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CONFIRMATION HEARING ON THE NOMINATION OF JAMES B. COMEY, JR., OF NEW YORK, TO BE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

OCTOBER 29, 2003

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NOMINATION OF JAMES B. COMEY, JR., OF NEW YORK, TO BE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

WEDNESDAY, OCTOBER 29, 2003

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

The Committee met, pursuant to notice, at 2:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Kennedy, Feingold, and Schumer.

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

Chairman HATCH. Good afternoon. Since Senator Schumer is here, I am going to proceed.

I want to welcome everyone to today's hearing to consider James Comey's nomination to serve as Deputy Attorney General of the United States. I want to congratulate you, Mr. Comey, for being selected by President Bush for this important position in the Justice Department. In my view, you are uniquely qualified to serve as Deputy Attorney General. You bring a wealth of experience and perspective as a line prosecutor, as manager of the U.S. Attorney's Office of the Eastern District of Virginia, and most recently as U.S. Attorney for the Southern District of New York.

Most importantly, your record demonstrates that you are a leader who can inspire others to accomplish great things and one who can oversee and manage an organization such as the Justice Department.

With the recent departure of Larry Thompson, who was a fine Deputy Attorney General, I am sure everyone shares my view that Mr. Comey has very big shoes to fill. However, I am confident that in your case, Mr. Comey, you are the right person for the job. Your impressive background and past Government service make me confident that you will be a great asset to the Department of Justice, this Committee, and the American people.

The importance of the Deputy Attorney General within the Justice Department cannot be overstated. Over the years, the Deputy Attorney General's office has played a greater role in overseeing the Department's operations, implementing new policy initiatives, and ensuring the effective enforcement of our criminal and civil laws. It is important for the Committee to review Mr. Comey's nomination and act quickly to ensure that the Justice Department's

important work on terrorism, cyber crime, and other criminal and civil issues continues with as little disruption as possible.

The stakes in this area are simply too high to leave this essential position unfilled for any length of time. I want to thank Senator Leahy for his cooperation in quickly scheduling this hearing.

Of course, I am not suggesting that we shirk our duties to review carefully these nominations, but I am asking members to be mindful of the circumstances in which we are acting and to work together to move this important nomination as quickly as possible.

A review of Mr. Comey's record establishes one simple fact: He is well qualified to serve as Deputy Attorney General. Since January 2002, Mr. Comey has served as U.S. Attorney in the Southern District of New York, an office that many consider to be the premier U.S. Attorney's Office in the country. In the Southern District of New York, Mr. Comey has earned the respect of judges, defense counsel, and prosecutors for his professionalism, for his fairness, for his judgment.

While serving as U.S. Attorney, Mr. Comey was responsible for leading his office in some of the more significant terrorism and white-collar crime investigations and prosecutions.

Prior to assuming the position as the U.S. Attorney, Mr. Comey served from 1996 to 2001 as Managing Assistant U.S. Attorney in charge of the Richmond Division of the U.S. Attorney's Office for the Eastern District of Virginia. From 1993 to 1996, Mr. Comey was an associate and later a partner at the law firm of McGuireWoods in Richmond, Virginia. Early in his career from 1987 to 1993, Mr. Comey served as an Assistant U.S. Attorney in the Southern District of New York.

As a Federal prosecutor, Mr. Comey investigated and prosecuted a wide variety of cases, including firearms, narcotics, major frauds, violent crime, public corruption, terrorism, and organized crime. In the Eastern District of Virginia, he handled the Khobar Towers terrorist bombing case arising out of the June 1996 attack on a U.S. military facility in Saudi Arabia in which 19 of our airmen were killed.

Mr. Comey was educated at William and Mary. He had a B.S. with honors in 1982, chemistry and religion majors, and the University of Chicago Law School, where he got his juris doctorate in 1985. After law school, he clerked for then-U.S. District Judge John Walker in Manhattan.

Let me take one moment to perhaps highlight Mr. Comey's most important accomplishment. While serving his country in a variety of prosecutorial positions, he has demonstrated that he is a dedicated family man. He and his lovely wife, Patrice, are raising five very wonderful children ranging in age from 15 to as young as 3 years old. I want to congratulate both of you for the excellent family that you have and for your family commitment, and I am happy to welcome your family here before this Committee.

Mr. Comey is a dedicated public servant and a talented, well-respected prosecutor. He is uniquely qualified to lead as the Deputy Attorney General of the Justice Department, and I am hopeful that this Committee will act favorably and quickly on his nomination as soon as we can.

With that, we will turn to Senator Schumer, and you want to speak from the dais rather than the table.

PRESENTATION OF JAMES B. COMEY, JR., NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and I want to thank you for holding this hearing today. I also want to thank the nominee, James Comey, for the opportunity to introduce him.

Mr. Chairman, it is a sign of the kind of person that Jim Comey is that, after we met yesterday, he still wanted me to introduce him today.

Chairman HATCH. You don't know what a big sign that is.

[Laughter.]

Senator SCHUMER. Now, the reason is simple, Mr. Chairman. I told Jim Comey that I praise his experience, reputation, and character, which I consider the highest. But I was going to insist on answers to some tough questions about the CIA leak investigation before I decide how to vote. And, nevertheless, Mr. Comey wanted me to introduce him, and I am very proud to do so.

Before I get to his personal qualifications, I should note that Jim is a Yonkers native, now lives in Somers, New York, up in the other end of the great County of Westchester. And if he is confirmed, my State will lose seven constituents: Jim, his wife, Patrice, and their five children. And I assure you, Mr. Chairman, despite the fact that I would hate as a New Yorker to lose such a handsome family, it will not influence my decision.

I have gotten to know Jim personally. I am convinced he is a man of honor and integrity. He puts family and country above all other interests, and every day he works hard to ensure that he serves both to the best of his ability.

Everyone you talk to who knows him says great things about him, and in a world where it is easy to make enemies, Jim Comey has managed to do nothing but win admirers. When it comes to the professional, it would be hard to find a more impressive resume and reputation.

Jim is a prosecutor's prosecutor. When Mary Jo White left her post in the U.S. Attorney's Office in the Southern District of New York, she left some pretty big shoes to fill. The White House proposed Jim Comey, and I don't know that they could have come up with a better man for the job. With his terrorism prosecution experience, including handling the Khobar Towers case, his management experience running the U.S. Attorney's Office in Richmond and his reputation as a guy who doesn't pull punches, it was an easy choice to support him for the Southern District post. And since he became the Southern District's top prosecutor, Jim has only burnished his reputation. He has been an excellent U.S. Attorney.

So, in my judgment, at least, Mr. Chairman, there is no question he is qualified; there is no question he is a fine man; and under normal circumstances, there would be no question of my unqualified support for him. But, unfortunately, these are not normal circumstances. Over the past several weeks, the Department of Justice has been handling—or should I say mishandling the investiga-

tion into who leaked the identity of a covert CIA agent. I take the Justice Department's criminal investigation into the leak of a covert CIA operative's identity very seriously because it is an act so vile and so heinous that it shocks the conscience. It demands a full, fair, and fearless investigation that is above and apart from politics.

But so far, the way this probe has been conducted falls quite short of that bar. There are serious concerns that the White House is being treated with kid gloves. From unexplained delays to disturbing apparent conflicts of interest, we have many reasons to be worried that this investigation is being bungled so badly that the culprits may never be caught.

This leak, in my opinion, is a dastardly crime. It goes to the heart of our ability to deal with terrorism. We have to make sure we find the leakers, punish them as severely as possible, and send a clear message that playing politics with national security will not be tolerated. And as you know, Mr. Chairman, I called for an investigation into this leak the day it was announced in the newspapers. I had no knowledge of who the trail might lead to. I still don't. So I don't care who they come up with, as long as they come up with the right person or persons and make sure they are punished to the full extent of the law.

Yesterday, Mr. Comey came by my office, and we spent about 45 minutes discussing these issues. I know that he agrees that this is an incredibly serious matter, and it should be investigated in accord with the highest principles of prosecution. If he is confirmed, Mr. Comey will oversee the Criminal Division and, as a result, oversee this investigation.

The question we all want to know, Mr. Chairman, is: If he is confirmed, will he straighten a ship out that appears to be sailing way off course?

I gave Mr. Comey a list of questions that I intend to ask him today. Mr. Chairman, I didn't want to catch him by surprise or to say that he needed more time to think about how to answer. This investigation is just too important. So today I will ask Mr. Comey what standards he will use in deciding whether to recommend that Attorney General Ashcroft recuse himself. I will ask what principles he will use in deciding whether to recommend the appointment of a special counsel. To me, at least, this investigation has many apparent conflicts, as this chart shows. Mr. Comey has an obligation to explain how he will address these conflicts, some real, some apparent.

I will also ask Mr. Comey what he will do if he believes the investigation is being compromised, and if he cannot use his authority to bring the investigation into line.

These are important questions, and we have a duty to the American people to get satisfactory answers before we vote on this nomination. There is no question, Mr. Chairman, Jim Comey is a good man. He has the right credentials for the job. But being involved in this investigation is an incredibly delicate and difficult undertaking.

Jim is well-known for two qualities: loyalty and integrity. These two qualities may come into conflict with one another as the probe progresses.

This Committee and the public need to know what Mr. Comey in his new position will do to ensure that the Justice Department will conduct this investigation in the most thorough, fearless, and comprehensive way possible, no matter where it leads. I hope that Mr. Comey will give answers today that will satisfy the questions the Committee and public have about an investigation that has thus far been criticized by many.

I look forward to hearing his answers to our questions.

Chairman HATCH. Well, thank you, Senator.

I think Senator Kennedy is going to preside for the Democrats, and when he gets here, we will interrupt whatever we are doing and allow him to make his opening remarks.

Mr. Comey, if you would, I would like you to please stand to be sworn. Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COMEY. I do.

Chairman HATCH. Thank you, sir. We would like you to introduce your family and any friends you have here with you and, of course, make any statement you would care to make at this time.

STATEMENT OF JAMES B. COMEY, JR., NOMINEE TO BE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. COMEY. Thank you, Mr. Chairman.

Mr. Chairman, Senator Schumer, members of this Committee, I am honored to be before you, and I have not changed my view, Senator Schumer, that I very much appreciate your introducing me, and I look forward to answering your questions.

I also very much appreciate the Committee and Mr. Chairman and Senator Leahy scheduling this hearing so shortly after my nomination. I have devoted nearly all of my working life to the Department of Justice, and I am honored that the President and the Attorney General have asked me to serve in yet another role with the amazing men and women of the Department.

I meet with each Assistant U.S. Attorney in the Southern District of New York on their first morning before I administer the oath, and I give them what they now teasingly call "the speech." And I tell them what my expectations are for their job, and the most important thing I tell them is that they are about to begin the journey of a lifetime because they are about to take a job where their only obligation is to do the right thing, an opportunity few people ever have.

And I tell them that, "You are about to get a gift that you didn't earn, and that was earned for you by things done and sacrifices made by people long since gone, and that is this: When you stand up as an Assistant U.S. Attorney and say, 'I represent the United States of America,' people believe the next thing you say. You didn't earn that. That's a gift," is what I tell them.

And I tell them that, "You've gotten from those people long since gone a reservoir of trust and credibility, and your absolute obligation—and I will insist upon it as your U.S. Attorney—is that you take that reservoir, you guard it, you protect it, and you turn it over to the next group that follows you as full as you got it or fuller."

If I am fortunate enough to be confirmed as Deputy Attorney General, I will receive just such a gift, an office once occupied by people like Byron White or Benjamin Civiletti or Bill Barr or my friend Larry Thompson most recently. And I'll have the opportunity to help supervise an organization made up of people who have done good in this country for generations. In small towns and big cities, there are folks who sacrifice, including some who risk their lives every day that I've worked with very closely, and they do it because they love getting paid to do the right thing for a living.

I promise you that if I'm confirmed as Deputy Attorney General, I will take my own advice. I will safeguard the gift that I didn't earn, the reservoir of credibility and trust that is the Department of Justice. And I will protect it. I will make sure it's as full as the moment I got it, if not fuller, when I hand it over to whoever is lucky enough to follow me.

Let me just say a brief word about the six people sitting behind me. Sitting to my right is my best friend since I was 19 years old and the only love of my life. She has made sacrifices for this country and for me that I cannot put into words without getting choked up, so I won't, except to know I can never repay that.

Also behind me are my five troops: Maurene, Kate, Brien, Claire, and Abby, the full gamut, 15, 13, 9, 6—almost 7, Claire—and 3. They are the joy of our lives. They make my life fun and full and a little nuts, but by being their wonderful selves, they remind me every day of what really, really matters in life. And I'm very grateful for them being here today, and I look forward to answering your questions.

[The biographical information of Mr. Comey follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

James B. Comey, Jr.

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

Westchester County, New York

United States Attorney's Office
One St. Andrew's Plaza
New York, NY 10007

3. Date and place of birth.

December 14, 1960; Yonkers, NY

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

Married to Patrice L. Comey (nee Failor), homemaker with our five dependent children.

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

University of Chicago Law School; October 1982 - June 1985; J.D. 1985

College of William and Mary; August 1978 - May 1982; B.S. 1982

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.

United States Attorney (1/02 to date)
Southern District of New York
One St. Andrew's Plaza
New York NY 10007

Managing Assistant United States Attorney (9/96-1/02)
United States Attorney's Office, Eastern District of Virginia
600 East Main Street, Richmond, VA 23219

- Acting Chairman, Weed & Seed of Richmond, Inc. (1998-1/02) (non-profit)
  c/o United States Attorney's Office
  600 East Main Street, Richmond, VA 23219

Board member
The Healing Place, Inc. (2000-1/02) (non-profit addressing homelessness)
c/o The United Way, 200 E. Broad Street, Richmond, VA 23219

Adjunct Professor (1994-1/02)
University of Richmond Law School
Richmond, VA 23173

Associate & Partner (8/93-9/96)
McGuireWoods, LLP
901 E. Cary Street
Richmond, VA 23219

- While an associate at McGuireWoods, I worked part-time during June and July 1995 as a Deputy Special Counsel on the U.S. Senate Special Committee to Investigate Whitewater and Related Matters. I remained a firm employee and my firm billed the Senate for my time.

Assistant United States Attorney (10/87-8/93)
United States Attorney's Office, Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Associate (9/86-10/87)
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, New York 10166

Law Clerk (9/85-9/86)
Hon. John M. Walker, Jr.
United States Courthouse
Foley Square
New York, NY 10007

Summer Associate (6/84-9/84)
Cahill, Gordon & Reindel
80 Pine Street
New York, NY 10005

Summer Associate (7/83-9/83)
McCarter & English
Gateway Center
Newark, NJ 07102

Law clerk (6/82-8/82)
Thomas H. Bruinooge, Esq.
85 Orient Way
Rutherford, NJ 07070

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.

None.

