like sometimes lawyers telling them no. Sometimes lawyers tell them no when they shouldn't, and they really are too cautious. But then, again, sometimes lawyers really have to say no and even be strongly committed to saying no out of ultimate loyalty to the administration to keep them from making a mistake that could prove costly or embarrassing.

I think later, the person I talked about, I think some things got by that embarrassed both that person and the administration; whereas, a real strong, absolute refusal to countenance the action may have avoided that.

Are you prepared to tell the President of the United States or the Attorney General or anyone else no if you think it needs to be no?

Mr. BRYANT. Thank you, Senator. If the faithful discharge of my duties requires me to counsel no to people in higher pay grades than mine, I hope I'll be prepared to do that.

Senator SESSIONS. Well, I think you should for their sake as well as your own.

Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman. I will put most of my statement in the record.

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

Senator LEAHY. Mr. Acosta, I appreciate seeing you here. The fact that you have had just 2 years of legal experience in civil rights issues and comparing that with the significance of the position to which you are nominated is one of the reasons why we are probably going to ask more questions than usual, and especially since that 2 years has been in a division and an administration has been criticized for failing to pursue civil rights violations vigorously

and for actually marginalizing staff attorneys with a lot of experience. But you have said a great deal about this, and let me just go into a little bit of that.

As head of the Project on the Judiciary at the Ethics and Public Policy Center, you campaigned against judicial activism. You urged the Senate to challenge on ideological grounds judicial nominees. That puts you somewhat at odds with the administration today. Of course, you were telling us to challenge President Clinton's nominees on ideology. The administration you are now serving with says we shouldn't do that.

In 1997, again, during President Clinton's term, you praised Senator Hatch for "strengthening the advise and consent process." You criticized the Clinton White House for refusing to inform the Senate Judiciary Committee of whom it is considering for nomination. Today, of course, it is the position of the administration there is no need to tell us anything until we read it in the paper on nominees.

In 2000, you co-authored an op-ed with a man named C. Boyden Gray. You praised the Republican Senate's refusal to approve President Clinton's nominees. About 60 of President Clinton's nominees were never approved, never even brought up for a vote. And you wrote, "The Senate's power of advise and consent, after all, is not a rubber stamp." So you and Mr. Gray were strongly praising the Senate for refusing to approve President Clinton's nominees, actually failing to approve them by just not allowing them ever to come to a vote. Sixty of them were not allowed to ever come to a vote.

I am not sure how that puts you at odds with the administration that is complaining about two now not being allowed to come to a vote versus the 60 that you praised for not coming to a vote.

So I hope if you are confirmed that you will be an advocate within the administration for greater consultation with this Committee and the members and that you will actually show at least some consistency with the positions you took when it was the Clinton administration. I don't expect Mr. Gray to, but he is not up for a nomination.

In the course of your campaign against what you call judicial activism, you criticized the use of consent decrees. You said they should be entered only to remedy constitutional violations, even then for a limited time. Of course, consent decrees have been used a great deal. There was a major one to address violations of civil rights statutes. That has been done for decades.

You said in 1997 that it would have been far better for modern women's rights to be gained through the democratic process that brought about suffrage, not by judicial grace or fiat.

So I would like to know, are you going to authorize lawyers in the Civil Rights Division, if you are confirmed, to seek consent decrees?

Mr. ACOSTA. Thank you for the question, Senator. Consent decrees are an important tool within the Civil Rights Division. The Civil Rights Division should and, if confirmed, will continue to use consent decrees. I believe I wrote that consent decrees should be limited in time. The Division has always had the policy of limiting consent decrees in time. Depending on the issue, there are standard lengths that we use for consent decrees. I would authorize con-

sent decrees. I would authorize our litigators to pursue consent decrees as they have.

Senator LEAHY. You said that you believe that the major court decision that cemented women's rights over the past decades were, in fact, further examples of judicial activism. Do you still feel strongly that way?

Mr. ACOSTA. Thank you, Senator. I don't recall the exact phrasing. I believe what I wrote about and what I was referring to is that in our system of Government, in the ideal, the democratic process brings about reform and that it would have been far better and far superior for the democratic process to bring about some of the reforms rather than for courts to do that. That doesn't mean that when the democratic process does not respond that judges do not have an obligation to respond to fill the gap, so to speak.

Senator LEAHY. I notice on your resume—and I first should say that there are many people who admire your work at the Civil Rights Division and enforcing Section 203 of the Voting Rights Act and addressing discrimination against persons with limited English proficiency. So far as my mother and all her family came here to this country speaking no English, and my wife didn't speak English until she was in school, I know how sometimes that can be difficult until you get able to do it. And so I applaud you for that.

I was worried, though, on your resume you state you worked on the Florida recount issues for the Bush-Cheney campaign, did campaign work in Pennsylvania. But on the questionnaire we sent you, where we asked whether you ever played a role in a political campaign, you stated only that you advised Indianapolis Mayor Stephen Goldsmith on civil justice issues to aid in his work in the Bush 2000 campaign.

Normally these discrepancies really wouldn't bother me, but the 2000 Florida election gave rise to a number of allegations of civil rights violations, some of which were investigated by the Civil Rights Division. Am I seeing a discrepancy here where there isn't any? Or did you leave something out in the questionnaire?

Mr. ACOSTA. No, I do not think you're seeing a discrepancy, Senator. If I could expand on both answers?

Senator LEAHY. Sure.

Mr. ACOSTA. I did not participate in the Florida recount. I did not participate in the Florida litigation. I did help obtain names of individuals who could be contacted to participate in the recount and the litigation. I compiled a list of individuals and passed them along to the campaign who I thought would be useful to contact to see if they had the time to participate.

Senator LEAHY. So your resume reference and your questionnaire are not in conflict at all?

Mr. ACOSTA. I do not think they're in conflict. I think one might have been—my resume might have been a broad statement of participated in a recount. I don't know which version of my resume you have. I believe there is one on the Internet that appeared there, and I sort of loosely referred to the Florida recount, but I will tell the Senator now, and I signed my questionnaire, my participation in the campaign was through Mayor Goldsmith's committee. I was contacted, I was asked for names. I did not go to Flor-

ida. I did not participate in the litigation. I did provide names to the campaign to call to see if they could go to Florida.

With respect to Pennsylvania, I traveled to Pennsylvania and spent, I believe, 2 or 3 days doing grass-roots campaigning in Pennsylvania. That probably should have been in my questionnaire. I apologize to the Senator for that omission.

Senator LEAHY. Mr. Bryant, of course, we know from his days in the House Judiciary Committee. We know him well. Of course, once he became Assistant Attorney General for the office of Legislative Affairs, he became more of a stranger, which is unfortunate because he is very knowledgeable about these issues. We sometimes had a hard time finding him. He is getting a very fast hearing. I think he was nominated—what was it, Dan? Two weeks ago? Am I correct? Two, three weeks ago?

Mr. BRYANT. That seems about right.

Senator LEAHY. It is a lot different than nominations coming from the Clinton administration when Republicans were in charge. They sometimes waited weeks, years, sometimes never get a hearing.

I would note that many of us in Congress, actually from both sides of the aisle, both Republicans and Democrats, have expressed serious frustration with delays, refusals, and inadequate information provided by OLA. So I want to know just where we are going to go now.

Mr. Bryant articulated the legal and historical departmental justification of the administration's refusal to give us papers in the Miguel Estrada matter. I thought his correspondence with me disregarded crucial case law and historical facts, departmental precedents, the clearly established precedent for Senators to review this. I was concerned that this may have been what he was required to do, but that Mr. Bryant continued to choose secrecy over openness in this regard.

I must say, I realize that he had to vet a lot of these. I have never seen such a consistent pattern of ideologically oriented nominees, many lacking a strong commitment to protect our basic civil rights, even though a lot of these I voted for to give the President the benefit of the doubt. But I will have a number of questions on that whenever you—I see the red light on, Mr. Chairman. I don't want to—

Senator SESSIONS. Well, I will just take a minute, and then I will give it back to you, Senator Leahy.

You know, on the question of handling of judges during the Clinton years, several hundred were confirmed. I forget the number at this moment. One was voted down. There were 41, I believe, pending confirmations when President Clinton left office.

Senator LEAHY. Several withdrew their names because after 3 or 4 years of waiting they got tired of waiting for a hearing.

Senator SESSIONS. A few may have. A few were objected to by home State Senators in ways that delayed their nomination. But when former President Bush left office and the Democrats controlled this Committee, there were 60 people left pending during that time, and so I don't think the record has been bad. Nominees are—

Senator LEAHY. If the Senator would yield, a lot of former President Bush's were sent, of course, at a time when he fully expected to be re-elected, were sent in during the prohibition of the Thurmond rule, the Strom Thurmond rule, a rule established by the Republicans saying that in the last 6 months of a President's term, no nominees would go through unless by a concurrence of both the Chairman and Ranking Member and the Majority and Minority Leader. So a whole lot of names were sent up, I think, in late summer or just before the recess, I guess with the assumption, looking at the polls, that the President was going to get re-elected easily and they would be first on the agenda in January.

Senator SESSIONS. We can talk about it a good bit. I don't agree. I believe that the Republican Senate under Chairman Hatch treated Clinton judges fairly and objectively and moved them in a fair and objective way. And it was at least as good, really better, than was done to President Bush's judges. And when the Senate was for that brief period under the hands of the majority Democrats in this body, 9 out of the 11 original appointees that President Bush submitted had not had a hearing in nearly 2 years. And until the Republicans took back control and started moving the nominees, they were not moving.

So we can debate that a lot, and I am prepared to do so right here. We don't have a quorum problem, and so we can just talk about it.

Now, Mr. Acosta, I think I heard you say that it would be better if the legislature acts, but sometimes the courts have the right to fill in the gaps. Did I understand that correctly?

Mr. ACOSTA. Senator, it is—if I may, it is better if the democratic process acts. Where the democratic process is silent and where the Constitution requires that injustices be corrected, courts do have an obligation to act pursuant to the Constitution and pursuant to the laws to ensure that injustice is not done.

Senator SESSIONS. Well, I think that is a better answer. Otherwise, I was going to ask Mr. Bryant to introduce you to John Ashcroft because I have heard him, as Senator Leahy has, on a number of occasions says that it is an ill thought to say that because the legislature didn't act, the courts should. Because when legislators don't act, they have acted. They have decided not to act. And that is a democratic act also. I have heard him say that a number of times. I think that is fundamentally correct.

So I think you articulate it better that if there is a fundamental constitutional right unaddressed, the court has to act in proper interpretation of the Constitution, but they don't have the right to fix everything they don't think is perfectly proper according to their feelings at that time.

Are we okay on that somewhat?

Mr. ACOSTA. Absolutely.