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

1994 Director's Award for Superior Performance, Department of Justice

1993 Henry L. Stimson Medal from New York City Bar Associate as outstanding Assistant U.S. Attorney in the Southern District of New York

1992 Director's Award for Superior Performance, Department of Justice

1982 James Frederick Carr Cup for Character, Scholarship & Leadership, College of William and Mary

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.

Virginia State Bar – Professionalism Faculty (2000-1/02)
Virginia Bar Association – Task Force on Professionalism (1998-1/02)

Virginia Bar Association – Special Committee on Issues of National and State Importance (2000-1/02)
Attorney General's Advisory Committee (1/02-present) (White Collar Crime and Narcotics Subcommittees)

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.

Sultana Ridge Pool, Yorktown Heights, New York (no known by-laws)
PTA, Somers, New York
Somers High School Booster Club

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.

New York, 1986
Virginia, 1993
U.S. District Courts for the Southern and Eastern Districts of New York, 1987
U.S. Court of Appeals for the Second Circuit, 1987
U.S. District Court for the Eastern District of Virginia, 1993
U.S. Court of Appeals for the Fourth Circuit, 1996

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.

"Wide-eyed Visitor to Africa Discovers Blessings of America," The Wall Street Journal, op/ed page (Sept. 1983).

During college and law school, wrote two published letters to editor of The New York Times and one to editor of The Wall Street Journal.

From 1997-02, gave dozens of speeches about Project Exile (all from notes only).

April 1998, keynote address about importance of reducing demand for drugs (Metro Richmond Coalition Against Drugs) (given from notes only).

From 1/02 to date, have given dozens of speeches about white collar crime, terrorism, work of the United States Attorney's Office for the Southern District of New York (all from notes only).

June 19, 2002, testimony before the Senate Judiciary Subcommittee on Crime and Drugs concerning Penalties for White Collar Criminal Offenses.

November 14, 2002, testimony before the Ad Hoc Advisory Group on Organizational Sentencing Guidelines (United States Sentencing Commission).

August 29, 2003, Convocation Address, College of William and Mary, Williamsburg, VA

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

Excellent. October 2000 (next physical scheduled for November 2003).

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.

United States Attorney, Southern District of New York (1/02 to date).

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;

1995-86, Law Clerk, Hon. John M. Walker, Jr., Southern District of New York

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

I have not 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;

United States Attorney (1/02 to date)
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Managing Assistant United States Attorney (9/96-1/02)
United States Attorney's Office, Eastern District of Virginia
600 East Main Street, Richmond, VA 23219

- Acting Chairman, Weed & Seed of Richmond, Inc. (1998-1/02) (non-profit) c/o United States Attorney's Office 600 East Main Street, Richmond, VA 23219

Adjunct Professor (1994-1/02)
University of Richmond Law School
Richmond, VA 23173

Associate & Partner (8/93-9/96)
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901 E. Cary Street
Richmond, VA 23219

- While an associate at McGuireWoods, I worked part-time during June and July 1995 as a Deputy Special Counsel on the U.S. Senate Special Committee to Investigate Whitewater and Related Matters. I remained a firm employee and my firm billed the Senate for my time.

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Gibson, Dunn & Crutcher, LLP
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New York, New York 10166

Summer Associate (6/84-9/84)
Cahill, Gordon & Reindel
80 Pine Street
New York, NY 10005

Summer Associate (7/83-9/83)
McCarter & English
Gateway Center
Newark, NJ 07102

Law clerk (6/82-8/82)
Thomas H. Bruinooge, Esq.
85 Orient Way
Rutherford, NJ 07070

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?

1986-87: commercial litigation
1987-93: criminal prosecution
1993-96: commercial litigation and criminal defense
1996 to date: criminal prosecution

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

1986-87: Big 8 accounting firm, accountant's liability defense
1987-93: federal criminal prosecution
1993-96: manufacturing company, toxic tort defense; railroad, FELA defense; various corporate clients, internal investigations and representation during government investigations.

1996 to date: federal criminal prosecution

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.

1986-87: not at all
1987-93: frequently as prosecutor
1993-96: occasionally
1996-date: occasionally

2. What percentage of these appearances was in:

(a) federal court; 90%
(b) state courts of record; 10%
(c) other courts.

3. What percentage of your litigation was:

(a) civil: 10%
(b) criminal. 90%

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.

25 (sole counsel in 18; chief counsel in 4; co-counsel in 3)

5. What percentage of these trials was:
(a) jury; 95%
(b) non-jury. 5%

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) United States v. John Gambino, et al., 88 CR 919 (Judge Leisure, Southern District of New York). Served as lead prosecutor in racketeering, murder, and drug trafficking case against members of La Cosa Nostra in New York. Case was tried during first six months of 1993. Lead defendants John and Joe Gambino were convicted of bail jumping, but jury hung on remaining charges. They and one other defendant (Mannino) then pled guilty before retrial and the fourth defendant (Romano) was convicted at a trial after I left Southern District of New York for Richmond.

Co-counsel: Patrick J. Fitzgerald (then Assistant U.S. Attorney in Southern District of New York)
United States Attorney
Northern District of Illinois
219 S. Dearborn Street
Chicago, IL 60604
(312) 353-5300

Defense counsel: George Santangelo (John Gambino)
Suite 2100
225 Broadway
New York, New York 10007-3001
(212) 267-4488

Bruce Cutler (Joe Gambino)
41 Madison Avenue
New York, New York 10010
(212) 233-6100

Charles Carnesi (Lorenzo Mannino)
34 Daniel Rd N
North Massapequa, New York 11758-1915
(718) 855-6646

Howard Leader (Matteo Romano)
111 Broadway 12th Fl
New York, New York 10006-1901
(212) 753-3794

(2) United States v. Paul Tinnirello, et al., 90CR428 (Judge Cedarbaum, Southern District of New York). Served as sole prosecutor of racketeering, robbery, and theft case against group of robbers and fences operating out of Manhattan's 47th Street jewelry district. After two leaders pleaded guilty, seven defendants were

tried during April and May 1991. Four were convicted, three acquitted. Affirmed, United States v. Tinnirello, 998 F.2d 53 (2d Cir. 1993).

Defense counsel: Lawrence V. Carra (Paul Tinnirello)
114 Old Country Road
Mineola, NY 11501
(516) 742-1135

Harriet B. Rosen (Lorenzo Gregory)
240 W 23rd St
New York, New York 10011-2305
(212) 366-6166

Alfred F. Brown (Frank Mucchiello)
655 Mosswood Ave
Orange, New Jersey 07050-3024
(973) 643-8098

Jacob R. Evseroff (Joseph Disomma)
186 Joralemon St
Brooklyn, New York 11201-4326
(718) 875-0903

Anthony L. Ricco (Frank Tinnirello)
361 Broadway
New York, NY
(212) 629-4995

Jo Ann Harris (Michael Pugliese)
Scholar in Residence
Pace University School of Law
78 N. Broadway
White Plains, NY 10603
(914) 422-4401

Howard Mulholland (Charles Lachterman)
83-74 Talbot Avenue, #1E
Kew Gardens, New York 11415
(Last known address)

(3) United States v. Joel Walker Harris, 3:97CR141 (Judge Spencer, Eastern District of Virginia). Served as lead prosecutor in racketeering and fraud case against Richmond businessman, who was former political aide in Richmond, and his wife.

Harris had his wife pose as wealthy heiress to obtain bank financing for their corporate schemes. Both pled guilty before trial.

Co-counsel: Assistant U.S. Attorney Robert E. Trono
U.S. Attorney's Office
600 East Main, Suite 1800
Richmond, VA 23219
(804) 819-5400

Defense counsel: Craig Cooley
3000 Idlewood Avenue
Richmond, Virginia 23221
(804) 358-2328

Edward E. Scher
316 W. Broad Street
Richmond, VA 23219
(804) 644-0711

(4) United States v. Leonidas Young, 3:98CR302 (Judge Williams, Eastern District of Virginia). Served as lead prosecutor in racketeering, fraud, and corruption case against Richmond's former mayor. Investigation and indictment exposed case kickbacks to Mayor Young, as well as his efforts to obstruct our investigation. Case resolved by guilty plea to racketeering, fraud, and obstruction on eve of trial.

Co-counsel: Assistant U.S. Attorney Robert E. Trono
U.S. Attorney's Office
600 East Main, Suite 1800
Richmond, VA 23219
(804) 819-5400

Defense counsel: Michael Morchower
9 E. Franklin Street
Richmond, VA 23219
(804) 643-0147

(5) United States v. Thomas Wilkinson and Edward Conk, 3:95CR68-01 (Judge Merhige, Eastern District of Virginia). This was a federal criminal case in which I served as defense counsel for a Thomas Wilkinson, a businessman accused of fraud and money laundering. Wilkinson and his partner, Edward Conk, were accused of bilking millions from an investor in their medical management companies. Case tried in federal court in Richmond for two weeks in December 1995. My client was convicted on all charges and went to federal prison, where he remains. Affirmed, United States v. Wilkinson, 137 F.3d 214 (4th Cir. 1998).

Co-counsel: Richard Cullen (co-counsel for Wilkinson)
McGuireWoods, LLP
901 E. Cary Street
Richmond, VA 23219
(804) 775-1000

Hon. Dennis W. Dohnal (Conk)
United States Courthouse
1000 E. Main Street
Richmond, VA 23219
(804) 916-2270

Prosecutor: Assistant U.S. Attorney David Maguire
U.S. Attorney's Office
600 East Main, Suite 1800
Richmond, VA 23219
(804) 819-5400

(6) United States v. Anthony Dawkins, 88 CR 526 (Judge Edelstein, Southern District of New York). Served as sole prosecutor of conspiracy and interstate theft charges against leader of ring involved in theft of American Express travelers checks. Case involved Dawkins's use of figures in the New York art world to travel abroad and falsely report large amounts of travelers checks stolen. Tried in April 1989 in U.S. District Court in Manhattan. Dawkins was convicted.

Defense counsel: Howard Mulholland
83-74 Talbot Avenue, #1E
Kew Gardens, New York 11415
(Last known address)

(7) United States v. Herbert Smith and Joseph Peeples, 85 CR 434 (Judge Keenan, Southern District of New York). Served as sole prosecutor of arms export case based on the defendants' effort to export military helicopters to Iran. Case was tried in November 1989 in U.S. District Court in Manhattan and both defendants were convicted. Affirmed, United States v. Smith, 918 F.2d 1082 (2d Cir. 1990).

Defense counsel: Michael Sporn (Smith)
Suite 2199
225 Broadway
New York, New York 10013-2909
(212) 791-1200

Martin Fogelson (Peeples)
South Tower 12th Fl
470 Park Ave S
New York, New York 10016-6819
(212) 679-4262

(8) United States v. Osumau Kwakye, 87 CR 962 (Judge Keenan, Southern District of New York). Served as sole prosecutor of drug importation case stemming from investigation of West African heroin trade. Case involved cooperating witnesses and undercover taping. It was tried in 1989 in U.S. District Court in Manhattan and Kwakye was convicted.

Defense counsel: Barry Weinstein
888 Grand Concourse
Bronx, New York 10451-2802
(718) 665-9000

(9) United States v. Khoroush Bakhtiari, 88 CR 395 (Judge Sand, Southern District of New York). Served as sole prosecutor of weapons and prison escape case against Iranian national. Bakhtiari was an aspiring terrorist who was arrested with a frightening array of weapons as he tried to rent a high-floor apartment near the United Nations. While in federal custody, he escaped by sliding down a rope made of dental floss from 7th floor of federal jail, but was apprehended. Case was tried in August 1989 in U.S. District Court in Manhattan and Bakhtiari was convicted. Affirmed in part, vacated in part (for resentencing), United States v. Bakhtiari, 913 F.2d 1053 (2d Cir. 1990).

Defense counsel: John P. Curley
Federal Defender Services
52 Duane Street
New York, New York 10007
(212) 417-8700

(10) United States v. Ramon Coates, 3:97CR73 (Judge Williams, Eastern District of Virginia). Served a sole prosecutor in 1997 of firearms case brought under Project Exile. Coates was a felon connected to a firearm by Richmond police. Case was fairly simple, but very significant because it was one of the early Exile cases and I tried it before a hostile federal judge in an effort to show management support for Project Exile. Coates was convicted after a jury trial. Affirmed, United States v. Coates, 1998 WL 454793 (4th Cir. 1998) (unpublished).

Defense counsel: JeRoyd Green
2809 North Avenue
Richmond, VA
(804) 321-1728

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).

As United States Attorney for the Southern District of New York, I have supervised an office of 500 employees and the wide variety of work they do. In

particular, I have supervised significant white collar prosecutions, including cases stemming from criminal conduct at WorldCom, Adelphia, ImClone, and numerous other companies. I have also supervised the Office's terrorism investigations and prosecutions, including the indictment of al Qaeda members and supporters and those responsible for the attack on the U.S.S. Cole. I also devote a significant portion of my time to the issues growing out of the Office's large civil caseload, which is handled by 50 Assistant United States Attorneys. As United States Attorney, I interact with the media as the Office's representative, make countless personnel decisions, preside over a budget of $54.3 million, and also serve as an advisor to the Attorney General and the Department of Justice through my participation on the Attorney General's Advisory Committee and the Corporate Fraud Task Force.

As Managing Assistant United States Attorney in Richmond, I supervised the approximately 50 employees in that office. I also supervised the office's criminal work, which included a large number of gun, drug, and violence cases. In particular, I helped design and implement a gun crime prosecution strategy known as Project Exile. To demonstrate my commitment to that Project, I personally handled a number of gun cases. In addition to my management duties, I personally handled the investigation and prosecution of the terrorist attack on the Khobar Towers barracks in Saudi Arabia and sensitive political corruption investigations and prosecutions, including that of Richmond's former mayor.

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.

   Federal Employee Thrift Savings 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.

   In the event any potential conflict issues arise, I will rely upon the advice and guidance of the ethics official for the Department of Justice.

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 Financial Disclosure Report.

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.

   No.

III. GENERAL (PUBLIC)

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

   From 1996 to January 2002, I directed the activities of the non-profit, Weed & Seed of Richmond, Inc., which involves enhanced law enforcement activities at selected neighborhoods and supervising social services in those neighborhoods. I spent about 50 hours each year on Weed & Seed.

   From 2000 to January 2002, I was a board member at the non-profit, Healing Place, which is devoted to building an in-patient substance abuse facility for the homeless in Richmond. I attended monthly board meetings.

   I devote a large amount of my free time to civic activities related to my children, including attending numerous sporting and school events, and helping with church-related community service.