Senator SESSIONS. All right. Senator Leahy?

Senator LEAHY. Thank you.

Mr. Acosta, as head of the Project on the Judiciary, what work did you do in any way related to the nomination of Ronnie White to serve as a U.S. district court judge?

Mr. ACOSTA. Senator, I was aware of that nomination. I was not involved in work on that nomination.

Senator LEAHY. In no way whatsoever?

Mr. ACOSTA. Other than I was aware of it, I might have mentioned it to someone in passing, but there was no—there was no official work.

Senator LEAHY. Did you consider Judge White a judicial activist?

Mr. ACOSTA. Senator, I didn't look at Judge White.

Senator LEAHY. Mr. Bryant, as Assistant Attorney General at the Office of Legislative Affairs, we have a lot of letters to you. I know we sent one, Senator Feingold, Senator Cantwell, and I to someone on January 10th regarding the data-mining practices and policies of the Department of Justice. We have never gotten an answer. It was sent as part of our oversight responsibilities. Do Members of Congress have any right to expect answers when they are carrying out their oversight responsibility?

Mr. BRYANT. Thank you, sir. Absolutely, I do. If I could say just more generally, in reflecting on the 107th Congress, I needed to do better. I need to do better, OLP needs to do better, the Department needs to do better. I think we are improving in terms of getting timely and accurate responses back to Members of Congress. Congress needs timely and accurate information in the course of conducting its oversight.

The challenge is to be as timely as possible, while being completely accurate. And while I was in OLA, there were some 7,000 letters back to Congress and the challenge for us was to balance timeliness and accuracy at the same time that we tried to have a care for how we burdened attorneys in the Department with operational responsibilities, especially in the post-9/11 environment.

Senator LEAHY. Well, I understand it was a concern, but I was thinking this morning, for example, Director Mueller testified, and in anticipation perhaps of his testimony about a week ago a number of questions asked by Senator Grassley, a couple of other Republicans and myself were answered.

They were requested, and I would note it sort of falls in a regular pattern. We asked the questions in July and we got the answers in July. Unfortunately, we asked them in July 2002 and got the answers in July 2003, and I think some were asked in 2001. But we at least got the answers to our July questions in July.

You do a lot of the vetting on judges. Do you see any problem with the fact that 20 of President Bush's judicial nominees, 14 percent of them, including 6 circuit court nominees and 14 district court nominees, have received at least partial "not qualified" ratings from the American Bar Association?

Mr. BRYANT. Thank you, Senator. Let me just say, if I might, that I have been, as you know, in the Office of Legal Policy only now about a month-and-a-half. OLP is, as you indicate, involved in helping do lawyering in connection with possible candidates to be nominees and it plays a support role to the Attorney General and the White House in connection with candidates. So I would need to review further the specifics in terms of those candidates before I could respond.

Senator LEAHY. Thank you. I have other questions, but one of the great things about the air pollution and what not is it seems to—you know, I have a sort of asthmatic reaction to it, and lucky for you, Mr. Bryant and Mr. Acosta, my voice is practically gone.

I will, however, submit some questions for the record. I also will put Mr. Acosta's resume, Mr. Chairman, if there is no objection, in the record.

Senator SESSIONS. That will be made a part of the record.

Senator LEAHY. I will submit the others for the records and would urge you to respond as quickly as you can. If you have any questions—these are not “gotcha” questions by any means. If you have any questions about what I want, just pick up the phone and call me directly. I will be glad to fill you in.

Good to see you both, gentlemen. Thank you. I am sorry I wasn't here when I assume you introduced your families earlier. Is that correct?

Mr. BRYANT. Yes.

Senator LEAHY. I have often urged—and I have done this maybe about four or times in the majority and four or five times in the minority. I have been Chairman of different committees and what not and I have always urged nominees to have their families here and introduce them, if for no other reason the fact that someday in the old archives of the family, you pull those out and say, my God, I was there, because their names are in there.

Of course, Mr. Bryant is familiar with this. You should always check with the transcript afterwards to make sure that family names are correctly spelled, so you can get copies of all that to the family members who were there.

Thank you, Mr. Chairman.

Senator SESSIONS. Thank you, Senator Leahy.

We will keep the record open for questions for one week, follow-up questions. I don't think I have anything else to add to these two fine nominees. They both have broad support within this body on both sides of the aisle, and I look forward to your prompt confirmation. It is important that the President have good people in these positions.

You have a management challenge. There are some people who think that these positions are all policy and don't have management requirements, but I submit to you that we need to watch spending around here. You have probably got some dead wood around and you probably need some reorganization and you may not need as many people as you have. If you do, you should say so and let's let the taxpayers keep some of their money.

Is there anything else that you two feel obligated to share with the group?

Mr. BRYANT. No, sir.

Senator SESSIONS. All right. If there is nothing else, we will stand adjourned.

[Whereupon, at 3:54 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Rene Alexander Acosta
2151 Jamieson Avenue, #506
Alexandria, VA 22314

July 29, 2003

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Chairman Hatch:

Attached are my responses to written question from members of the Senate Judiciary Committee.

I thank you again for the opportunity to appear before the Committee last week and to provide additional information through the attached written responses.

Sincerely,


R. Alex Acosta

Cc: Ranking Member Leahy

Question from Senator Hatch

Mr. Acosta, during your confirmation hearing, Senator Leahy asked about certain political activities listed on an earlier version of your resume that, I believe, is available on the Internet. Can you please reconcile your responses to Senate Questionnaire Section II, Question 6, regarding the positions or roles you have played in political campaigns with what appears on the earlier version of your resume?

Senate Questionnaire Question 6 asks:

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

My answer to that question was:

Indianapolis, Indiana, Mayor Stephen Goldsmith organized several informal committees to advise him on domestic policy issues during his service with President George W. Bush's 2000 campaign. I served as a member of his civil justice advisory committee during 1999 and 2000. The committee met by conference call every few months, to discuss legal issues.

I interpreted this question to refer to positions that I held in a campaign, specifically titled positions or official positions such as my work on the advisory committee. I inadvertently overlooked the fact that this question also asks for any role that I had played in a political campaign. That error was mine. I apologize to the Chairman, the Ranking Member, and the Members of this Committee for this oversight. I ask the Committee's permission to correct this oversight through this answer.

First, I would like to state that I worked a phone-bank in Pittsburgh, Pennsylvania for one weekend (perhaps including a Friday or Monday as well) for the campaign of President George W. Bush. I did this as an individual volunteer. This falls within the "played a role" language of Question 6. Additionally, I participated in two, perhaps three, meetings concerning Catholic outreach. I likewise participated in these meetings as an individual volunteer, and had no formal role. This may fall within the "played a role in a political campaign" language of Question 6. (I use the word "may" because I believe these meetings were sponsored by the Republican National Committee rather than the campaign). My failure to include this information in my Questionnaire was my oversight.

Second, I would like to make clear that I did not participate in the actual recount or litigation relating to the Florida election. I did, however, help compile a list of attorneys whom I believed might be willing to contribute their time to the recount or the litigation, and I did encourage several of these attorneys to volunteer their time to these efforts. Those are the activities to which I referred on my resume when I wrote that I "worked on projects relating to the Florida recount." I did not include those activities in my

Questionnaire, on the belief that compiling a list of potential volunteers (but not actually participating in the recount or litigation) was too indirect an activity to fall within the scope of Question 6. I apologize for my misunderstanding the scope of Question 6.

Questions from Senator Leahy

1. You stated in the committee questionnaire that from January-August 2001, you served as the “transition’s senior point of contact between the Department’s leadership offices and the Civil Rights Division” and held the title of Deputy Assistant Attorney General.

A. Is it true that before the confirmation of Ralph Boyd as Assistant Attorney General, you were the highest-ranking official in the Civil Rights Division during this time? During this period, were you responsible for all sections of the Civil Rights Division? What were your responsibilities?

It is inaccurate to state that I was the highest-ranking official during the period about which you inquire.

During this period, the highest-ranking official in the Civil Rights Division was the then-Acting Assistant Attorney General. During this time, my responsibilities were to work closely with the Acting Assistant Attorney General to ensure a smooth transition and to keep the Department’s leadership offices fully briefed on civil rights issues. Although I was aware of the work of all the sections of the Civil Rights Division and interacted with them regularly, the various section chiefs reported to the Acting Assistant Attorney General through attorneys on his staff.

B. You also state in the committee questionnaire that following the confirmation of the Assistant Attorney General in August 2001, you became the principal deputy in September 2001. As Principal Deputy, were you responsible for supervising all sections of the Civil Rights Division?

As Principal Deputy Assistant Attorney General, I had, subject to Assistant Attorney General Boyd’s directions, general management responsibility for the Division. This responsibility did not take the form of day-to-day oversight of each of the Division’s sections, however. Day-to-day oversight of each section was performed by the Deputy Assistant Attorneys General who had supervisory responsibility for particular sections. My responsibility was to remain generally aware of the work of each section, in order to be prepared adequately to advise Mr. Boyd should questions arise and to maintain accurate communications between the Division and the Department’s leadership offices and other governmental offices and agencies.

In addition, I had specific oversight responsibility for the Appellate and Administrative sections for a period of time. Sometime following my nomination to the National Labor Relations Board on October 9, 2001, responsibility for the Appellate section was assigned to another Deputy Assistant Attorney General. Later, responsibility for the Administrative section was also assigned to another Deputy Assistant Attorney General.

C. In April 2001, a U.S. News and World Report story stated that line attorneys in the Special Investigations Division could not make requests for documents or call litigants without permission from political appointees such as yourself. Please review this story and advise us of your response to it? What percentage and number of career attorneys have left the Division or the Department or been transferred or detailed out of the Division or the Department during Mr. Boyd's tenure?

The leadership of the Civil Rights Division -- under both the Clinton and Bush Administrations -- has consistently required that the Special Litigation Section secure approval from the front office before formally initiating any investigation into alleged violations of the Violent Crime Control and Law Enforcement Act of 1994 ("Section 14141"), the Omnibus Crime Control and Safe Streets Act of 1968, and the Civil Rights of Institutionalized Persons Act. In preparing the requisite authorization memorandum, Special Litigation Section attorneys access all publicly available materials and frequently contact individuals and organizations -- other than the proposed target of the investigation and its agents -- to glean information that may be relevant to the proposed investigation. There has been no change in this policy between the current and prior Administrations.

However, I should note that during my tenure at the Civil Rights Division, the Division opened 5 new "pattern or practice" (Section 14141) investigations in 2002 and 3 new "pattern or practice" (Section 14141) investigations in 2001. Similarly, the Division opened 31 new facility investigations under the Civil Rights of Institutionalized Persons Act during my tenure there.

With respect to your question regarding personnel movements in the Civil Rights Division, I do not have the information necessary to respond to such a query since I am not currently employed by the Department of Justice.

D. When Mr. Boyd testified before the Senate in May 2002, he told the committee that he expected that Katherine Baldwin, the former head of the Employment Litigation Section whom Mr. Boyd had reassigned, would be able to return to her former job. Instead, she was permanently reassigned to another section at a lower level. Were you involved in this personnel decision in any way? Is the position of Chief of the Employment Litigation Section currently open? If so, would you consider restoring Ms. Baldwin to that position?

In my role as Assistant Attorney General Boyd's Principal Deputy, I had many discussions with him about many issues, including personnel matters. It would be inappropriate for me to discuss the details of these internal deliberations. I am confident that Assistant Attorney General Boyd made his personnel decisions based on his view of how to best utilize the resources of the Division.

I understand that the position of Chief of the Employment Litigation Section has been permanently filled.

E. You state in your Senate Questionnaire that after you were nominated to the National Labor Relations Board in October 2001 you remained at the Civil Rights Division

until you were confirmed. You state that during this time, you were responsible for implementation of special projects, and you provide examples of those projects. Was the implementation of special projects your sole responsibility during this period, or rather were you responsible for the work of all sections of the Division during this period as your title as Principal Deputy would indicate?

As Principal Deputy Assistant Attorney General, I was assigned by Mr. Boyd to supervise the implementation of special projects, including those concerning Executive Order 13166 (access by language minorities to government-funded services), Section 203 of the Voting Rights Act (access by language minorities to voting), and unlawful trafficking in persons.

I was assigned primary responsibility for the development of, and in-court defense of, the Department of Justice's Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (Jun. 12, 2002). This Guidance implements Executive Order 13166, establishing the Federal Government's committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English.

I likewise was assigned responsibility for leading the Division's efforts in implementing Section 203 of the Voting Rights Act. Under Section 203 of the Voting Rights Act, jurisdictions that meet certain specific statutory demographic criteria must provide bilingual access to all stages of their electoral process for designated language-minority communities. Nearly 80 jurisdictions were covered for the first time as a result of the 2000 census. During 2002, I was primarily responsible for ensuring that Department of Justice aggressively enforced Section 203 on a consistent basis.

In addition, I was assigned responsibility for leading the Division's trafficking in persons prosecutions effort. Trafficking in persons, also referred to as "human trafficking," involves the acquisition of human beings, through the use or threat of force, fraud or coercion, for the purpose of sexual exploitation or forced labor. It is one of the most egregious human rights abuses of our time. Its existence is intolerable and repugnant. These responsibilities are, as your questions, explained in more detail in my Senate Questionnaire.

Implementation of these special projects was an important and perhaps my most significant, but not my sole, responsibility during this period. See Question 1B, *supra*.

F. You graduated from law school in 1994, clerked for a year and then served as associate at Kirkland & Ellis for 19 months before joining C. Boyden Gray's Project on the Judiciary at the Ethics and Public Policy Center as the project director, where presumably you handled no litigation. In your questionnaire, you indicate no appearances arguing any cases before federal courts, district or appellate. Please describe for the Committee what resources you will draw on in supervising the appellate and trial litigation of the Civil Rights Division given your relative lack of litigation experience compared with others who

have served as Acting Attorney General of the Civil Rights Division or who have been confirmed to that important post. How has your experience as a member of the National Labor Relations Board affected your view of litigation and settlement of cases, as well as the need for fair-minded, non-political adjudicators?

I have taught classes on employment discrimination, disability-based discrimination and an advanced civil rights seminar at the George Mason School of law.

As the transition team's senior point of contact, I became familiar with the work of all the sections of the Civil Rights Division and interacted with them regularly. I developed a strong relationship of mutual respect with the section chiefs and career staff. This relationship grew stronger during my tenure as Principal Deputy Assistant Attorney General. In addition, I spent much of my time working on important, special projects including implementation of Executive Order 13166, enforcement of Section 203 of the Voting Rights Act and increasing prosecutions of individuals engaged in Human Trafficking. These were substantial initiatives that required extensive work, not only within the Division, but with other government agencies. These projects likewise have provided me broad exposure to the staff and the work of the Division. The Division has hundreds of able, talented litigators. The responsibility of the Assistant Attorney General is to provide the policy guidance and the leadership necessary to permit staff to investigate matters and successfully litigate cases in court.

During my tenure as a Member of the National Labor Relations Board, I have participated in more than 125 decisions. This quasi-judicial position requires me to study the law and facts applicable to each case and arrive at a reasoned judgment that complies with the National Labor Relations Act. It requires that I be a fair-minded adjudicator. If confirmed, I would apply this same reasoned, fair-minded judgment as Assistant Attorney General.

2. From April of 1997 until the Supreme Court's decision in *Bush v. Gore*, you were the Project Director of the Project on the Judiciary.

A. Please describe in detail the mission of that Project.

The Ethics and Public Policy Center's Project on the Judiciary was intended to respond to the issue of judicial activism in federal courts. The Framers of the Constitution well understood the problem associated with this issue. During the constitutional debates, many expressed the fear that absent accountability to the democratic process, there would be a threat to liberty if the power of judging were not separated from the legislative and executive powers.

The Project addressed these and other problems of the federal judiciary by educating the public on the separation of powers outlined by the Framers. The Project accomplished this public education effort through speeches and opinion pieces and by examining and discussing the judicial philosophy of federal judicial nominees.

This latter discussion of individual nominees tapered off with time, especially so after the first year. It was my view that discussing the issue generally was more important. This more general discussion of the issue is reflected in writings that I have submitted as attachments to my Senate Questionnaire.

B. Please describe the nature of your work during your employment with the Ethics and Public Policy Center. What were your specific functions? Was all of your work devoted to issues involving the judiciary? What other issues did you work on?

My work during my employment at the Ethics and Public Policy Center was limited to examining the issues involving the judiciary. In addition to the issue of judicial activism, I also researched the issue of whether splitting the Ninth Circuit would help improve that circuit's decision-making with respect to speed, consistency and adherence to Supreme Court precedent.

During the time that I worked at the Ethics and Public Policy Center, as stated in my Senate Questionnaire, I also taught law at George Mason School of Law. I taught classes on employment discrimination, disability-based discrimination and an advanced civil rights seminar. In that capacity, I worked (spoke in class) on those issues as an employee of the George Mason School of Law.

C. In January 1997, immediately prior to your employment, the Sarah Scaife Foundation made a \$50,000 grant to the Ethics and Public Policy Center for the Project on the Judiciary. In January 1999, the John Olin Foundation made a \$50,000 grant to the Ethics and Public Policy Center that was partially designated for the Project on the Judiciary.

1) Did you have any role in seeking these grants, or any other funding for the Project on the Judiciary or the Ethics and Public Policy Center? Please list the budget for the Project during each of the years you served there, and the number of staff members who worked for the Project. Please describe each source of funding for the Project of the Judiciary, including the amount of funding received from each source.

I did not have any role in soliciting funds for the Ethics and Public Policy Center prior to my employment by the Center. I likewise did not have a personal role in soliciting funds from the Sarah Scaife Foundation or the John Olin Foundation following my employment by the Center. During my employment by the Center, I did on occasion, however, prepare short two or three paragraph descriptions of the activities of the Project on the Judiciary, which were to be used by the Ethics and Public Policy Center in fundraising. In addition, I recall participating in fundraising discussions on behalf of the Ethics and Public Policy Center with the Castle Rock Foundation, the Pennsylvania Manufacturer's Association and the Claude Lambe Foundation.

The Ethics and Public Policy Center funded the Project. The budget allocated to the Project by the Ethics and Public Policy Center was relatively small - just enough to cover

salaries, benefits and incidental expenses. Although I do not recall precise figures, an average budget of approximately \$150,000 (excluding imputed cost of rent, phone service and general office overhead) likely comes close. I am not aware of restricted sources of funding directed to the Project, and therefore am unable to provide specifics regarding these sources or amounts. I am aware that funding came from portions of general grants given to the Ethics and Public Policy Center from several sources, including those identified above.

Staffing at the Project varied from one to two employees (myself and an assistant, although the Ethics and Public Policy Center did not provide an assistant at all times). In addition, staff also included one or two interns.

2) In applying for, or assisting in applying or seeking, funding of any kind for the Project on the Judiciary or the Ethics and Public Policy Center, did you ever refer to the names of individual judicial nominees? If so, which names did you cite? Please indicate how you described the work you conducted or planned to conduct regarding each nominee.

In describing the activities of the Project, when preparing short paragraphs to be used by the Ethics and Public Policy Center in fundraising, I described the mission of the Project in a manner consistent with my answer to Question 2A. Especially after the first year, my description of the Project would focus on the importance of educating the public so that the public can better understand the importance of the judiciary in our system of government. I do not recall using specific names in these documents or in these descriptions. Although I do not recall doing so, it is possible that I may have orally referred to specific individuals during my participation in the discussions listed in Question 2C(1), *supra*.

3) In reporting, or assisting in reporting, on how funds for the Project on the Judiciary were expended, did you ever refer to the names of individual judicial nominees? If so, which names did you cite? Please indicate how you described the work you conducted or planned to conduct regarding each nominee.

To my knowledge, I did not refer to specific names in reporting, or assisting in reporting, how Ethics and Public Policy funds were expended.

4) How often did you meet or speak with the co-founders of the Project, such as C. Boyden Gray, in the effort to block Clinton judicial nominees?

As an initial matter, the purpose of the Project was to address the issue of judicial activism by educating the public on the separation of powers outlined by the Framers. The Project accomplished this public education effort through speeches and opinion pieces and by examining and discussing the judicial philosophy of federal judicial nominees.

With respect to any discussions I might have had with Mr. Gray or other co-founders, I spoke with them only on a sporadic basis. Initially, the contact was perhaps once or twice a month. Later, the contact was less extensive.

D. In your remarks announcing the formation of the Project on the Judiciary at a May 19, 1997 press conference, you indicated that the Project “will research the judicial philosophy of federal judicial nominees and disseminate that information to any interested party, including the media and the public.”

- 1) **Please identify each and every judicial nominee on whom you conducted any such research. Please indicate whether you disseminated such information and, if so, to whom you disseminated it.**

During its first year, the Project examined the philosophy of several nominees. I do not recall each and every judicial nominee whose record the Project examined. However, I do recall that some of the nominees whose record the Project examined included Richard Paez, Marsha Berzon, Margaret Morrow and Fredericka Massiah-Jackson. Further, although a May 1997 article states that the Project intended to examine the record of Ronald Gilman, the Project in fact did not do so and did not make any statements or disseminate information regarding him.