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	5,000			Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives	5,000		
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	12,000		
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable-First Market Bank	475,000		
Real estate owned: New York residence	625,000			Chattel mortgages and other liens payable: GMAC	32,000		
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	35,000						
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Program	65,000						
				Total liabilities	524,000		
				Net Worth	206,000		
Total Assets	730,000			Total liabilities and net worth	730,000		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	No			Are any assets pledged? (Add schedule)	No		
On leases or contracts	No			Are you a defendant in any suits or legal actions?	No		
Legal Claims	No			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	No						
Other special debt	No						

U.S. Department of Justice

Washington, D.C. 20530

October 21, 2003

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 James B. Comey, Jr., who has been nominated by the President to serve as Deputy Attorney General, 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. Comey recuse himself from participating personally and substantially in a particular matter in which he, his spouse, minor children or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating personally and substantially in any particular matter that could affect his financial interests.

We have advised Mr. Comey 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,

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

Enclosure

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

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Comey			First Name and Middle Initial: James B. (Jr.)	
Position for Which Filing	Title of Position: Deputy Attorney General			Department or Agency *(If Applicable)*: Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: One St. Andrew's Plaza, NY, NY 10007			Telephone No. *(Include Area Code)*: 212-637-2573	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: U.S. Attorney, Southern District of New York, 1/02-present				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: James B Comey			Date *(Month, Day, Year)*: 10/9/03	
Other Review (If desired by agency)	Signature of Other Reviewer: [illegible]			Date *(Month, Day, Year)*: 10/20/03	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [illegible]			Date *(Month, Day, Year)*: 10-21-03	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

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

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

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

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

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

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

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

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

Schedule B--Not applicable.

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

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

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

Agency Use Only

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U.S. Office of Government Ethics

Reporting Individual's Name: Comey, James B. (Jr.)

SCHEDULE A

Assets and Income — BLOCK A

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

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

None ☐

Valuation of Assets at close of reporting period — BLOCK B

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

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																						x						Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Wachovia, Savings Account		x																		x												
2	Wachovia, Checking Account		x																		x												
3																																	
4																																	
5																																	
6																																	

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

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

Reporting Individual's Name: Comey, James B. (Jr.)

SCHEDULE B

Part I: Transactions

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

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

None ☐

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

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

Part II: Gifts, Reimbursements, and Travel Expenses

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

None ☐

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

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Reporting Individual's Name: Comey, James B. (Jr.)

SCHEDULE C

Part I: Liabilities

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

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

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

Part II: Agreements or Arrangements

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

None [x]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Comey, James B. (Jr.)		5 of 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 or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	University of Richmond Law School, Richmond, VA	Law School	Adjunct Professor	08/1994	1/2002
2	Weed & Seed of Richmond, Inc., Richmond, VA	Non-profit service and law enforcement	Acting Chairman	09/1998	1/2002
3	The Healing Place, Richmond, VA	Non-profit - Homeless drug treatment	Board Member	01/2001	1/2002
4					
5					
6					

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

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

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

None ☒

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

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Chairman HATCH. Well, thank you so much. I think I differ with you in one of your statements, and that is, I think you have earned the right to be here. I don't think it is just a free gift. I think you have earned it. I know quite a bit about you, and I have to say I am very impressed that you have been asked to do this job. And I know you will do an excellent job, and that is all we can ask.

Let me just ask a few questions of you before I turn to either Senator Kennedy or Senator Schumer.

From my vantage point, it seems that over the last few administrations each Deputy Attorney General has left his own mark on the Department's mission. Now, what do you see as your major priorities as you pursue this job in the current Justice Department?

Mr. COMEY. Well, Mr. Chairman, I hope to, in filling the big shoes of Larry Thompson, continue two of the things that consumed most of his days, and that is, our number one priority, counterterrorism. It will remain that. It will remain what I do every day. And his leadership of the Corporate Fraud Task Force. I've been lucky enough to be involved in a lot of significant white-collar cases. I think that is a mission of the Department of Justice and the regulators and everybody in law enforcement that simply cannot be neglected. We can deter white-collar crime, and I think we're doing a great job out there in the field, and I would look to continue that.

There's a lot of other things I'm interested in because I've prosecuted a lot of different cases. I care passionately, as I know you and Senator Schumer do, about child pornography. When I started as a prosecutor in 1987, like smallpox, child pornography had almost been wiped out in this country. And with the Internet, we've seen an explosion of child pornography, and even worse, the exploitation that produces it. So that is something that I am happy to devote my energy to and something that I will pursue very aggressively.

Chairman HATCH. Well, thank you.

Given your experience as a line prosecutor and manager of a staff of prosecutors in the U.S. Attorney's Office for the Southern District of New York, can you describe how those experiences have helped to prepare you for this very important position in the Justice Department?

Mr. COMEY. To the extent I'm prepared, I think it comes in two different forms. I've been lucky enough to actually do the cases and work with the men and women, the cops, the State troopers, the special agents, to make criminal cases of all sorts. So I know what it's like where the rubber meets the road in the U.S. Attorney's Offices, and I think that helps me and gives perspective that maybe folks who have been at headquarters their whole life don't have.

I also think managing an office of over 500 people in the Southern District of New York has given me a sense of just what my role is as a manager. And it is not, in my view, for me to micromanage the work of my people, but for me to manage my people and help them work their cases. That's something I've learned as U.S. Attorney. In Richmond, I could be much more hands-on because I had a smaller place, but—so I think those two elements to my experience will help me.

Chairman HATCH. Let me ask you a question I asked your colleagues last week, Assistant Attorney General Chris Wray and U.S. Attorneys Patrick Fitzgerald and Paul McNulty. As you know, the Committee is holding a series of bipartisan hearings to assess the sufficiency of our laws to prevent and respond to acts of terrorism. Now, my question is this: Given your vast experience in this area, do you believe the country is in a better position to prevent terrorist attacks against America today than we were on September 11, 2001?

Mr. COMEY. I do, Mr. Chairman. I think we are—

Chairman HATCH. Why do you think that?

Mr. COMEY. We are very much safer. We are still at great peril from terrorists, and they lie awake at night trying to find ways to hurt our people. But I think for a variety of reasons and the one that leaps out at me is the portion of the PATRIOT Act that lowered the so-called wall between intelligence and criminal responses to terrorism.

You mentioned Pat Fitzgerald, one of my closest friends, the U.S. Attorney in Chicago, and the godfather of Brien Comey. And Pat Fitzgerald describes it in the way only he can, sort of down-to-earth ways, how important it was to lower that wall. When he ran the investigation of Al-Qaeda and Osama bin Laden starting in 1996, when no one had heard of bin Laden in the world at large, as he says, "I could talk to cops. I could talk to civilian witnesses. I could talk to foreign police officers. I could talk to foreign spies. I could talk to the CIA. I could talk to Al-Qaeda members who had come over to our side and were cooperating. There was only one kind of person I couldn't talk to, and that was the FBI agent upstairs who was conducting the intelligence investigation on those same targets."

And as Pat Fitzgerald says, "A world where I can talk to Al-Qaeda but not to the FBI is a world where we are not safe." And so I think that change, among all the changes in the PATRIOT Act, was the most profound and did the most to make the American people safer.

Chairman HATCH. Thank you. But I think we gave you a lot of other tools in the PATRIOT Act as well.

Mr. COMEY. Yes, sir, you certainly did.

Chairman HATCH. And they are working.

Mr. COMEY. They definitely are, sir. As I think came out at your hearing last week, there's a great deal of both apprehension and misunderstanding with respect to the PATRIOT Act. The tools of the PATRIOT Act have been very, very important to the FBI agents and the prosecutors in the field who are working in ways that we may never hear about in investigations to make people safer. So we are very grateful to Congress for those tools.

Chairman HATCH. Thank you.

Now, you also have significant experience in violent crime prosecutions. Some have suggested that the war on terrorism is being conducted at the expense of traditional prosecutions of violent criminals. From your vantage point, do you have a view on that particular suggestion?

Mr. COMEY. I have not seen it, Mr. Chairman, certainly in New York. It's obviously a time of resource-juggling because the FBI, for

reasons that every American would understand, has moved resources to counterterrorism. But what I've seen happening is the good men and women of the State Police in New York, the men and women of the New York City Police Department, for example, stepping up and contributing more bodies, as we say in law enforcement, to task forces, so the FBI in particular is able to leverage its resources.

My indictment numbers in the Southern District of New York have gone up in the 2 years since September the 11th. My people are working as hard as they ever did, but I think what's happened is we've come together as law enforcement not just to do our primary mission, which is to fight terrorists, but we've come together to make sure that folks who are the victims of violent crime are not left behind and those cases are made.

Chairman HATCH. Well, thank you. I am going to reserve the balance of my time and turn to Senator Schumer for questions.

Senator SCHUMER. Thank you, Mr. Chairman.

And, again, just let me reiterate, I think the nub of the difficulty we face here is that you are well-known for exhibiting two admirable qualities: loyalty and integrity. And in tough and delicate situations, they come into conflict, and that is why I think these questions are so important in what I consider to be a very important investigation.

So my first question is this: Have you recused yourself or your office from an investigation during your career as a prosecutor? If so, what standard have you used in making that decision?

Mr. COMEY. I have, Senator. In one particular case that comes to mind, my office in the Southern District of New York—in a matter that I believe is still pending in another office because we recused ourselves, so I'll be a little vague about the details—found ourselves involved in an investigation of a firm in the financial services industry, and we learned as the investigation went on that one of the principals of the firm was the spouse of one of my prosecutors one of my supervisors. And so we engaged in more investigation so we could understand a number of things that were important to me: How big is the firm at issue? What is their status? Are they, for example, a witness, subject, or target? And how close is the connection between this individual and the firm and the conduct at issue?

And so at the end of the day, we concluded that there were only a handful of people that controlled this particular firm and that they were, in fact, the subject of the investigation. And given the relationship between one of those handful of people who controlled it and one of my supervisors, I thought it was appropriate to recuse not just that supervisor, which I could have done, I suppose, pushed that supervisor to the side, but the entire office simply because the—and as I know you know, Senator, the issue with prosecutors, we have great people out there making these cases. And so the issue is not actual partiality. The issue is appearances. And I was concerned in that case that given the substantial connection between my office and this firm and the substantial role played by the spouse, that did raise an issue with respect to partiality, frankly, because we might find ourselves in a position of having to make a charging decision about the spouse of one of my key people and

maybe putting the guy in jail and affecting my employee financially.

So for those reasons, I recused the entire office after getting advice from a variety of my folks, and then it was moved by the Department to another office.

Senator SCHUMER. Was that the only time there was recusal for yourself or the office, the people you had jurisdiction over?

Mr. COMEY. There was one other time that I thought of last night where our office was asked to investigate a law enforcement agency in the theft of money, an agency that we worked very, very closely with. And that's also pending so I can't specify more. But given how closely we work day to day with the folks whose office was the subject—was the place where the money had disappeared, we decided that for relationship issues we would simply ask another office to handle it.

That's a little different because that wasn't an appearance issue. It was more we have got to work with these guys every day; we don't want to be locking one of them up.

Senator SCHUMER. Can you describe—it is hard to do, but, in general terms, when you think recusal is appropriate, when either the conflict or the appearance of conflict is even a harder standard, as you know, and the one more usually applied, when that has to be invoked?

Mr. COMEY. Well, Senator, as you said, it is a hard thing to spell out in the abstract. As I say, despite what my mother taught me about not caring what other people think, as a prosecutor you have to care that the public has confidence in the work you're doing. So the rule that I've applied—and I'll probably garble whatever is in the Code of Federal Regulations, but if I find a situation where because of a personal or business relationship to a person who is substantially involved in one of our investigations, the appearance of partiality arises, I make a judgment call, and as you saw in the example I gave you first, I err on the side of caution because I care about people's faith in the institution of the U.S. Attorney's Office. And in that circumstance, I would consider recusal.

Now, as you can tell from the way I have no doubt garbled the CFR standard, as I did in the case I mentioned, I talk to the folks in my office who know this stuff, who've done the legal research on it and are kind of the old hands, and get their advice before I make that kind of call.

Senator SCHUMER. Do you believe that an appearance of a conflict of interest can be enough to require the Attorney General to recuse himself? I am not asking about a specific case, but abstractly.

Mr. COMEY. Yes, Senator, I think I would agree. Any chief prosecutor, whether U.S. Attorney or the Attorney General, might find himself in a situation where the appearance issue was substantial enough. The prospect that folks would conclude that he or she was biased in a particular investigation, recusal would be appropriate.

Senator SCHUMER. And the other standard, of course, is extraordinary circumstances. This is for a special counsel, not just a recusal. But let me ask you both: Do you believe that an appearance of a conflict can be enough to give rise to extraordinary circumstances that would necessitate the appointment of a special

counsel in the case of Attorney General? Again, I am asking it generally, not just—

Mr. COMEY. Again, a tough one to answer in the abstract. I am sure I could imagine, given enough time, circumstances where there were extraordinary enough circumstances that it created, as I said, a substantial risk that folks would conclude that the Department or that chief executive, that chief prosecutor was unable to be impartial that it would be appropriate.

Senator SCHUMER. You mentioned the second case, which was offices that had to work closely together. So that can be a circumstance as well where recusal would be appropriate?

Mr. COMEY. It can be, Senator, and, again, the example I gave was probably not one in which I was applying the standard recusal, because I could imagine a circumstance where—

Senator SCHUMER. The law is flexible.

Mr. COMEY. That's exactly right. I could imagine a circumstance in the case I mentioned where I could wall off a group and handle it, or if there was someone who was particularly close to the folks in that office, the set of office cubicles where the money had disappeared, we could handle it. We could take other steps. I just decided that—I don't want to give away what the agency was, but because of that particular relationship, folks who needed to have lunch together and work these cases together, it was probably easier for me to make that call.

Senator SCHUMER. All right. And let me ask you this, now getting to the specific case. You have mentioned close working relationship. There are probably very few closer working relationships between, say, an Attorney General and the White House, in this case a group that he might be investigating, the Counsel's Office and so many other parts.

Just inform us a little bit. I know you have not immersed yourself in the facts of this case, but inform us in terms of that standard, what you would look at here, because, again, this is a close—it is a close daily relationship. And one of my concerns, frankly, is the Attorney General has to go to some of the very same people to get things for his Department, to get a policy recommendation implemented that he might be looking into. That creates not only an appearance of a conflict, but it actually might create the extraordinary circumstances where recusal would almost be required.

Tell me why it might not be or why it might be in this situation. Again, I am not asking to pin you down in a yes or no answer here; rather, I want to get your parameters.

Mr. COMEY. Senator, I understand that. I am not comfortable discussing the particular case for a number of reasons. First of all, as an experienced prosecutor I never talk about investigations or an aspect of them publicly. I certainly don't talk about investigations, even if I were otherwise inclined, that are not mine.

Senator SCHUMER. I am just asking the general standards you would use to determine the closeness of the relationship, the appearance of the conflict.

Mr. COMEY. And as we said earlier, it's by necessity a standard that is difficult to define. It turns upon the relationship at issue, the role of the party with whom the prosecutor you are looking at has that relationship in the investigation, that is, witness, subject,

target. That obviously turns on specific facts. And also from that relationship, what's the nature of the concern about partiality that arises?