As a general matter, the Project did not develop and disseminate information on the vast majority of nominees. Much of my time at the Project was spent working on more generalized discussions of the role of the judiciary and the importance of the judiciary, rather than individual nominees. Starting sometime in 1998, I made a decision to more explicitly shift the focus of the Project towards this more generalized discussion. That is reflected in writings, beginning in 1997, that I have submitted as attachments to my Senate Questionnaire.

With respect to other specific nominees or specific information disseminated, please see my discussion regarding Richard Paez, Marsha Berzon, Margaret Morrow and Fredericka Massiah-Jackson in Question 2D(2), *infra*.

- 2) **Please list and explain any and all work you did concerning the following judicial nominations: Fredericka Massiah-Jackson; Ronnie White; Richard Paez; Marsha Berzon; Margaret Morrow; Helene White; and James Wynn.**

Other than perhaps brief comments to friends or associates, I do not recall discussing or disseminating information regarding the nominations of Ronnie White, Helene White or James Wynn.

With respect to the nominations of Richard Paez, Marsha Berzon and Margaret Morrow, I did not issue any written report or publication or similar document. I do recall, however, raising questions regarding some articles they had written. Although I do not recall my exact statements, I know that as a general matter, I tried to raise questions rather than make conclusory statements.

The nomination of Fredericka Massiah-Jackson was controversial. Several leading prosecutors from both political parties in Pennsylvania raised issues regarding her nomination. I spoke with some of them about their concerns. I also discussed some of their concerns with media and with public policy groups (at a forum sponsored, I believe, by the Heritage Foundation), including disseminating a written summary of some of these concerns.

E. A July 16, 1999, Wall Street Journal column by Paul Gigot, entitled "Meet the Real Right-Wing Conspiracy," indicated that you were "about to embark on a 35-city tour for the Federalist Society" for the Project. The column stated that one of your "themes" would be that "eight years of Clinton appointments will have put the entire federal judicial bench in precarious ideological balance." Please state whether you made any presentations during this tour and indicate the subject matter of the presentations. Please state whether you referred to any particular judicial nominees by name during appearances on this tour, and if so, indicate which nominees.

As an initial matter, I spoke in approximately ten cities - not thirty five. At each event, I made a presentation consistent in content and style with my August 1999 Wall Street Journal opinion editorial, entitled "In 2000, Supreme Court Is at Stake Too."

F. During your tenure with the Ethics and Public Policy Center, did you work in any way on the issue of affirmative action? If so, please describe the nature of your work, and the views you expressed on affirmative action at that time.

I did not work on this issue while employed at the Ethics and Public Policy Center.

3. While you were working at the Ethics and Public Policy Center, the Center sponsored a forum in December 1997 to celebrate the passage of Proposition 209, an anti-affirmative action ballot initiative in California. The Winter 1997 edition of the newsletter of the Ethics and Public Policy Center reported that Ward Connerly, the leader of the initiative campaign, appeared at a "Center press conference" on December 2, 1997. Did you have any role in or input into the planning or producing of this event? Did you participate in or attend the event?

I did not have any role in or input into the planning or production of this event. I did not participate formally in the event. In fact, I do not even recall attending the event (although if the event was held at the Ethics and Public Policy Center offices, it is possible that I attended briefly).

4. According to the Ethics and Public Policy Center's own newsletter, Ward Connerly stated at the Center's December 2, 1997, press conference that "affirmative-action policies that require governmental bodies to acknowledge and enforce racial distinctions subvert our nation's fundamental principles of equality and fairness." Do you agree with this statement? Why or why not?

I am not familiar with Mr. Connerly's full remarks at the 1997 press conference so I cannot comment specifically on whether I agree or disagree with them. I will say, however, that governmental bodies should and must be very careful when using racial classifications. In some contexts, such as identifying and remedying past or present discrimination or achieving a diverse student body through higher education admissions programs, using racial classifications can be legally appropriate. In other contexts, the use of racial classifications is more problematic and, as the Supreme Court and other courts have found in several cases, can violate the fundamental right to equal protection enshrined in our Constitution.

5. Ward Connerly is currently sponsoring an effort to place the Racial Privacy Initiative – which would prohibit the collection of any racial or ethnic data – on the California ballot. What are your views on this?

I have not studied Mr. Connerly's proposal and therefore cannot comment upon it.

6. A. What are your views on the Supreme Court's decision last month in the University of Michigan affirmative action cases?

I agree with the President's views on the University of Michigan decisions. As the President said, diversity is one of America's greatest strengths. If confirmed, I will work with the Administration to continue to promote policies that expand educational opportunities for Americans from all racial, ethnic, and economic backgrounds. I agree with the President that there are innovative and proven ways for colleges and universities to reflect our diversity without using racial quotas, and we must look first to these race-neutral approaches to make campuses more welcoming for all students. I join with the President and, I hope with all Americans, in looking forward to the day when America will truly be a color-blind society.

B. Do you believe that "diversity" can serve as a compelling governmental interest, and can be appropriate justification for a race-conscious affirmative action program? Or may only race-neutral methods, such as the Texas, Florida, and California plans cited in the United States' brief, be used to seek diversity in higher education?

The Supreme Court held in *Grutter v. Bollinger* that the achievement of a diverse student body through higher education admissions is a compelling governmental interest. Further, the Court approved the University of Michigan Law School's race-conscious admissions program after concluding that the program was narrowly tailored to further this compelling interest. At the same time, and in a case arising from the same university, the Supreme Court struck down the University of Michigan's undergraduate admissions program after concluding that it was not narrowly tailored. As the Supreme Court's analysis of the two University of Michigan programs demonstrates, the determination of whether any particular program is narrowly tailored is a fact-intensive one that will vary by program even within the same university.

The *Grutter* decision makes clear that in higher education race-conscious admissions programs seeking a diverse student body using narrowly tailored means are permissible. I agree with the President that there are innovative and proven ways for colleges and universities to reflect our diversity without using racial quotas, and we must look first to these race-neutral approaches to make campuses more welcoming for all students.

C. Under your leadership, will the policy of the Civil Rights Division be to allow race-conscious methods to remedy discrimination, or will it require race-neutral methods?

The Department of Education has the primary responsibility for enforcing various non-discrimination laws and regulations pertaining to higher education.

In the event that a particular case challenging a university's admissions policy results in litigation, the Civil Rights Division, under my leadership if confirmed, will apply the principles set forth in *Grutter v. Bollinger*. Those principles make clear that race-conscious methods can be a permissible part of higher education admissions practices if they are narrowly tailored to achieve a diverse student body.

D. The Employment Litigation Section of the Civil Rights Division is responsible for defending the constitutionality of Federal affirmative action programs. Have you been involved in defending the constitutionality of any Federal affirmative action programs? What was your role? What is your view of the constitutionality of Federal affirmative action programs? Under your leadership, will the Civil Rights Division continue to provide guidance to federal agencies to support affirmative action in government programs?

During the transition, I was involved in defending *Gross Seed Company v. Nebraska Sherbrooke Turf v. Minnesota* was also being litigated during my time at the Civil Rights Division. Although I do not recall direct involvement with this case, I may have nonetheless have participated in discussions about it. With respect to *Dynalantic v. United States Department of Defense*, I do not recall direct involvement with the litigation but do recall participating in discussions regarding this case generally. Following Mr. Boyd's confirmation, although I was aware of litigation defending Federal race conscious programs and participated in some discussions regarding this issue, I was not directly involved in these cases.

I believe that federal programs employing racial classifications are constitutional if they are narrowly tailored and serve a compelling governmental interest. If confirmed as Assistant Attorney General, I believe it is my obligation as a government attorney to defend such programs in court so long as there is a good faith basis on which to defend the program, and I will do so.

7. In 2000, you were on an awards committee for the Family Research Council that awarded "Court Jester Awards" to a number of judges and courts that you believed had engaged in judicial activism. Your committee gave such an award to the Vermont Supreme Court, stating that its decision in *Baker v. Vermont* – the case that led to the

adoption of civil unions in Vermont – was “a decision so utterly without legal foundation that it shocks the conscience of the public and causes contempt for the judicial system.”

A. The Web site of the Family Research Council reveals articles concerning the “tragedy and threat of the gay lifestyle” and the “instability of homosexual relationships.” Are you familiar with the Council’s positions on policy issues related to homosexuality? Do you support them? Why did you decide to accept an invitation from the Council to serve on this committee?

I am aware that the Family Research Council favors the traditional family. I am not familiar with the Family Research Council’s specific positions on various policy issues.

At the 2000 Court Jester Award Ceremony, I presented an award to the Ninth Circuit for its record of reversals in that year’s Supreme Court term. My recollection is that I limited my remarks to that issue.

B. Do you support the Supreme Court’s recent decision in *Lawrence v. Texas* striking down state anti-sodomy laws? Do you believe that it too was a decision “utterly without legal foundation?” What effect, if any, do you believe the *Lawrence* decision should have on the Civil Rights Division’s mission?

In *Lawrence v. Texas*, the Supreme Court struck down a state law criminalizing certain same-sex conduct between consenting adults. The case involved a state criminal law dealing with consensual private sexual conduct and has no direct impact on federal civil rights laws. That being said, the eventual impact of the *Lawrence* decision on federal civil rights laws remains to be seen and likely will turn on whether Congress or lower federal courts expand the *Lawrence* holding in the future.

C. In *Hyman v. City of Louisville*, the Clinton Administration filed an amicus brief defending the constitutionality of an ordinance that prohibited discrimination based on sexual orientation. The ordinance was upheld, and the ruling was appealed to the Sixth Circuit. The Bush Justice Department declined to file a brief on appeal. Were you involved in the decision not to file a brief? If so, how? Do you support the decision not to file a brief? Do you believe that local ordinances prohibiting employment discrimination against gays and lesbians are constitutional?

Although I was involved in discussions relating to this case, it would be inappropriate for me to discuss the details of these internal deliberations. With respect to specific local ordinances, without specific language, studying judicial decisions and consulting with Division attorneys, it would be in appropriate to speculate on the constitutionality of a generic ordinance.

8. Mr. Boyd told The Hill in March of this year that one of the Justice Department’s “long list” of accomplishments was to help “poor children get a better education.”

A. What specifically has the Civil Rights Division done to achieve this goal?

The Division has worked diligently to enforce desegregation decrees and to help districts achieve unitary status. Many of the Division's desegregation cases involve districts with numerous children from lower-income families. Receiving an education in a school system that is free from the vestiges of prior dual school systems, whether in elementary and secondary schools or state institutions of higher education, is critical to this endeavor.

B. I understand that the Department has not filed any school desegregation cases during this Administration. Do you believe that no further racial desegregation is needed in the public schools? If not, what, if anything, can the Division do to promote desegregation?