And that sounds all fuzzy. That's because it is fuzzy to define in the abstract. It's simply one in which you have to be conscious of the importance—as I started, the touch stone is that you want to do the job right and you want to make sure that folks have confidence in the job that you do.

Senator SCHUMER. Right. I am speaking personally here. I find it virtually impossible for anyone to come to the conclusion—we can debate when a special counsel is needed, but in terms of recusal because of an appearance, I find it virtually impossible, given the naturally close and nothing illegal, I mean nothing wrong, with the relationship between the Attorney General and all of the nexus of people in the White House and all the interrelationships, that there would not be an appearance. That is one of the reasons I am frustrated. I thought the Attorney General—I have stated this publicly, there is nothing new—should have recused himself from the outset.

So again, I do not want to try to pin you down here unfairly, but I would like to know—you follow this, you do not know the details, but all you have to know, here we are talking about structure, not actual investigation. So I think it is appropriate to ask this question. How could there not be an appearance of conflict given all the close nexus of the relationships that we know about. We do not know who did this. I have no idea who did this. But we do know that some of the names that have been bandied about by some, and those people have such close and intertwined relationships it is virtually impossible for me to believe there is not an appearance. Could you address that? I mean this chart is really not hyperbolic, even though it might appear to be, there is just so many different relationships.

Mr. COMEY. Senator, as I said—

Chairman HATCH. Senator, your time is up. But answer the question. Then I am going to call on Senator Warner who would like to make opening remarks on behalf of—

Senator SCHUMER. Fine. I have no problem as long as I get a chance to just continue this line of questioning, Mr. Chairman, after Senator Warner. That is fine with me.

Chairman HATCH. Unless Senator Kennedy comes in, but we will work it out.

Senator SCHUMER. Please.

Mr. COMEY. Thank you, Senator. Thank you, Mr. Chairman.

It is a question that I am not neither comfortable nor equipped to answer with respect to a particular case, Senator. My—as you and I discussed, what I would do in this circumstance is, if I am fortunate enough to be confirmed as Deputy Attorney General, is do what I do every day when I am involved with a case, is make sure I have a mastery of where we are factually, understand the law, and decide what is appropriate with respect to any of the issues that you have raised, and make my best judgment in that area and give my best advice.

Senator SCHUMER. But you would not rule out, by any stretch of the imagination, recommending to the Attorney General that he recuse himself?

Mr. COMEY. Certainly not. I am not in a position to rule anything in or out. I do commit to you that I approach this as a professional. And you mentioned integrity and loyalty, there's no choice in my mind. Loyalty's a terrific thing, but integrity and the love of my family is all I have left at the end of this life, and so that is paramount in my mind. There is no conflict there for me.

Senator SCHUMER. Thank you, Mr. Chairman. I would be happy to defer to my senior colleague from Virginia.

Senator WARNER. I thank the Chair and my colleague and good friend from New York.

Chairman HATCH. Happy to have you here.

PRESENTATION OF JAMES B. COMEY, JR., NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Having listened to his lasts phrase, I have two observations. One, I am going to take it and use it myself, and I am not going to attribute it to you.

[Laughter.]

Senator WARNER. I like that phrase, and I can simply say, with the unanimous consent of this Committee, I will just submit my statement on behalf of this very distinguished individual, who I have known for some time.

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

Senator WARNER. So you are on your own, my friend, and you are doing magnificently. Just keep rolling.

[Laughter.]

Senator WARNER. Thank you.

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

Chairman HATCH. Thank you, Senator Warner. Thank you for taking time out of what we know is a horrendous schedule, and being here to lend your support to Mr. Comey.

I am not going to ask any more questions. We will turn to Senator Schumer. Can you finish in one—

Senator SCHUMER. Thank you, Mr. Chairman. I appreciate it. As you know, this is a very important issue to me, and I am trying to approach it as fairly as I can, but I do need some more time here to flesh this out a little bit.

Chairman HATCH. Happy to do it. You have 10 more minutes.

Senator SCHUMER. Thank you.

Let us be specific. I will not even use a hypothetical here. The closeness of the Attorney General to Karl Rove in terms of their being political consultants, having a long and ongoing relationship, I have no idea if Mr. Rove did this or did not. I am not even pointing the beginning of any finger. But he is obviously a possible person who did it. He did say, I guess, it is reported, that Joe Wilson's wife was fair game. That would mean any prosecutor would want to interview him. Again, just please tell me, given that close relationship, how could there not be a conflict? That is what I do not

understand here. And again, the happiest thing I would be is if they would appoint a independent counsel of stature and let the investigation go forward under—not independent counsel, excuse me—special counsel, all of us would go on to other things with the confidence that we would get to the bottom of this and then the chips would fall where they may.

But the closeness of that relationship is well known. It has existed over 10 years. Knowing you, I believe in my heart that if you approach that relationship just with Mr. A and Mr. B, you would have a strong inclination to say there ought to be some kind of recusal. Just elaborate a little more for me. Someone is a consultant to someone. Someone is a friend of someone. Someone is a political associate of someone. They have worked together long and hard. I mean the bottom line is you protect the law deeply and almost religiously, which I admire. It would seem to me that given the fact that there are many other people who could be capable of getting to the bottom of this without those at least appearances of conflict, that that recusal is sort of a no-brainer.

Just again, tell me a little more about your thinking in general.

Mr. COMEY. Well, Senator, as I said earlier, I think it is unwise for anyone in my position—I know it's unwise for me—to talk about a pending matter. Among other reasons, as your question highlights, it requires me to assume facts about who's what—in what capacity in an investigation, witness, subject, target.

As I said to you, what we did in the case that I mentioned with the financial services company was not stop once I found out someone was connected to my supervisor, but try to figure out from some more investigation a number of key things, including what was the company's status in our investigation. And because there are plenty of situations that we encounter where one of my supervisors can have—in fact I know of one, where his mother was a bank teller at a bank that we were investigating, and—his mom wasn't in any trouble—and we concluded that there was no reason for that, to raise that significant issue. And so that's why I sort of steer clear of the specific and return to the general, which is incredibly important, and that is two things, what you mentioned, my love of law, and love of integrity and love of the institution that I believe is shared by the people that I'm going to work for and with, by the Attorney General and all the folks who will be below me if I'm confirmed.

So I approach it with an open mind. I approach it with a careful enough character that I make sure I understand facts and understand law, and then make a judgment that I believe is the right judgment. That's my totem is what is the right thing?

Senator SCHUMER. I know Senator Kennedy is here, and I have a different line of questioning, but if you like, Mr. Chairman, I would certainly defer to Senator Kennedy.

I just had one final question. Let us just say, hypothetically, you come to the conclusion that the Attorney General should recuse himself, which you said you might or might not, but it is possible that you would, you have not ruled it out, which I appreciate. And you recommended to him and he says, "No, here are the reasons, James, that I do not think I should." And you feel quite strongly that he should.

Will you just say, "Well, he has overruled me and that is that?" Would you go to another arbiter? Would you—what would you do? You have had to have thought about that—well, I asked you about it yesterday, so you had to have thought about it overnight. It is not an easy question.

Mr. COMEY. And I appreciate your doing that. We are not going to conduct cross-examination in the Department like that, but I appreciate it.

Senator SCHUMER. I would not want you to. Do not get any ideas about this investigation either to do that.

[Laughter.]

Mr. COMEY. No. We will be tougher, but you were extraordinarily fair in that regard.

Really impossible for me to answer in that hypothetical form. People disagree with me every day, including my underlings in the U.S. Attorney's Office. I'll say, "I think we ought to do it this way." They say, "You're a bonehead. Here's the way we ought to do it." And they explain to me why it ought to be done that way, and ultimately agree.

You are asking me to imagine an apocalyptic situation that I don't expect to encounter. I would not take this job if I thought I was going to be working with people who didn't share my love of the law and love of the institution. So I don't think I'll ever find myself in that position. I can commit to you though that—because I talk so much about integrity and about this great group behind me—that's what I really care about. I don't care about politics. I don't care about expediency. I don't care about friendship. I care about doing the right thing. And I would never be part of something that I believe to be fundamentally wrong. I mean obviously we all make policy judgments where people disagree, but I will do the right thing.

Senator SCHUMER. I have more questions, but I defer to Senator Kennedy if you would like, and then I will resume.

Senator KENNEDY. Thank you, Mr. Chairman, and thank you, Senator Schumer.

I am going to come back to what Senator Schumer mentioned in somewhat a little different way. But first of all I understand we have your four daughters and a son that is here.

Mr. COMEY. Yes, sir.

Senator KENNEDY. I am sure they have been presented. I am sure they have had a long afternoon.

Mr. COMEY. Two were evicted, Senator. The 6-year-old and the 3-year-old are on furlough.

[Laughter.]

Senator KENNEDY. Keeping their interest is challenging at the best of times, and particularly at a hearing. So we thank you for being here and we welcome your family.

I welcome Mr. Comey to the Committee, and I have had the opportunity to meet with him, heard much praise of him by those who know him well, and I am encouraged that we will have a Deputy Attorney General of high caliber and integrity if we confirm him. The Deputy Attorney General is one of the most important officials in the Federal Government, especially when the Attorney General has close ties to the President. The Deputy may often be

in the day-to-day charge of the Department. When my brother was Attorney General his Deputy Attorney General was the outstanding Denver lawyer, Byron White, who performed so well as Deputy. President Kennedy appointed him to the U.S. Supreme Court in 1962. His successor was Nick Katzenbach, war hero and law professor, who also did an outstanding job, was promoted to Attorney General when my brother came to the Senate in 1965.

So Mr. Comey has many superb models to guide him as he meets the new challenges. Perhaps the most relevant one today is that of William Ruckelshaus, Deputy to Eliot Richardson, who was Attorney General during the Watergate crisis as part of his confirmation proceedings. Mr. Richardson made a clear commitment to the Committee, the Congress and the Nation that he would not fire the Watergate Special Prosecutor, Archie Cox, except for extraordinary improprieties. And when Cox investigated the White House too well, President Nixon ordered him fired. Richardson refused and resigned. Ruckelshaus, as Acting Attorney General, also refused and resigned.

Those acts of courage and integrity by both the Attorney General and the Deputy Attorney General, which took place exactly 30 years ago this month, stand out in the annals of the Justice Department as moments which all of us hope will never have to be repeated.

We are faced today, however, with a serious problem, a possible White House abuse of power involving the disclosure of the name of the CIA covert employee. The President himself has asked for a vigorous examination of the alleged security leak, and the intimidation campaign at the White House. The Justice Department has begun the investigation, but it is far from clear, the integrity of that investigation, especially in light of the close ties between the Attorney General, the press and the White House staff.

Many of us on both sides of the aisle are hopeful that the appointment of Mr. Comey will facilitate Attorney General Ashcroft's decision to recuse himself from the investigation so that Mr. Comey will be serving as the Acting Attorney General for the purposes of the investigation.

Obviously, we do not expect Mr. Comey to become part of a new Archibald Cox situation, but his impressive qualifications and the timing of his nomination are auspicious.

Mr. Comey and I have had a full and frank conversation about this prospect, and based on that discussion, I believe that once he takes office he will very promptly gather the available facts on the allegations, including the results of the investigation thus far, and if the Attorney General has not already decided to turn the matter over to Mr. Comey, Mr. Comey will decided for himself whether the public interest in a credible investigation requires the Attorney General to recuse himself and will advise the Attorney General accordingly, and if he is given responsibility for the investigation, Mr. Comey will insist that he and only he will make the further decision as to whether the public interest requires the appointment of a special counsel.

Since there is now no statute on special counsel, Mr. Comey will follow the precedent set by Attorney General Richardson, and Pro-

fessor Cox in 1973, and consult with the members of this Committee on the selection of and the mandate for the counsel.

Mr. Comey, I know you will clarify the record if you take issue with the accuracy of any of the conclusions I have reached from our discussions on Monday.

Mr. COMEY. Senator, I thought I heard you just say that I've committed to do what Eliot Richardson did.

Senator KENNEDY. No. I have indicated that—I said given—Mr. Comey will assist—he will make the—requires of a special counsel. Since there is no statute, there is no statute on special counsels, the statute, which is the original statute that was used even in the special counsel statute, was basically the one under which the—came about for the establishment of the special counsel at the time when Attorney General Richardson and Professor Cox appeared before this Committee and was worked out, Republican and Democrat at that time.

And what I am asking you is that since there is no statute on special counsels, if you reached a decision and a judgment, would you then feel that you would follow the special counsel statute that was worked out at that time, which is the basic structure?

Mr. COMEY. I'm sorry, Senator.

Senator KENNEDY. Then would you also consult with the members of the Committee at that time as well.

Mr. COMEY. Senator, I thank you for that, and I agree with you. I think Eliot Richardson and Deputy Attorney General Ruckelshaus are two of the reasons that this institution has such credibility because of the kind of people that have worked there, and they being two shiny examples.

There is in place a regulation. In preparing for my, I hope, new job, I've read it, 28 CFR 600, which is the regulation governing to appointment of special counsel propounded by Attorney General Reno. So I think in the first instance I would be obligated, and even if I weren't, I think that would be the prudent decision. Anyone considering the appointment of special counsel would go to that regulation and look at the procedures laid out there.

Senator KENNEDY. So that would be the statute that you would follow if it was necessary to trigger?

Mr. COMEY. Yes, sir. And I believe it's been used once. Attorney General Reno used it to appoint former Senator Danforth as special counsel in 1999, and that would be the starting place. In terms of who else I might or might not consult if I ever found myself in that position, I'm really not in a position to say.

Senator KENNEDY. There are probably four areas that I would like to talk with you about. One is on the civil rights issues. The Department of Justice has been the guardian of America's civil rights laws. The nature of the civil rights violation have changed since the days when the Department was involved in the historic efforts such as the desegregation of the University of Mississippi. The U.S. Marshals were needed to protect those seeking to integrated. The Department of Justice seems to be filing fewer cases than the past, and fewer pattern or practice cases, particularly in the areas of job discrimination. Though there may be difference of opinion in certain areas, most Americans support, and I am sure that members of the Committee support the basic core of the work

that the Department does in the area of civil rights and enforcing well-established statutes of the Civil Rights Act, of the Fair Housing Act.

If you are confirmed to the position of Deputy Attorney General will you work to ensure the Department of Justice takes prompt action in response to various civil rights violations?

Mr. COMEY. Senator, as I think you and I both agree, that is one of the things that makes the Department of Justice special. It is one of the things that really only the Department of Justice can do, and that is pursue civil rights cases. It is something that I personally have taken very seriously as a prosecutor.

Yesterday my office in New York indicted a former New York City police officer for killing a young man by throwing a radio at him as he rode his bicycle and knocking him off his bike, and then not reporting the head injury of the young man. So we indicted him in a civil rights case, and that's just one example of many that I think makes us still a special place in the area of civil rights.