I am firmly committed to school desegregation and, if confirmed, would work diligently toward achieving equal opportunity for all.

The Civil Rights Division during this Administration has expended substantial resources working with local jurisdictions to help foster compliance with consent decrees and to reduce barriers to quality education for all children. In fact, during my time at the Division, we reached settlements in major cases involving desegregation in the Mississippi higher education system and in Yonkers, New York.

C. Do you believe that the playing field is now level for male and female athletes in our nation's colleges and high schools? Do you believe that, it is now male athletes who are the victims of discrimination? Do you believe that the three-part test under Title IX, or any part of it, requires institutions to implement quotas or to cut male teams in order to comply with Title IX?

Since its enactment, Title IX has produced significant advancements in athletic opportunities for women and girls across the nation. Still, discrimination persists for some athletes in some schools and institutions of higher learning. I support the Department of Education's continued strong enforcement of Title IX requirements. Whether male athletes are the victims of discrimination turns on a fact-specific analysis of a particular situation. Without more detailed knowledge of a specific situation, I cannot give a general opinion.

I would note that the Department of Education recently reaffirmed the 1979 policy interpretation, which provides a three-prong test for Title IX compliance. Nothing in Title IX or in this test requires that an institution cut teams in order to comply with the requirements.

9. Earlier this year, the Supreme Court ruled in Nevada Dept of Human Resources v. Hibbs that Congress acted constitutionally in making states subject to suit under the Family and Medical Leave Act. Chief Justice Rehnquist's opinion reinforced Congress' authority to legislative to address gender inequality. Do you agree with the Court's ruling, and with the Chief Justice's view that the purpose of the FMLA is to address gender inequality?

In *Hibbs*, the Supreme Court, adopting the position advocated by the Department of Justice, held that Congress acted within its authority under section 5 of the Fourteenth Amendment in abrogating States' Eleventh Amendment immunity for purposes of the FMLA's family-leave provision. Chief Justice Rehnquist's opinion specifically noted that "[t]he FMLA aims to protect the right to be free from gender-based discrimination in the workplace," and that "the States' record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic § 5 legislation." If confirmed, I would vigorously enforce this decision, just as I would with any Supreme Court decision or congressional enactment.

10. I understand that under Mr. Boyd's leadership the Division has brought only seven employment discrimination cases under Title VII of the Civil Rights Act.

A. What was your involvement, if any, in evaluating whether to bring Title VII cases? If you are confirmed, do you foresee any increase in the number of Title VII cases brought by the Division? Will you look carefully at bringing "pattern and practice" discrimination cases, which the Division has not brought under Mr. Boyd's leadership?

If confirmed as Assistant Attorney General, it is my intent to ensure that the Employment Litigation Section of the Civil Rights Division will work vigorously to challenge discriminatory employment practices. In this regard, I would instruct the Section to use the full range of enforcement tools available, including pattern or practice jurisdiction.

B. After the Bush Administration took office, the Civil Rights Division changed its position in a number of ongoing employment discrimination suits, including suits involving custodians in the New York City school system, security officers in the Philadelphia transit system, and police officers and firefighters in Buffalo.

1) Do you think it is appropriate for the Justice Department to change its position in an ongoing litigation, where parties alleging discrimination have relied upon the Department's position and assistance?

The Civil Rights Division participates in hundreds of cases and matters each year. Changes in position in these cases and matters should be the exception, and should take place only when there has been a change in legal or factual circumstances of a particular case or matter, or when there has been a change in policy. My understanding is that this has been the general policy of the Division during Mr. Boyd's tenure.

2) Are there any additional ongoing employment cases where, as head of the Division, you would advocate a change in the Department's litigation position?

I am unaware of any ongoing employment case where I, based on what I presently know, would advocate that the Department change positions.

C. Mr. Boyd told the ABA last year that the Division would not bring disparate impact cases unless it has “additional evidence that is indicative of or reflects disparate treatment, that is to say: intentional discrimination.” As head of the Division, would it be your policy to bring disparate impact cases only where there is evidence of intentional discrimination, even where disparate impact cases are specifically authorized by statute?

Several civil rights statutes enacted by Congress, such as Title VII, make clear that practices or policies that create unjustified disparate impacts are discriminatory and illegal. If confirmed as Assistant Attorney General, it is my intent to enforce these laws, using disparate impact theory where appropriate. Specific evidence of intentional discrimination is not a prerequisite to a disparate impact case.

With respect to Mr. Boyd’s statement, respectfully, it is my understanding that Assistant Attorney General Boyd did not state that he did not intend to initiate and proceed with disparate impact cases arising under Title VII or that he would only do so in the event that intent was shown. In fact, I believe that Assistant Attorney General Boyd announced in May of 2003 that he had authorized 9 disparate impact employment investigations.

11. In your remarks on the Project on the Judiciary, dated May 19, 1997, you stated: “Consent decrees must be limited. A consent decree should remain in effect only for a given, and short, period of time, and only if court management is necessary to cure an ongoing constitutional violation.” The Civil Rights Division has historically used consent decrees widely to address civil rights violations.

A. What role, if any, did you have at the Civil Rights Division in determining whether to seek consent decrees as opposed to out-of-court settlements? What recommendations did you make in this regard?

My view is that consent decrees have an important and an historic role in helping ensure that violations of civil rights laws are adequately remedied. Indeed, later in the quoted paragraph, I explain that “Renewal of the consent decree should be possible, but the decree should not be allowed to stand forever.” The Civil Rights Division has long acknowledged that consent decrees should be used, but that they should not stand forever but rather should continue only as long as necessary to ensure implementation of the requirements of the decree. The Civil Rights Division under my leadership, if I am confirmed, should and will seek consent decrees when necessary to ensure an adequate remedy.

With respect to individual cases, however, it would be inappropriate for me to discuss the details of internal deliberations.

B. Do you still believe that consent decrees should only be entered for constitutional violations? What about statutory violations of laws such as the Americans with Disabilities Act, Fair Housing Act, and Title VII of the Civil Rights Act?

Many civil rights laws have traditionally been enforced by consent decrees and settlements. I fully support their use when necessary to remedy statutory or constitutional violations.

My comments arose in the context of a discussion regarding constitutional issues. My comments were not meant to imply that consent decrees should only be used to correct constitutional (as opposed to statutory) violations. My wording should have been more precise.

C. Were you involved in the decision to enter into an out-of-court settlement instead of a consent decree with Marriott International concerning its alleged discrimination against an Arab-American group?

As noted above, I was involved in discussions on many matters in my role as Principal Deputy, including an early discussion about this matter in the immediate aftermath of the 9/11 attacks. It would be inappropriate for me to discuss the details of internal deliberations.

12. In *Alexander v. Sandoval*, the Supreme Court held that private plaintiffs cannot sue in federal court to enforce the regulations under Title VI of the Civil Rights Act of 1964 that prohibit recipients of federal funds from using practices that have a discriminatory effect. Because the Court did not invalidate these regulations, organizations that receive federal funds might be violating federal regulations due to discriminatory practices, but the individuals affected by those practices now cannot sue to enforce the regulations. This makes it even more important for the federal government to vigorously enforce the Title VI disparate impact regulations, through both lawsuit and administrative investigations. What plans do you have to ensure the continued vitality of these regulations?

Because the Court in *Sandoval* did not invalidate the Title VI disparate impact regulations, those remain in force and I support their enforcement.

Questions from Senator Biden*Question #1*

Over the last two years, I have been tremendously concerned about the enforcement of federal employment non-discrimination laws. During the two decades that preceded the current Administration (including the administrations of Presidents Reagan, Bush and Clinton), the Justice Department filed approximately 270 Title VII actions, an average of 13 new cases each year. However, since January 2001, it has been reported that the Department has filed only about 3 cases per year – and, from what I understand, none of those cases were the more far-reaching “disparate impact” lawsuits that Congress has authorized as a tool to enforce this nation’s non-discrimination statutes. As Assistant Attorney General, how would you prioritize the investigation and prosecution of employment discrimination cases? Do you believe that the reduction in cases initiated by the Civil Rights Division (hereinafter “Division”) is appropriate and/or justified? If so, please explain.

If confirmed as Assistant Attorney General, it is my intent to ensure that the Employment Litigation Section of the Civil Rights Division works vigorously to challenge discriminatory employment practices. It is my intent to instruct the Employment Section to use the full range of enforcement tools available, including pattern or practice and disparate impact jurisdiction. Ensuring the vigorous enforcement of the law, through a full and fair investigation and through prosecution or satisfactory resolution is a top priority.

Regarding the statistics, respectfully, it is my understanding that these statistics are incomplete. For example, in at least two of the “intent” cases filed by the Division since January 20, 2001, the United States is seeking or has obtained the same kind of relief as it would seek and obtain in disparate impact/pattern or practice cases

Question #2

The outgoing Assistant Attorney General, in a speech before the Equal Employment Opportunity Committee of the American Bar Association, stated the Division’s intention not to initiate any disparate impact cases. Did you play any role in formulating or implementing this apparent policy? Do you believe that disparate impact cases, even where there is no showing of intent, should be aggressively pursued by the Division? What is your understanding of the requirements that the U.S. Supreme Court has established for the use of statistics in disparate impact cases?

Several civil rights statutes enacted by Congress, such as Title VII, make clear that practices or policies that create unjustified disparate impacts are discriminatory and illegal. If confirmed as Assistant Attorney General, it is my intent to enforce these laws, using disparate impact theory where appropriate.

With respect to Mr. Boyd's statement, respectfully, I am unaware of any such policy. It is my understanding that Assistant Attorney General Boyd did not state that he did not intend to initiate and proceed with disparate impact cases arising under Title VII or that he would only do so in the event that intent was shown. In fact, I believe that Assistant Attorney General Boyd announced in May of 2003 that he had authorized 9 disparate impact employment investigations.

Lastly, the Supreme Court has spoken in many of its decisions regarding statistical issues in disparate impact cases. I intend to follow these precedents.

Question #3

As you are undoubtedly aware, the Justice Department recently has reversed its position in a handful of notable employment discrimination cases. In your view, what criteria or principles should guide department officials when considering such a reversal in ongoing litigation in which the government had previously alleged discrimination against victims?

The Civil Rights Division participates in hundreds of cases and matters each year. Changes in position in these cases and matters should be the exception, and should take place only when there has been a change in legal or factual circumstances of a particular case or matter, or when there has been a change in policy. My understanding is that this has been the general policy of the Division during Mr. Boyd's tenure.

Question #4

As you know, the U.S. Supreme Court recently held in the University of Michigan affirmative action cases – *Grutter v. Bollinger* and *Gratz v. Bollinger* – that the achievement of a racially diverse student body constitutes a compelling governmental interest justifying the consideration of race when making admissions decisions. Did you support the Solicitor General's argument that race-conscious admissions programs should be viewed as quotas and struck down as unconstitutional?