And I do commit that it would remain for me personally and for the Department, a priority.

Senator KENNEDY. We talked about this last week along with several of my colleagues on the Committee. I introduced a bill to renew the Undetectable Firearms Act, make it permanent. The Undetectable Firearms Act, known as the plastic gun law, makes it illegal to manufacture, import, possess, or transfer a firearm not detectable by walk-through metal detectors or airport X-ray machines. Only firearms necessary for certain military intelligence use are exempt. You know the background law was enacted in 1988 and then re-enacted, but it expires December 10th.

The bill is supported by all the major gun safety organizations, the International Brotherhood of Police Officers, Airline Pilots Association, flight attendants. Can you speak for the Department on whether they are going to support our bill?

Mr. COMEY. Yes, Senator, I can. Even though I am not yet at the Department, I did see that you asked about that at the hearing my great friend Pat Fitzgerald testified at, and so I found out. The Department supports the extension of that law.

Senator KENNEDY. Okay. Well, after you are confirmed, we will be looking for a good letter from you indicating support on that.

Let me ask you about the—

Chairman HATCH. You will learn to be so forthright.

[Laughter.]

Senator KENNEDY. I had a heads up on that answer, Mr. Chairman, before this.

I want to raise the issues of hate crimes. You are familiar with the issue, the challenge, the problem, the limitations that exist under the existing law. And after September 11th, we saw a shameful increase in the number of hate crimes committed against Muslims, Sikhs, Americans of Middle Eastern descent. The Justice Department has expressed their commitment to investigating and prosecuting the backlash hate crimes. The Department's ability to respond was severely limited by the outdated and unnecessary laws.

Will you make it a priority as Deputy Attorney General to work with us in trying to fashion legislation to deal with this challenge?

Mr. COMEY. Senator, hate crimes are among the things that most motivate prosecutors because folks are victimized not just for the usual awful reasons but for particularly awful reasons having to do with race, creed, color, orientation, things of that sort. And there's nothing that we out in the field take more seriously. And speaking from the field's perspective, I have been very proud of what the U.S. Attorneys and I think the Department as a whole did in the wake of September 11th, that it was not just empty rhetoric. When the word went out to the field, make sure that we protect our Arab American citizens and visitors from backlash, I mean, that was really meant and really pursued, and I don't think just by the Feds, but by local departments and State organizations as well.

So it is something that all of us in law enforcement feel very, very strongly about. I am not familiar with any particular legislative details, but it is obviously something I care about and would work on.

Senator KENNEDY. On the issue of the death penalty, as United States Attorney, Southern District of New York, you have been responsible for reviewing the recommendations made by a Committee of prosecutors in your office regarding whether to seek the death penalty in particular cases. In turn, you have submitted your recommendations to Attorney General Ashcroft.

As you know, the Attorney General has frequently rejected the recommendations by U.S. Attorneys not to seek the death penalty 37 times since February of 2001. On several occasions, Federal prosecutors have been forced to seek the death penalty against defendants who were willing to plead guilty in return for lengthy terms of imprisonment, including life sentences, in order to avoid the death penalty.

In February 2003, the New York Times reported Attorney General Ashcroft had overruled death penalty recommendations by U.S. Attorneys in New York at least ten times.

How many times has the Attorney General overruled your recommendations in the Southern District?

Mr. COMEY. Senator, I don't know that that's a matter of public record because some of those cases may be pending. The New York Times has reported that I was overruled in two cases. I used to say they're a very accurate newspaper. But I have commented publicly on that in response to the Times' reporting that I was overruled.

Senator KENNEDY. Well, is that classified? Or what is it not a matter of public record?

Mr. COMEY. I don't think it's—it's certainly not classified, but I would imagine that while the cases are pending, we certainly want—to the extent we would not otherwise be reluctant to release internal deliberations in the Department, we certainly wouldn't want to be speaking about decisionmaking on cases that may or may not be going to a jury on the death penalty.

Senator KENNEDY. Just then can you answer, has the Attorney General overruled your recommendation in any case where the defendant, without getting into the specific names of the cases, where the defendant was willing to plead guilty and receive a sentence of life in prison?

Mr. COMEY. Senator, I have the same concern because I'm thinking about a particular case, or cases, that is pending and I don't

want to do anything to influence them because we have some the juries are going to be selected shortly.

Senator KENNEDY. It has been reported that Federal prosecutors have failed to persuade the jury to impose the death penalty in 15 of the last 16 trials in which they sought it. During this administration, only five death sentences have been imposed in 34 Federal capital trials. Why do you believe the Justice Department is losing so many death penalty cases?

Mr. COMEY. Death penalty cases are among the hardest cases to try, and as they should be, among the hardest cases to obtain a death penalty because of the safeguards built into the Federal death penalty statute. It is stacked in favor of life, and I think most prosecutors support that, that it ought to be the extraordinary case in which we are able to obtain the death penalty.

So I'm not in a position to say whether the numbers are any different across administrations. I do know from having been involved in these cases that they're very hard to win. I was involved in one in Richmond under the prior administration where we sought the death penalty against four defendants in the same trial, and the jury returned life verdicts on all four.

And as I said, I don't ever want to be in a situation where I'm saying it ought to be easier to seek the death penalty. These are the decisions we as prosecutors and as the Department of Justice take most seriously. I know all U.S. Attorneys, as I do now, debate them, discuss them, analyze them internally before making a recommendation to the Department of Justice. There is no harder call I make as U.S. Attorney. And as I said publicly at the time of the New York Times article, the fact that the Attorney General might disagree with a U.S. Attorney does not—and maybe I was too colorful. I said "does not mean either of them is out to lunch." These are often very, very close questions, and I believe the Department has an obligation, one that I recognized even from the field, to make sure that the death penalty is fairly administered across the country. There has to be someone in that high fire tower looking out all over the country and saying we want a defendant in Alabama to be treated on identical facts similarly in New Hampshire. And that's the job of headquarters.

Senator KENNEDY. I want to go to another issue on this judicial blacklist. As you know, earlier this year a number of controversial sentencing provisions were added at the last moment to the Amber Alert law on missing, abducted, and exploited children. These provisions, called the Feeney amendment, had nothing to do with protecting children and everything to do with handcuffing and eliminating fairness in our Federal Sentencing Commission.

Chief Justice Rehnquist said, "They do serious harm to the basic structure of the Sentencing Guideline system, seriously impair the ability of courts to impose just and responsible sentences."

One of the most troublesome provisions in the Feeney amendment allows the Attorney General and the House and Senate Judiciary to establish judicial blacklists, detailed reports on the sentencing practice of individual judges. This provision has drawn criticism from Republican-appointed and Democrat-appointed judges alike. Chief Justice Rehnquist has said that it potentially amounts to an unwarranted and ill-considered effort to intimidate individual

judges in the performance of their judicial duties, cautions that it should not be used to trench upon judicial independence.

Another judge, Reagan appointee Paul Magnuson, of the District of Minnesota, recently wrote, "This report requirement accomplished its goal. The court is intimidated. The court is scared to depart. The reporting requirements will have a devastating effect on our system of justice, which for more than 200 years protected the rights of citizens. Our justice system depends on a fair and impartial judiciary that is free from intimidation from other branches of Government. The departure reporting requirements constitute an unwarranted intimidation of the judiciary."

Then on June 24th, Judge Joseph Martin, a Bush I appointee and former U.S. Attorney, Southern District Court, conservative record on criminal issues, announced he was retiring from the Federal bench because he no longer wants to be part of an unjust criminal justice system. He cited the Feeney amendment as Congress' most recent assault on judicial independence, an affront to intimidate judges.

What is your opinion regarding Judge Martin's comments and resignation from the bench?

Mr. COMEY. I have great respect for Judge Martin. He held the job that I now hold, and I think he was a very, very fine district court judge, and I know him socially and professionally. I certainly respect Judge Martin's opinion. He was I don't think ever a fan of the Sentencing Guidelines. My response whenever he and I discussed it is, "Judge, I'm a servant of the law. Congress passed the law. Congress passed the punishments. And I believe my job is to make sure that they are fairly carried out and that I never do anything to undercut that."

And there is a risk that prosecutors can do that by not being forthright in the way they charge crimes and insist upon plea resolutions to those crimes. So I respect Judge Martin, and I'm sure were he a legislator, he would vote differently, and that's something I respect.

Senator KENNEDY. Well, this is a continuing issue where there is obviously division, even on our Committee. But it is one that is a very key aspect of the criminal justice system. And we will be wanting to visit.

I am going to submit some issues on immigration, which is a cause, particularly about law enforcement and immigration and community policing. We talked briefly about that, and you indicated your own kind of personal experience in noting sort of the challenges that they have in community policing and also whether the local enforcement can enforce the immigration laws. But I will submit questions on that. But I was impressed both by your sort of knowledge and awareness of what the considerations are on that issue.

Let me just ask you just finally about the Department of Justice Diversity Report. You are familiar with this report. It recently released a heavily redacted report on diversity, and it is my understanding the report which was prepared by a private consultant examines the issue of diversity at DOJ in such areas as hiring, promotion, and retention of DOJ attorneys.

While the Department is to be commended for the commissioning the report, I am extremely troubled by the Department's treatment of the report since it was completed. The DOJ Diversity Report found that white lawyers are far more likely than minorities to hold powerful and well-paid positions in the Senior Executive Service. Men are about 50 percent more likely to be Senior Executive Service than women. Pay grade DOJ component are taken into account. Minority and female attorneys are paid significantly less than their white male counterparts. The attrition rate for minority attorneys is 50 percent higher.

According to the press accounts, for more than a year the Department sort of ignored the requests, including Freedom of Information requests, to release the report. When it finally did publish it on the DOJ website, substantial areas of the report were blackened out.

Unfortunately, the manner in which the Department has treated the report gives the distinct impression that the Department commissioned the report and then left it on the shelf, ignoring the conclusions instead of seeking to correct the internal problems.

Senator Leahy and I sent a letter to the Department asking that the report be provided to the Committee as soon as possible so we could have the correct version of the report.

Are you familiar with the report? Do you know about it? Would you have any problems making sure that we had access to the original report?

Mr. COMEY. I'm familiar with the report from the press accounts, Senator. I haven't read it. I think it's a point of pride, actually, for the Department of Justice and one of the reasons I think Larry Thompson was such a great Deputy Attorney General that he initiated this. As far as I can tell, no one had ever done this before, and he said, "I want somebody to come in and scrub what we are doing to figure out how well we are doing."

And my sense of it is—even though I haven't read it, I have seen the conclusions of it reported—that we are doing very well, not as well as we can do—we can always do better, but certainly better than other major law employers, law firms, and State legal organizations. It's something I care passionately about, have worked very, very hard on in Richmond and in New York. I know that the Department has already begun enacting some of the report's suggestions. One of the things that I was so thrilled to hear about is that they've set aside money to help young lawyers, minority lawyers coming out of law school loaded with debt, to help them defray the costs of those loans, because my challenge always as a chief prosecutor in attracting minority lawyers was these kids come out of law school and they're broke. They tend to be more broke than their non-minority counterparts, and they get the golden handcuffs from the big law firms slapped on them, and they never come off.

And so I'm thrilled that the Department is moving forward on this. As I said, I care very much about diversity, Senator, and, of course, I will work on it as an issue and follow up.

Senator KENNEDY. Okay. After you are approved, which I expect that you will be, we will follow up on the exchange of correspondence.

Thank you very much, Mr. Chairman.

Chairman HATCH. Thank you, Senator.

Senator Feingold?

Senator FEINGOLD. Mr. Chairman, I am going to, if I could, defer to Senator Schumer, who said he wanted to finish a line of questioning.

Chairman HATCH. That would be fine with me.

Senator FEINGOLD. Then I would prefer to go after that.

Chairman HATCH. Can you finish in the remaining 5 minutes you have, Senator Schumer?

Senator SCHUMER. I was hoping for 10.

Chairman HATCH. It is the second round. Why don't we give you 10, but finish in the 10, will you?

Senator SCHUMER. Thank you. Okay. I will do my best.

Chairman HATCH. We will give you a full 10, and then we will turn to Senator Feingold.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman HATCH. I have got to close this down.

Senator SCHUMER. I have a lot of questions, but I will try to be as brief as I can.

Chairman HATCH. I understand. And we will keep the record open for written questions until Friday at 5 o'clock, so all written questions will have to be in by Friday.

Senator SCHUMER. Thank you.

Another concern of many of us is the opaqueness of the structure of this investigation, going back to the CIA leak. No one knows who is in charge. This has nothing to do with which witnesses are being interviewed, what line. They say Justice Department officials. Some people say Mr. Dion is in charge. Some people say, well, sometimes he is in charge, et cetera.

Will you commit to letting this Committee know, letting the public know, the structure of the investigation, who is completely in charge, who can overrule that person, et cetera? I think that is very, very important because, again, the amorphous sort of ad hoc way this investigation seems to have proceeded has troubled many people.

Mr. COMEY. And as I said when we were talking about this earlier, Senator, I don't know that from the outside I'm in a position to criticize or have an opinion on the structure of it. I did read Christopher Wray's testimony before this Committee, and he described it in the way I would have imagined an investigation being conducted by the Department, with the career folks reporting to the career supervisor and then up to the AAG for Criminal.

What I can commit to you is, as I said earlier, that if I am fortunate enough to be confirmed as Deputy Attorney General, I will be in the chain of command. I will know how the investigation is structured. I will, as I said, master the facts, understand the law, and take appropriate action or give appropriate advice on a whole range of topics, some of which we've discussed.

Senator SCHUMER. But will you let us know what that structure is?

Mr. COMEY. I don't know that I'm in a position to commit to that, Senator, simply because as a career prosecutor I'm very reluctant to make any promises about what I will say publicly about an in-

vestigation, any investigation, not just one that involves a subject as important as this one.

Senator SCHUMER. I am not asking, I don't think anyone is asking for the details of the investigation, which could compromise it, but, rather, again, the structure, who is running it. Who is running it day to day? Who makes the day-to-day decisions? And how often do they consult or do they consult with higher-ups before, say, a witness is requested or whatever? We have been assured over and over again that there are professional prosecutors in charge. Yet we don't know who they are and in what situations they are making the decisions and what situations they are consulting before making decisions with the appointees?

Now, as I say, I have complete faith in you, but I still think the public ought to know that if, say, Mr. Dion is in charge of the investigation, that he has to consult with so-and-so before he can make—or that he doesn't.

Mr. COMEY. And I would hope, Senator, that as you said, knowing me, if I were the Deputy Attorney General, you would know and you and the public I hope would take some comfort from the fact that a guy who knows his business and who is committed to integrity and the rule of law and running out facts is there and in that position.

Senator SCHUMER. Do you know you will be involved in this investigation yet if you are confirmed?

Mr. COMEY. I'm certain that I will. I mean, just given the nature of the Deputy Attorney General's job, I'm certain that I will.