Under your stewardship, what would the policy of the Division be with respect to affirmative action? Would you work aggressively, in concert with the U.S. Department of Education, to safeguard the use of race-conscious methods to remedy discrimination?

The Administration's brief argued that race conscious higher education admissions programs should be permitted only if they are narrowly tailored to further a compelling governmental interest. I support that statement of law.

After undertaking an in-depth factual analysis, the Supreme Court agreed that student-body racial diversity in higher education admissions was a compelling state interest. With respect to narrow tailoring, the Supreme Court found that the Michigan undergraduate program was not narrowly tailored and, at the same time, concluded that the law school program at the same university was narrowly tailored. If I am confirmed,

the policy of the Civil Rights Division under my leadership will be consistent with this holding.

The Department of Education has the primary responsibility for enforcing various non-discrimination laws and regulations pertaining to higher education. If I am confirmed, the Civil Rights Division under my leadership will work with the Department of Education to apply the principles set forth in *Grutter v. Bollinger* in the event any particular case questioning a university admissions policy results in litigation. Those principles make clear that race-conscious methods can be a permissible part of higher education admissions practices so long as they are narrowly tailored to achieve a diverse student body.

Question #5

The Justice Department's Office of the Inspector General recently issued a report in which it identified (during the 6-month period ending June 15, 2003) 34 credible cases in which department employees have been accused of serious civil rights violations involving enforcement of the USA PATRIOT Act. As the report notes, in some instances, credible claims existed but accused employees were exonerated without even being questioned. Expectedly, such revelations have raised serious concerns regarding the Department's ability to police itself when its own employees are accused of such infractions.

As you so aptly noted in your testimony, "[t]he job of Assistant Attorney General is at heart to provide leadership, to provide leadership on issues, to provide leadership for the division, to provide leadership to the country on the civil rights front." In that capacity, what specific role would you and the Division play in addressing the concerns raised in the Inspector General's report? If your nomination is approved by the U.S. Senate, what steps would you take to redress the 34 complaints identified by the Inspector General, as well as other complaints arising out of enforcement of the nation's anti-terrorism laws.

It is my understanding that the individuals detained were charged with criminal or civil violations of the federal immigration laws. The Department of Justice should not, and does not, tolerate abuse of anyone being held in federal custody.

It is my understanding that the Department is taking a close look at the report and the concerns it raised. Any allegation that any officer engaged in a criminal violation of civil rights laws should be brought to the attention of the FBI, the local U.S. Attorney's Office, the Criminal Section of the Civil Rights Division, or the Department's Inspector General's Office for investigation, appropriate handling and prosecution if warranted. If confirmed, I would ensure that the Division's Criminal Section investigates and takes appropriate action where there are credible allegations of criminal violations of civil rights laws brought to the attention of the Division.

Questions from Senator Feingold

1. In June 2001, the Department of Justice entered into a consent decree settlement with the Los Angeles Police Department (LAPD). The decree states, in part:

“LAPD officers may not use race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in appropriate suspect-specific activity to identify a particular person or group.”

The federal racial profiling guidelines do not include national origin, and they have a national security exemption. They only ban profiling based on race or ethnicity.

a) If confirmed, what would you do to ensure that federal law enforcement officers are held to the same standards regarding the ban on racial profiling that the Justice Department expects from the LAPD and other state and local police departments?

The Guidance recently issued by the Department of Justice was the result of many months of careful study and consideration. Several individuals, expert in this area of law, carefully considered all the options. Before suggesting changes or amendments to that Guidance, I think it is important for me to speak with those individuals, to learn their views on the competing considerations involved.

b) Please provide the Judiciary Committee with copies of the consent decree agreements the Department of Justice has entered into with state and local police departments dealing with racial profiling both during your time at DOJ and since then.

During my time in the Civil Rights Division, the Division completed a Memorandum of Agreement with one police department dealing in part with racial profiling that incorporated an earlier consent decree containing racial profiling provisions. I have attached a copy of that memorandum and the consent decree from the Civil Rights Division's web site.

2. Last month in *Georgia v. Ashcroft*, No. 02-183 (S. Ct., June 26, 2003), the Supreme Court upheld the right of the state of Georgia to restructure its voting districts because the action was not found to be ‘retrogressive’ as it relates to the influence of minority voters. In other words, while the number of minority districts would not remain constant under Georgia's plan, the number of minority-influenced districts would not decrease. The Court found the redistricting plan does not decrease minority voices at the voting booth, and is therefore not a violation of Section 5 of the Voting Rights Act. The Court's decision overturned a lower court's ruling striking down Georgia's new plan.

The Texas legislature, however, recently proposed a plan to restructure its districts in a manner that will arguably cause considerable retrogression, lessening the influence of minorities in congressional elections. If the Texas plan passes the state legislature, it will have to be reviewed by the Department of Justice before being enacted.

According to recent media reports, Representative Tom Delay has had contact with the Department of Justice and received assurances that the Department will allow the Texas plan to go forward.

a.) To your knowledge, has anyone within the Civil Rights Division had contact with Representative Delay or his staff about this issue? Will you commit to conducting an inquiry into potential contacts between Congressman Delay's office and the Civil Rights division so Congress and the public can be assured that there were no promises made to support the Texas redistricting plan?

I have not been at the Civil Rights Division during the last several months while the redistricting efforts of the Texas legislature have been ongoing. I have not, nor to my knowledge has any Civil Rights Division employee, had any contact with Representative Delay or his staff about this issue. If confirmed, any redistricting plan that is submitted to the Civil Rights Division under Section 5 of the Voting Rights Act will be reviewed by Division staff according to the usual and regular procedures applied to all submissions made to the Civil Rights Division. In addition, consistent with the Department's long-standing policy, I commit to instructing all staff of the Division to ensure that any calls from Members of Congress or their staffs be directed to the Department's Office of Legislative Affairs.

b.) If you are confirmed and the Texas redistricting proposal comes before you, will you review it under the standards set in *Georgia v. Ashcroft*?

If I am confirmed and a Texas redistricting proposal is submitted to the Civil Rights Division under Section 5 of the Voting Rights Act, the submission will be reviewed under the standards established under all applicable Supreme Court decisions governing Section 5 review, including *Georgia v. Ashcroft*.

c.) Will you object to the implementation of redistricting plans that reduce minority voting influence?

A long line of prior Supreme Court decisions have held that any new voting "standard, practice or procedure" including a redistricting plan can only be precleared if it "does not have the purpose [or] effect of denying or abridging the right to vote on account of race or color." No change can be precleared if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." If confirmed, I would ensure that the Civil Rights Division continues to follow established law in its review and analysis of all Section 5 submissions, including redistricting plans.

3. The Supreme Court ruled last month in two companion cases, *Grutter v. Bollinger*, No. 02-241 (S. Ct., June 23, 2003), and *Gratz v. Bollinger*, No. 516 (S. Ct., June 23, 2003), that diversity is a compelling interest in the admissions decisions in higher education and that race or ethnicity can be considered in combination with other factors in admissions decisions.

The Department of Justice had previously filed a brief at the district court level in support of the admissions policies. In January 2003, the administration abruptly changed its position and filed an amicus brief opposing the admissions policies of the University of Michigan. The President apparently believed that college admissions decisions should never consider the race of applicants, even though he also has said that he supports the pursuit of campus diversity.

a.) **What role, if any, did you play in the Department's decision to change its position, or in aiding the administration in drafting or filing its amicus brief?**

I was confirmed to the National Labor Relations Board on November 14, 2002. The brief was filed in the middle of January of 2003. It would be inappropriate for me to discuss the details of internal deliberations.

b.) **Did you agree with the administration's position?**

The Administration's brief argued that a race conscious higher education admissions programs should be permitted only if they are narrowly tailored to further a compelling governmental interest. I support that statement of law.

After undertaking an in-depth factual analysis, the Supreme Court agreed that student-body racial diversity in higher education admissions was a compelling state interest. With respect to narrow tailoring, the Supreme Court found that the Michigan undergraduate program was not narrowly tailored and, at the same time, concluded that the law school program at the same university was narrowly tailored. If confirmed, the Civil Rights Division under my leadership would make every effort to comply with these holdings.

4. **On June 11th the U.S. District Court of the District of Columbia dismissed a lawsuit brought by the National Wrestling Coaches Association, National Wrestling Coaches Association v. U.S. Department of Education (D.D.C., No. 02-72, dismissed June 11, 2003). The suit challenged the athletic participation opportunities requirements of Title IX, alleging that they are discriminatory toward male athletes, resulting in cuts to athletic programs for males in schools and universities. The Title IX requirements, which are intended to increase access of women and girls to athletics, were recently reaffirmed by the Department of Education. Title IX has not only enhanced girls' participation in sports at the elementary and secondary school level, but it can also be credited for creating a base of awareness in women's sports upon which women's professional soccer and basketball have been built.**

a.) **Do you believe, as the National Wrestling Coaches Association suit asserts, that it is now male athletes who are the victims of discrimination?**

Since its enactment, Title IX has produced significant advancements in athletic opportunities for women and girls across the nation. Still, discrimination persists for

some athletes in some schools and institutions of higher learning. I support the Department of Education's continued strong enforcement of Title IX requirements. Whether male athletes are the victims of discrimination turns on a fact-specific analysis of a particular situation.

b.) The National Wrestling Coaches Association is appealing the decision of the D.C. District Court that there was no causal connection between Title IX and the cutting of men's sports teams, and that alteration or elimination of the Title IX requirements would not guarantee their return. If you are confirmed, will you provide leadership at the Department of Justice to defend Title IX against the Association's challenge?

This matter is being litigated by the Civil Division, as opposed to the Civil Rights Division. Nevertheless, I will strongly support the Department's defense of the Education Department's Title IX regulations and enforcement policies.

SUBMISSIONS FOR THE RECORD



July 3, 2003

By Facsimile

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Re: Support for Alex Acosta as Assistant Attorney General for Civil Rights

Dear Mr. Chairman and Mr. Ranking Member:

I write on behalf of the American Association of People with Disabilities (AAPD) to express our strong support for Mr. Rene ("Alex") Acosta's nomination to fill the post as Assistant Attorney General in the Department of Justice's Civil Rights Division. With 50,000 members around the country, AAPD is the largest cross-disability membership organization in the U.S. Our mission is to promote political and economic empowerment for the more than 56 million children and adults with disabilities in the U.S.

I have known Mr. Acosta since we appeared together on a panel regarding the Americans with Disabilities Act (ADA) at a national conference hosted by the Federalist Society. Although Alex and I don't always agree on matters of Constitutional and statutory interpretation, I have found him to be fair, honest and effective as a public servant. I consider him to be a friend and I respect his ability to follow through when he makes a commitment.