Senator SCHUMER. Okay. Let me ask you this: As you know, when we talked yesterday, I am really troubled by the way the investigation has proceeded, particularly in the gathering of information where it seems, either by design or just by accident, different groups of people have been notified ahead of time, either in the media or by informal discussion, that documents will be requested. Is that usual? Do you do that? Is that standard procedure that a prosecutor will telegraph that within 3 days, within some period of time, within 12 hours, we will request documents?

Mr. COMEY. With respect to the particular investigation—

Senator SCHUMER. I am just asking in general.

Mr. COMEY. Okay. With respect to, for example, white-collar investigations that I participated in, every one is different and it depends upon a host of factors. There are times when we execute a search warrant because we simply think the entire entity we are dealing with is corrupt. There are other times where we have a comfort level with a general counsel or a relationship with a law firm of credibility that has been conducting an internal investigation, that we will ask them to pull together relevant things and show them to us. There are other times we will serve a grand jury subpoena.

It's very hard, in my experience, to answer in a vacuum. Each case turns on its facts.

Senator SCHUMER. Have you ever been involved in a situation where you have asked an office or a protagonist for documents, they said, "Give us 12 hours before you demand them," and you have said yes?

Mr. COMEY. I think so, Senator. I think in some of the white-collar work that we've done, companies are very—particularly regulated companies are very sensitive to—

Senator SCHUMER. Criminal investigations?

Mr. COMEY. Yes, criminal investigations, to the service of grand jury subpoenas, because that triggers—it may be a material event in the life of that company and trigger a reporting requirement. And so I believe I have dealt with situations where company counsel has said, "Look, before you hit us with the subpoena, give us a chance to pull together what you need to see."

Senator SCHUMER. They communicated that to their employees, that in 12 hours, or whenever, or it was made public that—I mean, I understand if you quietly call the counsel and say, "We are going to request them," and he says, "Give us 12 hours." Wouldn't you naturally say, "Well, don't let anybody know until"—you know, don't let anyone know ahead of time before the issue was ordered?

Mr. COMEY. Not necessarily, Senator. What I was trying to explain was a situation where a company wants to cooperate with us and they say rather than you guys giving us a subpoena that we'll have to disclose to the SEC and to the marketplace, give us a period of time to pull together the relevant records, we'll send out, you know, to all the relevant divisions and ask them to collect their documents, and then we'll provide them to you and we're going to show you X or Y about this investigation.

Again, as you can tell by my struggling, it's hard to answer in a vacuum, but I believe there have been those situations, and there are plenty of situations where we just slap them with a subpoena—

Senator SCHUMER. That is the usual situation, isn't it?

Mr. COMEY. That's probably more frequent, yes, sir.

Senator SCHUMER. Let me just ask you this for the record: Do you believe that the deliberate exposing of the identity of a covert CIA operative is serious crime with potentially devastating consequences to our National security and deserving the prosecution to the fullest extent of the law?

Mr. COMEY. I agree with you, Senator, that it is an extremely serious matter. The only word that a prudent prosecutor does not use during an investigation is "crime," and just for this reason: that if you later lock somebody up, they will say you prejudged it and you concluded that they had committed a crime. It is an extraordinary—

Senator SCHUMER. Not referring to this particular—any particular case. I am just saying—

Mr. COMEY. Any particular case. I've learned from some of the really fancy counsel I've dealt with in New York, you've got to be careful what you say. But it is—of course I agree with you—an extraordinarily serious matter worthy of fair and aggressive investigation.

Senator SCHUMER. Okay. Let me ask you this: As a career prosecutor, do you think it potentially helps or hurts the investigation for the White House Press Office or for any outside office to conduct its own investigation and then announce that it is satisfied that no wrongdoing has occurred on the part of the people they have interviewed? Isn't that unusual? Isn't that damaging?

Mr. COMEY. I'm in the same place there in being unable to comment about the particular investigation, both because it's not my investigation, at least not yet, and I don't do that—even if it were mine, I don't do that as a matter of course. So I don't think I—

Senator SCHUMER. Well, look, let's say you are investigating a company and the public relations person of the company then said, "Well, I have interviewed these people and they are just fine. I have gone over questions with them and everything else." What would you do? Anything?

Mr. COMEY. Well, in that hypothetical, I'm not sure what, frankly, difference it would make to my approach to the investigation other than I would continue to—I am going to run out every fact. I don't care what someone else's opinion is. And we encounter this frequently with companies that conduct internal investigations. That's terrific and that's helpful, but we need to run out the facts ourselves. And that's the way I approach investigations.

Senator SCHUMER. Let me ask you this: It has been reported that some former administration officials are consulting with the White House on strategy related to this controversy. Are they fair game to be interviewed in an investigation? I am not asking whether you would or not, but is that appropriate and reasonable to do under some circumstances?

Mr. COMEY. I don't think it's appropriate for me to comment for the reasons I said. First of all, it's an investigation I'm not in yet, and also, that would illustrate some of the perils of commenting about a pending investigation. I wouldn't ever want in any investigation people to know my view on who should and should not be interviewed, what avenues should or should not be pursued. They need to know when we handle a case only that we're on it and that we're going to make our own decisions.

Senator SCHUMER. Okay. I am going to ask you one more hypothetical related to what we talked to before, and then I will have written questions, Mr. Chairman, because I see that my 10 minutes are up.

You are investigating Enron for corporate crimes. This is hypothetical. Imagine you instructed the general counsel of Enron to order all employees to preserve potential evidence. Imagine Enron's general counsel then asked you if he could wait until the following morning to instruct employees not to destroy evidence. Would you agree to that request?

Mr. COMEY. I used to use, Senator, Enron as a hypothetical because the Southern District of New York had nothing to do with it.

Senator SCHUMER. Right. That is why I chose it.

Mr. COMEY. I think in the new job, though, I will, so we will have to pick another company name.

Senator SCHUMER. Pick another company name.

Mr. COMEY. A very hard question to answer in the abstract. It would depend upon a host of factors, as I alluded to earlier, including our relationship with the firm representing them, our sense of the entity, a whole bunch of things.

The one thing that I would know is that certainly since Sarbanes-Oxley was passed, I have a terrific tool as a prosecutor, and that is, if somebody destroys a document before I've served a sub-

poena, before anything, thinking about that we might be coming, then they've committed a crime. And that's often a terrific tool to flip people in an investigation. So anybody who did that would do it at their peril.

Senator SCHUMER. I would just say—

Chairman HATCH. Senator, your 25 minutes is up.

Senator SCHUMER. Yes, thank you, Mr. Chairman. I think this issue deserves more than 25 minutes, to be honest with you, but I will defer to your wishes. I just want to make one comment, which is this: I do hope that you will think about particularly my question about the structure of the investigation. I mean, all of the others, I understand that you want to get immersed in the details. But I think no matter what happens, for the public to know who was actually in charge, what is happening, who can overrule the ongoing parts of this, particularly in light of the fact, if there is no recusal. You have said you would be willing to recommend recusal, and we will see what happens there. But particularly if there is not, I think that is really important. And I will reiterate that question to you in writing and ask you to think about it.

Thank you, Mr. Chairman.

Chairman HATCH. You are welcome. I appreciate your willingness—

Senator SCHUMER. And I thank my colleague from Wisconsin.

Chairman HATCH. I just need to point out that, you know, these leaker investigations are the toughest investigations there are. Very seldom have they ever found out who it was. And I suppose both sides try to exploit those, no matter what. But we expect you to handle that in a straightforward, upright, honest manner, and knowing you, I know you will. And it is a serious situation, but good luck. That has been the experience around here, and, frankly, I wish it wasn't. But that is the way it is.

Senator Feingold, I hope you can finish in 10 minutes because I have got to be in the conference.

Senator FEINGOLD. I will certainly do it within 25—no, I won't be—

[Laughter.]

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman HATCH. You will be on my list, is all I can say, if you do that.

I expected Senator Schumer to take longer. He is from New York, and he always does take longer, so that is what we expect.

[Laughter.]

Chairman HATCH. Senator Feingold.

Senator FEINGOLD. Welcome and congratulations on your nomination. I would like to first thank you for your service and particularly time you have spent during the last 2 years as U.S. Attorney for the Southern District of New York. We know that the Southern District has had a critical role in investigating and prosecuting terrorism cases, both before and after September 11th, 2001.

I would like to use my time to ask you about how you would use your experiences to guide you in your new role and about your plans to lead the Department on certain issues. The first has to do with the U.S.S. Cole investigation. I would like to begin by asking you about that incident which took place in October 2000 and re-

sulted in the death of 17 crew members, including one of my constituents from Fond du Lac, Wisconsin.

I understand that you and your office had a central role in the investigation and resulting indictments in that case. So like most Americans I was surprised to learn that on April 11th, 2003, 10 men, including men suspected of involvement in the Cole bombing, escaped from a prison building in Yemen. One month later on May 15th, the Justice Department unveiled a 51-count indictment against two of the escapees, Jamal al-Badawi, and Fahd al-Quso, who were indicted on various terrorism offenses.

I am very troubled that these people were able to escape, particularly when there was an active Federal investigation under way resulting in indictments of two of the escapees. As the U.S. Attorney in charge of this investigation, can you tell me what happened and what steps have been taken to ensure that the suspects would not be able to escape?

Mr. COMEY. Certainly, Senator. That U.S.S. Cole is one of those that I am most proud to have been involved in. My deputy, Deputy United States Attorney David Kelley went to Yemen on that terrible October day within 24 hours to help the FBI investigate, and has spent years working with the families, I'm sure including the family of your constituent, to see that these thus were brought to justice. Because the matter is pending in my Court, I'll try to be a little more careful what I would say with a case that was concluded. But what I can tell you is that FBI and my office are working very hard on that continuing investigation, also investigating what happened in Yemen.

As you know, the men you're talking about were in the custody of the Yemeni authorities, not in United States custody, and our handling of the case involved close coordination with the Yemeni authorities. All I can tell you at this point is it's something we take very, very seriously. There is nothing that I would want more—the families feel it more than anyone—but to have these people back in custody. It's a great frustration for us that they escaped. I'm not in a position to report what the results of that investigation are yet. It's not done. But it's something that we take hugely seriously, Senator.

Senator FEINGOLD. I thank you for that. I have made every conceivable effort to find out what happened in any setting that was available to me, and if there is something new to tell me in some other setting, I would really like to know how this could have happened. So I will have my staff contact you, but I still have heard nothing that gives me any clue about how this could have happened.

Press reports have suggested that the prison where these 10 were held was not an ordinary prison, but instead a, quote, "political security prison," unquote. Did you take steps to determine the security of the prison where the suspects were behind held?

Mr. COMEY. I did not, Senator, and I don't know what was done in that regard by the FBI. I don't. I can't say at this point.

Senator FEINGOLD. According to the indictment, al-Badawi was recruited by members of Osama bin Laden's inner circle. Since he was known as a senior Al-Qaeda operative, what steps were taken to monitor the facility where he was held?

Mr. COMEY. I don't know the answer to that, Senator.

Senator FEINGOLD. Well, I thank you for your attempt to respond. I just conclude by saying that I certainly hope this situation is not standard practice for the Justice Department or other Federal agencies in any case, let alone a case where close associates of Osama bin Laden are actually in custody. It is almost incredible to me. I hope it is not representative of the level of attention the administration is giving important terrorism investigations requiring international cooperation, but I do appreciate your willingness to try to pursue this.

Let me switch to a different subject. In June the Justice Department Civil Rights Division issued guidance to Federal law enforcement agencies banning racial profiling. I was very pleased to see the Department finally take a concrete step to address racial profiling, but in my view it still falls short of the pledge made by President Bush in 2001 to end racial profiling in America. For example, it does not apply to State and local law enforcement, but the guidance does largely adopt the definition of racial profiling that is contained in legislation introduced by myself and Representative Conyers last Congress, and that we hope to reintroduce again. This is a priority issue for me and many members of the House and Senate. I understand that one responsibility of the Deputy Attorney General is to ensure that all components of the Justice Department implement Department policies. If confirmed, what will you do to ensure that the FBI and other components of the Department comply with the Department's guidance banning racial profiling?

Mr. COMEY. Thank you, Senator. There is to me, nothing in law enforcement that is more wrong and dumber than racial profiling. It is morally wrong, morally offensives, and as I think a very forward-looking law enforcement leader, Ray Kelly, the Police Commissioner of New York, with whom I work very closely, explained to his troops when he was Customs, it's also dumb because you miss the bad guys. You not only abuse innocent folks, you miss the bad guys.

So it's something that I am committed and I know this Department is committed to ending. I, like you, think that the guidance that was put out is terrific. As you said, it doesn't apply to the States. I certainly know though that we as Feds serve as a role model to so many State and local law enforcement organizations, that they look to us to set the standard, so I think that that's a terrific step forward, that we've set that gold standard. I would expect that as Deputy Attorney General I would ensure, that as with other very important policies of the Department of Justice, those who violate it are subject to the normal sanctions of—that happen in their employment when they violate any important policy.

I don't know enough at this point to say what the range of sanctions would be, but it's, it's not something that's on the book just for show. It's a real thing for me and for the men and women of law enforcement.

Senator FEINGOLD. I like your wrong and dumber characterization, because I do this in the spirit of tremendous respect for law enforcement people who I know do not think this is a good practice and do not want to be associated with the practice, so I appreciate that.

As you may know, President Clinton issued an Executive Memorandum in 1999 directing Federal law enforcement agencies to collect data on stops and searches and directing the Attorney General to compile and analyze this data. In early 2001 President Bush essentially committed to continuing this directive. President Bush pledged to end racial profiling and directed the Attorney General to, quote, "Develop methods or mechanisms to collect any relevant data from Federal law enforcement agencies," unquote. A few days later the Attorney General announced that he would direct the Deputy Attorney General to implement the President's directive, including reviewing the nature and the extent of racial profiling by Federal law enforcement agencies.

I understand the data has been collected by Federal law enforcement agencies and transmitted to the Attorney General. The Attorney General has not yet issued a report on the results of the data collection effort. If confirmed, will you commit to providing Congress with a report on the data collected by Federal law enforcement agencies pursuant to these presidential directives?

Mr. COMEY. Senator, as I said, I am committed, as you are and I think all right-thinking people are, to ending racial profiling in this country, and it's certainly something that I know that my predecessor, Larry Thompson, the Deputy Attorney General, with whom I have had such close association, shared a passion for that. I commit to you that it is something that I will pursue very, very aggressively. I'm not familiar with the particular data collection that you've mentioned, but it's something that I will follow up on, and that you can rest assured that I will dedicate myself to following up on eradicating racial profiling and making sure that we're doing it.

Senator FEINGOLD. Well, obviously, this hearing shows you are going to have an awful lot to do, and I know you are going to have to get up to speed, but I think a very reasonable time for you to report to Congress on this Federal data collection effort would be within 6 months of assuming your new position. Will you commit to providing this report to Congress within 6 months of your confirmation?

Mr. COMEY. Senator, I will commit to following up on it. I don't know whether if it committed to that I would horrify people sitting behind me. That sounds like plenty of time—

Senator FEINGOLD. They look okay.

Mr. COMEY. Okay.

[Laughter.]

Mr. COMEY. I don't mean my children, although they must have all left me.

[Laughter.]

Mr. COMEY. I can assure you, Senator, that I will look into it, and if that is feasible, if that is possible, I will commit to that.

Senator FEINGOLD. Will you commit to continued collection of data on stops and searches by Federal law enforcement agencies to allow the Department to monitor whether agencies are in compliance with the guidance banning racial profiling?

Mr. COMEY. I would assume, Senator, that that's what my predecessor directed law enforcement agencies to do, that's something we would want to continue. I sit here not knowing enough to be able

to say whether it's a good idea or a bad idea to continue collecting the data, depending on what the first set of data show. My mind is completely open on that. My head is largely empty on the details, but my mind is open.

Senator FEINGOLD. Well, both President Bush and President Clinton recognized data collection as a valuable tool. It allows management to determine whether an agency or individual officers are engaging in racial profiling. I think it goes directly to your characterization of racial profiling as being wrong and dumber, and this is a way to monitor whether it is happening or not. There should be some mechanism to monitor progress and determine if goals have been met. If you are not relying on data collection, I guess I would ask you how would you plan to monitor whether DOJ components and other Federal agencies are in compliance with the DOJ guidance banning racial profiling? How would you do it if you didn't have this?

Mr. COMEY. I don't know, Senator. Logic tells me that the way you suggest is the way to do it, but it is something that I will study and figure out.

Senator FEINGOLD. I thank you, Mr. Chairman. I will reserve the other 15 minutes for the next hearing.

[Laughter.]

Chairman HATCH. You are always a gentleman, and I appreciate it very much.

Now, the Committee, in closing this, has received several significant letters of support for Mr. Comey's nomination. Specifically, we have received letters from the National District Attorney's Association, the Fraternal Order of Police and the National Sheriff's Association, all in support of your nomination.

Significantly, we received a lengthy letter of support from Helen Fahey, who served as U.S. Attorney for the Eastern District of Virginia from 1993 to 2001 under the Clinton administration. She is very familiar with Mr. Comey's work as the Managing Assistant U.S. Attorney and Criminal Division Supervisor in the Richmond, Virginia office. Now, she concludes in her letter—and I will just read this one rather lengthy paragraph out of a really lengthy letter.

"Mr. Comey is intelligent, articulate and possessed of an outstanding legal mind. He will bring to the position of Deputy Attorney General years of Federal prosecution, experiences covering a wide range of cases from violent crime to white collar to terrorism. I consider Mr. Comey a friend and one of the most competent attorneys I have had the pleasure to work with in more than 25 years. He is respected, admired and genuinely liked by all who have worked with him, and I cannot think of anyone more qualified to serve as Deputy Attorney General of the United States."

That is a great letter of support, and I am very grateful to have received it, and I am sure you are as well.

Now, with regard to the sentencing issue that was raised, actually there is no such thing as a Feeney amendment. That was modified and modified way down by the Hatch-Sensenbrenner amendment, and admittedly, the Chief Justice was upset about the Feeney amendment, but I have never heard any upset about the

Hatch-Sensenbrenner amendment, which limit it in very specific ways.

But just to cover that issue for Senator Kennedy and others, Senator Sessions is going to hold a Sentencing Commission hearing in November, and I am hopeful that the Senate schedule will permit that hearing.

Finally, on this issue of leakers, I have every reason to believe that Mr. Dion is totally competent and capable of taking care of this matter. He is a career, long-term career employee, who has always had an impeccable reputation for honesty and decency. Clearly identifying the person who released the employee's name may be difficult, as it always is. I think my colleagues should recall that former Attorney General Reno, in June 2000 testimony before the Senate Intelligence Committee, upon which I sit also, told us that the pool of potential leakers in any administration often is extremely large, she said She goes on to say, quote, "Almost inevitably"—this is Janet Reno, by the way, who was the Attorney General in the Clinton administration, quote—"Almost inevitably we find that the universe of individuals with authorized access to the disclosed information is so large as to render impracticable further efforts to identify the leaker," unquote.

Attorney General Reno went on to say, quote, "Almost all leak investigations are closed without having identified a suspect."

The best known example of how hard it is to identify those who leak information is that it has been some 30 years since someone identified only as, "Deep Throat," passed information to reporters, and despite attempts by scores of individuals who tried to find out who that individual is, we still do not know who that person is. So when I say good luck, it is not just with tongue in cheek, although in this case it was, because it is going to be very difficult, and all administrations have leaked, and we can even name some of the great leakers of the past in both Democrat and Republican administrations.

But whoever did leak this matter was wrong and committed a criminal act apparently. So I am sure you are going to be asked to do your very best to try and locate that, as is the FBI and other law enforcement people, but to try and make a major political event out of this I think may be pushing the envelope just a little bit.

So let me just say this, Mr. Comey, you are really an impressive person. Your family is impressive. Your record is impressive. I have no doubt you are an honest, decent, honorable man, and that you will do this job very, very well, and I intend to work closely with you and to help you every step of the way, and when you think we could help you more than we are, I would like you to be sure to use the open door that I will always for you and let me know what we can do better, because we will work together for the best interest of our country and the best interest of safety and protection for our American people.

But this is an important position, one of the most important in Government, and I commend you for being willing to take this position and to continue your life in public services. It is a disadvantage in many ways to your family because this is not an 8-hour-a-day job, this is 18 hours a day, and as you know, Larry Thomp-

son was worn out because he had just worked himself to death, as virtually every Deputy does.

So I just want to apologize, to let your family know this, that I might as well your good wife know this in advance. But if anybody can do this job well, it is you.

So with that, we are going to recess until further notice. And we will get you up as soon as we can. We will put you on not tomorrow's, but next Thursday's markup, and hopefully they will not put you over for a week. We will get you passed out down on the floor and get you confirmed before we recess for this session of Congress.

Mr. COMEY. Thank you, Senator.

Chairman HATCH. That is as it should be, and I hope everybody will cooperate in getting that done.

Thank you for being here, thanks to your family. We are proud of you, and with that we will recess until further notice.

[Whereupon, at 3:43 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Responses to Questions for James B. Comey, Jr.
Submitted by Senator Richard J. Durbin

1. **As U.S. Attorney, you defended the administration's designation of Jose Padilla, an American citizen, as an "enemy combatant." Padilla, a suspected terrorist, has been detained indefinitely without criminal charge, access to counsel, or meaningful judicial review. I understand that you may not be able to comment on the details of this ongoing case, but I am concerned about the policy of designating and detaining American citizens and non-citizens as enemy combatants.**

   a. **Why do you believe that the designation and detention of American citizens and noncitizens as enemy combatants is permissible under constitutional and federal statutory law?**

Answer: The President has constitutional authority as Commander in Chief to detain any combatants in the current conflict with al Qaeda, whether they are U.S. citizens or not. As a unanimous panel of the Fourth Circuit has recently explained, the President's war powers under the Commander-in-Chief Clause "include the authority to detain those captured in armed struggle." *Hamdi v. Rumsfeld*, 316 F.3d 450, 463 (4th Cir. 2003) ("*Hamdi III*"). *See also Hamdi v. Rumsfeld*, 296 F.3d 278, 281 (4th Cir. 2002) ("The authority to capture those who take up arms against America belongs to the Commander in Chief under Article II, Section 2.") ("*Hamdi II*"). Indeed, it has long been settled that the President has authority under the Commander-in-Chief Clause to direct the military to detain enemy combatants engaged in an armed conflict with the United States. As the Supreme Court explained in *Ex parte Quirin*, 317 U.S. 1, 31 (1942), "[l]awful combatants are subject to capture and detention as prisoners of war by opposing military forces," and "[u]nlawful combatants are likewise subject to capture and detention." In addition, "[c]itizenship in the United States of an enemy belligerent does not relieve him from the consequences of [his] belligerency." *Id.* at 38. *Accord In re Territo*, 156 F.2d 142 (9th Cir. 1946); *Colepaugh v. Looney*, 235 F.2d 429 (10th Cir. 1956). It is under that constitutionally assigned presidential authority that both citizens and non-citizens may be held as enemy combatants.

I assume that the reference to "statutory law" in your question may refer to 18 U.S.C. § 4001. As the Department of Justice has explained in the *Padilla* case, Congress did not interfere with the President's constitutional authority to detain enemy combatants when it enacted § 4001. Certainly, nothing in the text of the section indicates that it was meant to address detention of enemy combatants. As the Fourth Circuit has explained, "it has been clear since at least 1942 that citizenship in the United States of an enemy belligerent does not relieve him from the consequences of his belligerency. If Congress had intended to override this well-established precedent and provide American belligerents some immunity from capture and detention, it surely would have made its intentions explicit." *Hamdi III*, 316 F.3d at 468 (alterations and citations omitted). Thus, the Court concluded that "[t]here is no indication that § 4001(a) was intended to overrule the longstanding rule that an armed and hostile American citizen captured

on the battlefield during wartime may be treated like the enemy combatant that he is." *Id.*

The Fourth Circuit also explained that, "[e]ven if . . . § 4001(a) requires Congressional authorization" for detention of citizens as enemy combatants, "Congress has, in the wake of the September 11 terrorist attacks, authorized the President to 'use *all necessary and appropriate force* against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks' or 'harbored such organizations or persons.' . . . [C]apturing and detaining enemy combatants is an inherent part of warfare; the 'necessary and appropriate force' referenced in the congressional resolution necessarily includes the capture and detention of any and all hostile forces arrayed against our troops." *Id.* at 467 (quoting Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (Sept. 18, 2001) (emphasis added by the Court)). In addition, "Congress has specifically authorized the expenditure of funds for 'the maintenance, pay, and allowances of prisoners of war [and] other persons in the custody of the [military] whose status is determined ... to be similar to prisoners of war.'" *Id.* (quoting 10 U.S.C. § 956(5) (2002)). Based on these congressional enactments, the Fourth Circuit properly concluded that detention of combatants such as Hamdi has been authorized by an act of Congress for purposes of section 4001. *See also Padilla v. Bush*, 233 F. Supp. 2d 564, 597-99 (S.D.N.Y. 2002) (similarly concluding that the Authorization for Use of Military Force of September 18, 2001 renders the detention of Padilla "pursuant to an Act of Congress" within the terms of section 4001).

b. As Deputy Attorney General, your role would be not just to defend the legality of government actions, but to develop policy. Why do you think that enemy combatant designations are good policy?

Answer: In the current conflict with al Qaeda, the United States faces a ruthless enemy capable of carrying on a global war against the U.S. homeland and U.S. interests worldwide. In facing that enemy, I believe it is important that the President, as Chief Executive and Commander in Chief, have at his disposal the full range of lawful powers that the Framers provided for the defense of the Nation in the Constitution. One of those powers, as the Supreme Court has made clear, is the Commander in Chief's power to detain enemy combatants during an armed conflict. To be sure, the criminal justice system has an extremely important role to play in the struggle with global terrorism, as the successful prosecutions brought by the Department of Justice show. Those successes, however, provide no warrant for arbitrarily renouncing the use of another constitutional power that also has great value in this context. In some cases, detaining an individual as an enemy combatant may present the President with a more effective option for securing his objectives in defending the Nation – for example, where detention as an enemy combatant would allow immediate, ongoing, and uninterrupted interrogations for intelligence critical to protection of the nation and our citizens and armed forces.

This is not to say that I believe detention of an American citizen as an unlawful combatant is a routine or trivial matter. Although it has happened only once in the case of a citizen apprehended on our soil, that designation is an important policy issue, one that I believe should be the subject

of public discussion and debate and I welcome the judicial review process that is under way.

c. **You have been very successful at prosecuting terrorists. Do you think that our criminal and military justice systems are capable of prosecuting enemy combatants?**

Answer: As I noted in my answer above, the Department of Justice has had great successes in prosecuting terrorists, some of whom might have qualified as enemy combatants. Where enemy combatants have committed violations of the laws of war, I have every confidence that the military justice system, through military commissions, will also be able to bring prosecutions successfully.

d. **Do you believe that enemy combatant designations might subject Americans to similar treatment by other countries, create anti-American hostility abroad, and/or set a precedent that other countries will use to justify their actions?**

Answer: The right of a nation engaged in armed conflict to detain enemy combatants under the laws of war is well established and has a long historical pedigree. I do not think that by exercising that well-established authority in this context the United States is providing any openings for other countries to take actions that are not already justified under the laws of war.

2. **The Justice Department has launched a number of high-profile initiatives that target large groups of immigrants and visitors, especially Arabs and Muslims, for heightened scrutiny. For example, U.S. Attorneys Offices played a lead role in a Justice Department project to interview thousands of Arab and Muslim men. I am concerned that efforts like this might waste precious law enforcement resources and alienate communities whose cooperation we need.**

The GAO reviewed the Interview Project and concluded:

> **How and to what extent the interview project – including investigative leads and increased presence of law enforcement in communities – helped the government combat terrorism is hard to measure ... More than half of the law enforcement officers that [the GAO] interviewed raised concerns about the quality of the questions or the value of the responses.**

The GAO expressed concern that the project was not completed nine months after it began, and that the Justice Department did not know the status of the project and had no plans to conduct an assessment of the project. They recommended that the Justice Department formally review the project and report on its findings, particularly since it seems the government plans to conduct additional interview projects. According to the GAO, the Justice Department has not responded to this

recommendation.

a. As a U.S. Attorney who participated in the Interview Project, do you believe that it was an effective use of limited government resources?

Answer: In an effort to develop leads that could help deter another terrorist attack following September 11, the Department quickly initiated the Interview Project. The Department found that there were more people to be interviewed than federal agents to conduct the interviews and reached out to the United States Attorneys to coordinate the interviews with the Anti Terrorism Task Forces (ATTFs). Although I was not U.S. Attorney when the Project was initiated, I believe this important project was an effective use of government resources. The project yielded a number of positive things for the war on terrorism, including, the potential disruption of terrorist activities, enhanced working relationships among federal, state, and local enforcement, enhanced credibility of the ATTFs, and increased intelligence information. The Muslim and Arab communities provided a great deal of support in this and other anti-terrorism efforts and the project was successful in large part because of that cooperation.

According to the GAO, "Attorneys and advocates told us that interviewed aliens told them that they felt they were being singled out and investigated because of their ethnicity or religious beliefs."

b. Do you believe that the interviews alienated the target community and/or reduced the likelihood that they will cooperate with law enforcement in the future?