This July 26, we will celebrate the 13th anniversary of the signing of the ADA. I am hopeful that Mr. Acosta will receive a favorable committee vote and be confirmed by the full Senate in time for him to participate in the anniversary celebrations as the next Assistant Attorney General for Civil Rights. If you or your staff have any questions, I can be reached at 202 457-0046 (w) or 443 386-2935 (cell).

1629 K Street NW, Suite 503 Washington, DC 20006
phone 202-457-0046 (V/TTY) 800-840-8844 (V/TTY) fax 202-457-0473 www.aapd-dc.org

The Honorable Orrin G. Hatch
The Honorable Patrick J. Leahy
July 3, 2003
Page two

With warm regards and best wishes for a happy and healthy Independence Day,


Andrew J. Impyato
President and CEO

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AAI Applauds Acosta Nomination

June 24, 2003

Washington, D.C.—Today, the Arab American Institute welcomed President George W. Bush's nomination of Alex Acosta to be the new Assistant Attorney General for Civil Rights in the Department of Justice. During Acosta's tenure as Principal Deputy Assistant Attorney General in the Division of Civil Rights, he, along with Assistant Attorney General Ralph Boyd, worked to ensure DOJ outreach to the Arab American community in the wake of the 9/11 terrorist attacks. Under their tenure the Civil Rights Division also took decisive action to enforce federal hate-crimes legislation against those who attacked Arabs, Muslims, Sikh's and other ethnic and religious groups.

"At one of the most difficult times in our nation, Alex reached out to Arab and Muslim Americans to ensure that we were part of the system and that our rights were protected. His immediate response to our community's concerns provided an important indication of his sensitivity and helped pave the way for regular meetings with various branches of the DOJ. Alex has strong opinions and we may not always agree, but we know that he will always be there willing to listen and work together," said AAI President James Zogby.

AAI Chairman George Salem noted the Institute's hope that Acosta would receive confirmation without delay. "Alex Acosta has an amazing ability to bring diverse groups together and he understands the critical importance of dialogue between affected communities and the DOJ. Under his guidance, I have no doubt that the Civil Rights Division will continue play a vital role in ensuring that Arab American concerns are heard. The Senate should not hesitate to confirm him," said Salem.

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CHUCK CANTERBURY
NATIONAL PRESIDENT

**GRAND LODGE
FRATERNAL ORDER OF POLICE®**

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Washington, DC 20002
Phone 202-547-8185 • FAX 202-547-8190

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

7 July 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

I am writing this letter to advise you of the strong support of the Fraternal Order of Police for the nomination of R. Alexander Acosta to be the next Assistant Attorney General for the Civil Rights Division at the Department of Justice.

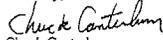
The Fraternal Order of Police began its relationship with Alex when he was a part of the Administration's transition team, serving as the senior point of contact in the Civil Rights Division. After the confirmation of Ralph F. Boyd, Jr. in July 2001, we continued to work with him in his capacity as Principal Deputy Assistant Attorney General for Civil Rights until his appointment and subsequent confirmation by the Senate to the National Labor Relations Board in 2002.

Since the beginning of this Administration, the F.O.P. and the Civil Rights Division have enjoyed an excellent working relationship built on the foundations of mutual respect, cooperation and a genuine desire to improve the profession of law enforcement. Alex was very much a part of building that foundation and, as we have every expectation that he will continue the policies that he and his predecessor have set in the past two years, we expect that our cooperative efforts with the Civil Rights Division will continue to benefit our communities and the law enforcement agencies which serve them.

I know from experience that Alex is fair-minded and committed to protecting the civil rights of all Americans. This is precisely the leadership style that the F.O.P. believes is critical to the success of the Civil Rights Division's mission. We believe that President Bush has made an excellent choice in R. Alexander Acosta, and know that he will make an outstanding Assistant Attorney General for Civil Rights. We urge you and the Judiciary Committee to approve his nomination expeditiously.

If I can provide any further recommendations for Alex, please do not hesitate to contact me or Executive Director Jim Pasco through my Washington office.

Sincerely,


Chuck Canterbury
National President



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

HAROLD A. SCHAITBERGER
General President

VINCENT J. BOLLON
General Secretary-Treasurer

July 8, 2003

The Honorable Orrin G. Hatch
Chairman
Judiciary Committee
United States Senate
SH 104 Hart Senate Office Building
Washington, DC 20510 4402

Dear Chairman Hatch:

The International Association of Fire Fighters is very proud to support the nomination of Alex Acosta for the position of Assistant Attorney General for Civil Rights. During his service on the National Labor Relations Board, Mr. Acosta has demonstrated the ability to work fairly with both labor and management. More importantly, he has engendered broad-based support from the African-American, Latino, and other minority communities. Further, Mr. Acosta has worked exceptionally well on immigration issues during his stint at the Department of Justice.

The IAFF believes that Alex Acosta would bring the necessary combination of intelligence, ability, and sensitivity to the position of Assistant Attorney General. We heartily support his appointment.

Sincerely,

A handwritten signature in cursive script that reads "Harold A. Schaitberger".

Harold A. Schaitberger
General President



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International Union of Operating Engineers

1125 SEVENTEENTH STREET NORTHWEST * WASHINGTON, D. C. 20036
AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

OFFICE OF GENERAL PRESIDENT * (202) 420-9100

July 4, 2003

The Honorable Orrin G. Hatch
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

As the general president of the 400,000-member International Union of Operating Engineers, I respectfully request your support for President George W. Bush's nomination of R. Alexander Acosta to be assistant attorney general for civil rights. The Senate Judiciary Committee will be considering his nomination later this week.

In all of the IUOE's dealings with Mr. Acosta as a member of the National Labor Relations Board and his earlier stint as a member of the Washington law firm of Kirkland & Ellis, we have found him to be a reasonable, intelligent and eminently fair individual.

I feel that these character traits make Mr. Acosta an ideal nominee for the position of assistant attorney general for civil rights. I also am certain that he would be an invaluable asset to the government's endeavors in this vitally important arena of civil rights and civil justice.

I thank you in advance for your consideration of this request and look forward to your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Hanley".

Frank Hanley
General President

from the office of
Senator Edward M. Kennedy
of Massachusetts

FOR IMMEDIATE RELEASE
July 23, 2003

CONTACT: Stephanie Cutter
(202) 224-2633

**STATEMENT OF SENATOR EDWARD M. KENNEDY AT THE CONFIRMATION
HEARING FOR RENE ALEXANDER ACOSTA FOR ASSISTANT ATTORNEY
GENERAL, DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION**

It's a privilege to welcome Mr. Acosta to our committee. I commend him for his nomination to be Assistant Attorney General for the Civil Rights Division.

That position is one of the most important positions in our government. Since it was created 45 years ago, it has been at the forefront of our the continuing struggle to guarantee equal justice for all Americans. Much of the progress we have made in recent decades has come because of the genuine and sustained commitment of the Division in vigorously enforcing our civil rights laws.

We are proud of the progress we've made, but civil rights is still the unfinished business of the nation. It is extremely important that the leader of the Division has strong credentials and a strong commitment to equal opportunity.

Many of us have been concerned about the recent direction of the Division. In the past two years, it has changed its position in significant discrimination cases, adversely affecting the interests of large numbers of women, African Americans, Hispanics, and Asians. It has sought to release politically connected defendants from important consent decrees. It has transferred long-time managers and changed hiring practices in the Division. It has significantly reduced its litigation in a number of areas, sometimes ignoring the recommendations of career managers.

These are serious challenges, and I hope we can deal with them effectively. I look forward to hearing from Mr. Acosta today, and to his responses on these challenges.

**Statement of Senator Patrick Leahy
Confirmation Hearing of Rene Alexander Acosta
Assistant Attorney General, Civil Rights Division
July 23, 2003**

The committee will today review the President's nominee for one of the most important positions in the Department of Justice, the Assistant Attorney General for the Civil Rights Division. Alex Acosta would come to this position from a spot on the National Labor Relations Board, after previously serving for 15 months as Principal Deputy Assistant Attorney General in the Civil Rights Division under Assistant Attorney General Ralph Boyd.

I have a number of questions for this nominee. His youth and the fact that he has only two years of legal experience in civil rights issues – along with the significance of the position for which he has been nominated – require this committee to give this nomination more than a cursory review. To the extent that he does have experience in civil rights enforcement, it is in a division that has been criticized during the Bush Administration for failing to pursue civil rights violations vigorously and for marginalizing career attorneys with substantial experience, if not driving them away altogether.

Although Mr. Acosta does not have a long record in the area of civil rights, he has said a great deal about the courts and what he sees as the limits of judicial authority and the perils of what he has termed “judicial activism.” As head of the Project on the Judiciary at the Ethics and Public Policy Center from 1997-2000, he campaigned against “judicial activism” and urged the Senate to challenge on ideological grounds the judicial nominees proposed by President Clinton. In a September 1997 speech, he praised Senator Hatch for “strengthen[ing] the advice and consent process,” and criticized the Clinton White House for “refus[ing] to inform the Senate Judiciary Committee of whom it is considering for a nomination until after the nomination is publicly announced.” In 2000, he co-authored an op-ed with C. Boyden Gray praising the Republican Senate's refusal to approve President Clinton's nominees, writing, “The Senate's power of advice and consent, after all, is not a rubber stamp.” I look forward to hearing Mr. Acosta's current views on the importance of the Senate's role in the judicial selection process, and if confirmed, I hope he will be an advocate within the Administration for greater consultation with this committee and the members of the Senate on judicial nominations.

The nominee's work at the Project on the Judiciary is relevant not only to his view on the law generally, but to the enforcement of civil rights in particular. Throughout the last 50 years, our courts have vindicated the rights of all Americans in decisions that were criticized at the time – and since – as examples of judicial activism. In the course of his campaign against “judicial activism,” Mr. Acosta criticized the use of consent decrees and said they should be entered only to remedy constitutional violations, and even then, only for a limited time. Consent decrees have of course been a major weapon to address violations of civil rights statutes for decades, although their use seems to have decreased during the current Administration. He also said in 1997 that “it would have been far

better for modern women's rights to be gained through the democratic process that brought about suffrage and not by judicial grace or fiat." I hope that Mr. Acosta will tell the committee today to what extent, if at all, he would authorize lawyers in the Civil Rights Division to seek consent decrees, and whether he believes that the major court decisions that cemented women's rights over the past decades were in fact further examples of "judicial activism."

I am aware that the nominee has received the support of a number of civil rights organizations and labor unions, as well as the Fraternal Order of Police. I am aware also that many observers admired his work at the Civil Rights Division in enforcing section 203 of the Voting Rights Act, which governs access by language minorities to voting, and addressing discrimination against persons with limited English proficiency. I want to assure all of his supporters that their views are taken seriously, and to assure the nominee that all of us want to see him receive – and will ensure he receives – a full and fair hearing. In return, I expect that the nominee will answer our questions – on affirmative action, employment discrimination, the Division's reversal of litigation positions in ongoing cases, and the many other topics that concern us – in a forthcoming and complete manner.

Finally, in addition to addressing our substantive concerns, I hope Mr. Acosta will explain an apparent discrepancy between his resume and his answer on the committee questionnaire concerning his past roles in political campaigns. On his resume, he states that he worked on Florida recount issues for the Bush/Cheney campaign and did campaign work in Pennsylvania. In his committee questionnaire, however, when asked whether he ever "played a role in a political campaign," he states only that he advised Indianapolis Mayor Stephen Goldsmith on civil justice issues to aid in Goldsmith's work on the Bush 2000 campaign. Considering that the 2000 Florida election gave rise to a number of allegations of civil rights violations – at least some of which were investigated by the Civil Rights Division – this discrepancy requires an explanation.

**Statement of Senator Patrick Leahy on the nomination of Daniel Bryant to the
Department of Justice, Office of Legal Policy
July 23, 2003**

Today we consider Dan Bryant to head the Office of Legal Policy (OLP), an office that plays an important role in a variety of policy issues at the Department of Justice, including the selection of judicial nominees. Dan Bryant was well known to this committee through his days on the House Judiciary Committee, but once he became Assistant Attorney General for the Office of Legislative Affairs (OLA) at the Department of Justice, he became a stranger. Mr. Bryant is certainly knowledgeable about legislative matters across a range of subjects, but I do have some questions about the role he has played in Attorney General John Ashcroft's Justice Department as the head of the OLA. I also have some questions about his plans if confirmed as the Assistant Attorney General in OLP, the position to which he was nominated just two weeks ago.

Mr. Bryant is receiving a very fast hearing, even though when Republicans controlled the Judiciary Committee during the Clinton Administration they sometimes waited months or years to give Justice Department nominees hearings or votes and some never got hearings at all.

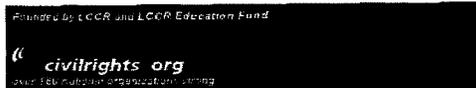
While serving Mr. Ashcroft in the Department's legislative affairs office, Mr. Bryant was the public face of the Department of Justice's effort to stonewall attempts by members of Congress to access Departmental information crucial to fulfilling our oversight responsibilities and important to the lives of all Americans. I and other members of Congress, from both sides of the aisle, have expressed serious frustration with the delays, refusals, and inadequate information provided by OLA. This continues to disturb me, and Mr. Bryant's role in limiting Congressional access to information concerns me as he prepares for his new role at OLP.

One incident of note is Mr. Bryant's role in articulating the legal, historical and departmental justification of the Administration's refusal to release memoranda related to the nomination of Miguel Estrada. Mr. Bryant's correspondence with me on this issue disregarded crucial case law, historical facts and departmental precedents that clearly established the precedent for Senators to review such documents as part of their advise and consent role for both short-term and lifetime appointees. I am disturbed by this because Mr. Bryant's rationale in the Estrada matter reflects a choice of politics over precedent, secrecy over openness and partisanship over cooperation, choices that have damaged the judicial nominations process. I am concerned today whether Mr. Bryant will continue to choose secrecy over openness in his new responsibilities in the Department's policy shop, which has responsibility for advising the Attorney General and, in turn, the President on judicial nominations.

I also have questions about Mr. Bryant's role, as acting head of OLP, in assisting the Administration in the selection of increasingly ideological right-wing judges. In my almost 30 years in the Senate, I have voted time and again to confirm judges with whom I dramatically differ on judicial philosophy. However, never have I seen such a consistent

pattern of ideologically-oriented nominees, many lacking a strong commitment to protecting the basic civil liberties that make our country the greatest democracy on earth. I have questions about whether OLP and Mr. Bryant have instituted ideological litmus tests for nominees and if not, why so many nominees hold such strikingly consistent and extremist positions.

Notwithstanding these concerns, I believe Mr. Bryant is an honorable person and I hope that he takes my concerns seriously. I hope he does this not for my sake, but for the sake of fostering a vibrant independent judiciary, for the sake of allowing members of Congress to fulfill their Constitutional responsibilities, and for the sake of the American people, who deserve a government that is open and responsive to their concerns.



Press Release - National Asian Pacific American Legal Consortium

NAPALC Supports President Bush's Nomination of R. Alex Acosta as Assistant Attorney General for Civil Rights

FOR IMMEDIATE RELEASE

June 27, 2003

Andrew Rice
202-296-2300
arice@napalc.org

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Washington, D.C.-The National Asian Pacific American Legal Consortium supports President Bush's nomination of R. Alex Acosta as Assistant Attorney General for Civil Rights at the U.S. Department of Justice. The Civil Rights Division is tasked with the responsibility for enforcing federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. This includes hate crimes, employment, disability and housing discrimination, voting rights, police misconduct, and coordinating the civil rights enforcement efforts of the federal agencies, among others.

Acosta, a current Member of the National Labor Relations Board and former Principal Deputy Assistant Attorney General of the Department of Justice's Civil Rights Division had an excellent record on issues of importance to the immigrant community during his tenure in those positions. In his position at the Department of Justice, Acosta was instrumental in the continued implementation of Executive Order 13166 and the limited English proficient guidances concerning Title VI of the Civil Rights Act of 1964. Title VI requires that recipients of federal funds provide meaningful language assistance to LEP persons. Last year, Acosta played a pivotal role in ensuring that Census data information was promptly released to determine the jurisdictions that qualified for language assistance under the Voting Rights Act of 1965. At the NLRB, Acosta wrote a concurring opinion on a significant labor case that held that an assumed undocumented immigrant's testimony could not be disqualified solely because of a false social security statement on an employment application.

"NAPALC and the APA community has had a good working relationship with Acosta on issues relating to the immigrant community when he was at the Department of Justice and the NLRB," said Karen K. Narasaki, President and Executive Director of NAPALC. "His understanding of immigrant civil rights issues and his ability to deliver results were impressive."

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News Release

For Immediate Release
June 23, 2003

Contact: Lisa Navarrete
Angela Arboleda
(202) 785-1670

NCLR COMMENDS PRESIDENT BUSH'S NOMINATION OF ALEX ACOSTA AS ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS

Washington D.C. -- The National Council of La Raza (NCLR) expressed its strong support for President George W. Bush's nomination of Alex Acosta to be the new Assistant Attorney General for Civil Rights in the Department of Justice. NCLR cited Mr. Acosta's track record as Principal Deputy Assistant Attorney General in the Civil Rights Division as a major factor in its endorsement.

During his tenure at DOJ, Mr. Acosta played a pivotal role in the Limited-English-Proficient (LEP) Guidance enforcing Title VI of the Civil Rights Act of 1964, which requires recipients of federal financial assistance to provide language assistance to LEP persons. Additionally, Mr. Acosta was instrumental in DOJ's prompt release of the new jurisdictions, as determined by the Census, to be covered by the language minority provisions of the Voting Rights Act of 1965, which ensures all citizens, regardless of language proficiency, have the right to vote.

"Mr. Acosta has proven himself to be a bridge-builder, not only with the Latino community but with other ethnic and racial groups," said Raul Yzaguirre, NCLR President.

Most recently, as one of the five members of the National Labor Relations Board, Mr. Acosta sided with the majority in a key labor law violation decision. The ruling established that an employee's credibility cannot be judged unfavorably simply because the employee used a false Social Security Number to obtain employment.

NCLR believes that Mr. Acosta is an excellent example of someone with whom the Latino community can work. "We may not agree with everything that Mr. Acosta has done or will do, but we are certain that he is someone who will listen and act in a fair manner," concluded Yzaguirre.

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◀ BACK TO THE PRESS ROOM

OF NATIONAL COUNCIL OF LA RAZA 1111 14th Street NW, Suite 1100, Washington, DC 20005

6/25/03 1:02 PM

A handwritten signature in black ink that reads "John Warner". The signature is written in a cursive, flowing style.

STATEMENT TO THE JUDICIARY COMMITTEE ON THE
NOMINATION OF DAN BRYANT TO SERVE AS ASSISTANT
ATTORNEY GENERAL OF THE OFFICE OF LEGAL POLICY
July 23, 2003

Chairman Hatch, Senator Leahy, and my other
distinguished colleagues on the Senate's Judiciary Committee, I
thank you for holding this confirmation hearing.

Today, I am pleased to introduce a Virginian, Dan Bryant,
who has been nominated to serve as Assistant Attorney General
of the Office of Legal Policy within the Justice Department. I
have had the pleasure of introducing Mr. Bryant to the
Committee in May of 2001 when he was nominated and
confirmed to serve as Assistant Attorney General of the Office
of Legislative Affairs.

Mr. Bryant's background makes him highly qualified for

this position. He graduated Cum Laude from American University and earned his J.D. from Washington College of Law at American University.

Subsequent to earning his law degree, Mr. Bryant served approximately five years in the Justice Department, having worked in the Office of Juvenile Justice, the Office of General Counsel, and in the Criminal Division. He then served as Chief Counsel to the House of Representatives Judiciary Committee's Subcommittee on Crime.

After serving on the House Judiciary Committee, he returned to the Department of Justice as Assistant Attorney General of the Office of Legislative Affairs as well as Counsel and Senior Advisor to the Attorney General. Currently, Mr.

Bryant is the acting Assistant Attorney General of the Office of Legal Policy.

Mr. Chairman, Dan Bryant is obviously a very accomplished American, and well qualified to serve as Assistant Attorney General of the Legal Policy. I am certain he will continue to be a strong asset for the Justice Department.

I am pleased to introduce him to the Committee, and I look forward to the Committee reporting his nomination favorably.



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron
General President

By Fax

July 7, 2003

Senator Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Hatch:

I understand that your Committee will soon consider the nomination of National Labor Relations Board Member Alex Acosta to head the Department of Justice's Civil Rights Division.

I am writing on behalf of the leadership and more than 500,000 members of the United Brotherhood of Carpenters. In personal meetings and as a member of the NLRB, we have found Mr. Acosta to be extremely hard working. In addition to a sense of personal dedication, we have found him to be both fair and open minded.

In addition to these qualities, Mr. Acosta has demonstrated the ability to understand and absorb disparate information and opinions and resolve difficult issues.

We believe all these qualities would serve him well as Assistant Attorney General and we urge his confirmation without delay.

Sincerely,

Douglas J. McCarron
GENERAL PRESIDENT

DJM/mb