Answer: Cooperation from Muslim, Arab, and other communities has been critical to our efforts in the war on terrorism. I know first-hand that, in the Southern District of New York, the Project enhanced our many other efforts to build strong and trusting relationships with members of the Arab and Muslim community. I also know that the Attorney General personally took a number of steps in the wake of September 11 both to reach out to those communities and to ensure the Project's success. For example, the Attorney General directed those participating in the interviews to treat the individuals who would be interviewed with "courtesy and respect as potential witnesses and sources of information." Then-Deputy Attorney General Larry Thompson also provided a guidance memorandum that instructed the investigators approaching an individual for an interview that they were to introduce themselves, clearly explain the purpose of the interview and ask permission to speak with the individual. Individuals were free to decline to answer questions, and there were no adverse ramifications for failing to comply with an interview request.

Additionally, the Department conducted a great deal of outreach at the local level through United States Attorneys, FBI Special Agents in Charge and other ATTF members. I know from my experience in the Southern District of New York that these outreach efforts were successful in convincing many community leaders that law enforcement was acting in good faith when

soliciting the active cooperation of the Muslim communities in the government's war on terrorism. The Project gave federal law enforcement officers the opportunity to demonstrate on a person-to-person basis their interest in these immigrant communities, as well as their professionalism.

c. **Do you agree with the GAO finding that the Justice Department should conduct an assessment of the project? Has your office conducted such an assessment of its participation in the project? If so, what did you find?**

Answer: We have not, in the SDNY, conducted a formal assessment of the Interview Project. Anecdotally, however, we have found that the Project has had a positive impact on our many other efforts to build a strong and trusting relationship with the Arab and Muslim communities since the tragic events of September 2001. The Project served as yet another vehicle for us to open and then to maintain important lines of communication to all corners of the Arab and Muslim community, to provide us with an opportunity to hear the concerns of those constituencies, and for the law enforcement community to foster greater trust among the community.

Two U.S. Attorneys Offices sent letters to interviewees to inform them about the interviews, rather than appearing unannounced at their homes or workplaces, as investigators in other jurisdictions did. The GAO found that the community reaction to this approach was positive.

d. **What approach did your office use? Do you believe that the approach of sending letters might be more effective in building trust between law enforcement and the community? If so, would you recommend that the Justice Department replicate it in other jurisdictions when such interviews are conducted in the future?**

Answer: We did not notify interviewees by letter. However, before embarking upon the Interview Project, we reached out to the business and religious leaders in the Arab and Muslim communities, explained what the Project was about, and solicited their views about how best to proceed. These leaders helped to get word about the Project out to their constituents. We also recognized at the outset the danger of conducting the interviews without the appropriate degree of sensitivity to cultural and social differences, and that the nature of the Project could alienate many community members. To this end, the leaders of the community conducted sensitivity training for all those who were to be directly involved in the interviews. Ultimately, we found that our approach was quite productive and well received by both the community leaders and by the interviewees. As a result, our relationship to the community is stronger and the Project has helped to develop clearer lines of communication between law enforcement and the Arab and Muslim communities.

Because there are many differences in the accessibility and make-up of Arab and Muslim

communities throughout the various judicial districts, I think each district should make its own assessment as to which approach might work best. For instance, in the New York Metropolitan Area we have identified many established leaders in the Arab and Muslim communities who communicate well with, and are trusted by, their constituents. We found that communicating, in the first instance, through those leaders was very effective and helped pave the way for the smooth execution of the Project.

Responses of
James B. Comey, Jr.
Nominee to be Deputy Attorney General
to
Written Questions Submitted by Senator Russell D. Feingold

Federal Death Penalty

1. **In the Justice Department's June 2001 supplementary report on the federal death penalty system, the Department acknowledged that, with respect to the death penalty:**

> **... geographic "disparities" [among the several U.S. Attorneys' charging practices] are neither avoidable nor undesirable. .... There is nothing illegitimate about a district focusing on the actual needs of the geographic area for which it is responsible in decisions about the exercise of federal jurisdiction. Rather, a U.S. Attorney who failed to do so would be derelict in his or her basic responsibilities**
>
> **Nevertheless, the Attorney General has invoked the concept of "uniformity" to explain why he has overruled the decisions by U.S. Attorneys not to seek the death penalty – particularly in your district and others in the Northeast – at a much higher rate than any of his predecessors since the federal death penalty was restored in 1988. In counseling the Attorney General on death penalty issues as the Deputy Attorney General, which approach would you endorse: his recent insistence on uniformity, or his words in 2001 recognizing the need to defer to the judgments of U.S. Attorneys like you?**

Answer: Deference and uniformity are important and complimentary components of the Department's decision-making in death penalty cases. As U.S. Attorney, I know that death penalty recommendations are made after careful consideration and deliberation. They are among the most difficult decisions prosecutors have to make. To that end, the Attorney General's review and decision-making process have in the past, and will continue to, accord significant deference to the recommendations of the U.S. Attorneys in all death-penalty-eligible cases, including those against potential cooperating witnesses. At the same time, I believe that the Department has an obligation to make sure that the death penalty is administered fairly throughout the federal system. This requires that the Department review cases throughout the country and ensure that like cases – whether in New York or California – are treated with consistency.

I respectfully disagree that there is a conflict between the statements extracted from the June 2001 supplementary report and the goal of consistent application of the capital sentencing laws regardless of the geographic location of the prosecution. As I understand it, the statement in the June 2001 report focuses on the fact that certain prosecutorial

initiatives may influence whether, in certain districts, categories of cases (for example, firearms offenses) are prosecuted by the state or the federal government and, accordingly, whether related capital charges are prosecuted by the state or federal government in those districts. There is no inconsistency between the practice recognized and consistent application of the capital sentencing laws among comparable offenders charged in the federal system.

2. **A former Assistant U.S. Attorney from your district recently wrote that the Attorney General's lack of deference to U.S. Attorneys had a harmful effect on your own office's ability to fight crime. In a June article in the *National Law Journal* entitled, "Let the Prosecutor Decide," your former assistant prosecutor wrote:**

> **Even more damaging to federal law enforcement was Ashcroft's decision earlier this year to reject the recommendation of the U.S. attorney for the Eastern District of New York not to seek death against a defendant who was willing to plead guilty and cooperate with the government against other murderers. This decision has had an immediate and profound impact on the ability of federal prosecutors to investigate and prosecute violent crimes, which virtually always involves the use of one or more cooperating witnesses. However, few defense attorneys will now recommend that their clients cooperate when they may face execution nonetheless. The prosecution of violent gangs using federal statutes, resources and sentences is one reason that many New York City neighborhoods are safer than they were 10 years ago. But after the attorney general's decision, the pool of potential cooperating witnesses in these cases all but evaporated.**

As Deputy Attorney General, will you advise the Attorney General to show greater deference to career prosecutors like you in deciding whether to execute potential cooperators rather than using their testimony to prosecute others?

Answer: As I stated above, the Attorney General's review and decision-making process accord significant deference to the recommendations of the U.S. Attorneys in all death-penalty-eligible cases, including those against potential cooperating witnesses. That is as it should be. I also believe the author whose remarks are quoted (who was a former EDNY AUSA, I believe), misapprehends the state of federal violent crime investigations and prosecutions in New York. Based on my experience over the last two years, nothing

has happened to inhibit offers of cooperation by violent gang members.

3. **To the extent that some states are examining their own death penalty systems, it appears that they are discovering troubling problems in terms of racial disparities, the quality of appointed counsel, and the extent to which innocent people find themselves on death row – sometimes coming within hours of execution. As Deputy Attorney General, would you be in favor of having the Congress fund, and having the National Institute of Justice support, examinations of the capital punishment systems, similar to those undertaken in Maryland and Illinois, in all of the other 36 states that currently allow the death penalty? If not, why not?**

Answer: I am, of course, familiar with disturbing reports of death row exonerations in various states. I am, however, not familiar enough with this aspect of the issue to offer an opinion. If I am fortunate enough to be confirmed as Deputy Attorney General, I will study it.

4. **The Bureau of Justice Statistics (BJS) releases annual data about the states' use of the death penalty in thousands of cases but currently does not release annual data about federal capital cases. Compared to the states, the federal government prosecutes significantly fewer capital cases annually. If the federal government does not compile and release this data, then Congress and the public will have no choice but to rely on anecdotal data gathered by the defense bar.**

   (a) **Given that the federal system handles roughly only a hundred capital cases a year, is there any reason BJS could not also release annual data about federal capital cases by updating the statistics set forth in the Department's 2000 survey of the federal death penalty system?**

   (b) **Will you direct BJS to compile and release annual data about federal capital cases by updating the statistics set forth in the Department's 2000 survey of the federal death penalty system?**

Answer: Although I am not familiar with this aspect of the issue, if I am fortunate enough to be confirmed as Deputy Attorney General, I will study it.

<u>Post-9/11 Civil Liberties</u>

5. **You, of course, have had a role in the investigation and prosecution of a number of terrorism cases. The Southern District of New York has had a number of successes, including the prosecution of the perpetrators of the 1993 World Trade Center bombing and the 1998 embassy bombings. But**

while you and your colleagues have done outstanding work, there still seems to be room for improvement. Earlier this year, the Department's Inspector General released a report finding that many of the 762 Muslim or Arab men rounded up and detained on immigration violations after 9/11 were haphazardly and indiscriminately labeled as terror suspects, and yet none were charged with terrorism offenses. Some were even subjected to inexcusably harsh and unfair treatment. The IG issued a number of recommendations with a common goal: preventing future abuses and ensuring protocols are in place in the event of a future emergency investigation.

(a) Have you read the IG's report?

Answer: I have read portions of the Inspector General's report.

(b) In your new role supervising all U.S. Attorneys, the FBI, and other DOJ components in terrorism investigations, and based on your experiences, what steps will you take to address the concerns and implement the recommendations in the IG's report?

Answer: I take the findings and recommendations of the Inspector General very seriously. I have been briefed about the response of the Department of Justice and believe that it lays out a framework for addressing all of the Inspector General's concerns. I feel confident that appropriate steps are being taken to ensure that all detainees and terrorist suspects receive fair and humane treatment. If I am confirmed as Deputy Attorney General, I will ensure that the changes made in response to the report are continued and that we look for additional ways to improve.

Responses to Senator Charles Grassley's Questions
for James B. Comey, Jr.
Nominee to be the Deputy Attorney General

October 30, 2003

1. **What are your views on the False Claims Act ("FCA"), the program of the Department of Justice ("DoJ") to prosecute FCA cases, and the importance of whistleblowers that bring qui tam actions to the success of the FCA?**

Response: The Department of Justice is committed to uncovering fraud against the American taxpayer. The False Claims Act ("Act") is the government's principal civil tool to recover federal funds fraudulently obtained from government programs. Any person – from our largest corporations to individual citizens – participating in government programs must deal with the government scrupulously. The provisions of the Act both encourage that behavior and impose liability against those who do not meet that standard. I know from my experience as U.S. Attorney just how effective the Act has been. I am told that recoveries in suits and investigations of fraud against the federal government for the fiscal year ending September 30, 2003 exceeded $2 billion for the first time ever, making it the fourth year in a row that recoveries exceeded $1 billion. False Claims Act recoveries since the law was substantially amended in 1986 have now topped $12 billion. If I am confirmed I will ensure that on my watch the Department will continue to use the Act and the *qui tam* provisions of the Act, which have been highly effective in rooting out and redressing fraud perpetrated on federal contracts and programs.

2. **On October 17, 2003, I sent a letter to the Secretary of the Department of Health and Human Services regarding a proposed regulation that would allow drug companies participating in the Medicaid Drug Rebate Program to destroy documents after a three year period. In that letter I noted that such a regulation would adversely affect the False Claims Act and whistleblowers generally. While I am presently awaiting a response to that letter, I want to take this opportunity to seek your assurances and commitment that you will uphold the principles underlying the False Claims Act and do whatever it takes to protect whistleblowers. What actions will you take as Deputy Attorney General to support and strengthen DoJ's programs to prosecute FCA cases?**

Response: The Department believes, as do I, that the 1986 amendments strengthening the *qui tam* provisions have played a significant role in the government's anti-fraud enforcement efforts. It is beyond dispute that the *qui tam* provisions and whistleblowers have provided the Department with significant information that has led to the development of major cases and very substantial recoveries.

If confirmed, it would be my intention, through the Associate Attorney General and the Assistant Attorney General for the Civil Division, both of whom have substantial experience in this area,

to make clear to all Department attorneys that continued vigorous enforcement of the Act should remain a Departmental priority. In conjunction with those officials, I will consider the resource needs of investigating and bringing these cases and support appropriate budget levels to maintain and enhance our current enforcement efforts. I know that both the Associate Attorney General and the Assistant Attorney General for the Civil Division have in the past reached out to make sure that the views of both relator's counsel and defense counsel about our enforcement efforts are heard, and I look forward to working with both of them on these issues.

3. **Will you agree to promote a closer working relationship and better cooperation between qui tam relators, their counsels, and DoJ for the purpose of establishing the public/private relationship envisioned when the FCA was signed into law by President Reagan?**

Response: An important element of the Department's overall False Claims Act enforcement effort will continue to be a commitment to *qui tam* and the cases identified and brought by whistleblowers. The *qui tam* provisions were designed to provide a monetary incentive to those aware of fraud against the government to bring that information forward and to work with the Department in investigating that fraud. Both I and the Department have emphatically supported that purpose. I'm advised that many of the Department's most successful civil False Claims Act cases have involved the full integration of relator's counsel with government counsel. This includes the recently concluded historic final fraud settlement with HCA, which was a model of Department-relator cooperation. Based on the successful results in these matters, I would support continued cooperative relationships with relators and their counsel who show the expertise and willingness to provide such assistance without interfering with the government's law enforcement responsibilities.

4. **Some FCA whistleblowers have complained that DoJ is forcing whistleblowers to waive their rights to amend their complaints as a condition for allowing them to assist DoJ in the prosecution of FCA cases. I have written to senior DoJ officials to ask that DoJ cease this counterproductive practice. What is your view on this waiver requirement?**

Response: I am aware that the Department, before it shares with a relator materials it collects during an investigation, has required the relator to agree not to use such government-collected materials to file a new *qui tam* case or add new claims to their existing case. The Department's practice is premised on the view that relators are entitled to share in recoveries based on claims about which they had information and that they should not be allowed to coopt a government opportunity to pursue on its own a claim based on documents and information the government collected. Nonetheless, I understand that the Civil Division, even before receiving your letter on this subject, and as a result of Assistant Attorney General Peter Keisler's meeting with a group of relator's counsel, undertook to consider further their stated concerns with the Department's practice and that he will be reviewing this practice as part of a continuing dialogue with relator's counsel.

5. **Do you agree that the Congress has the right and duty to monitor, investigate and oversee how the DoJ administers its various programs, including the program to enforce the FCA? Do you agree that the Congress has the right and duty to monitor, investigate and oversee the process and procedures by which DoJ resolves FCA cases, whether through settlement and otherwise?**

Response: I agree that Congressional committees, under well-established procedures, appropriately conduct oversight with respect to subject areas within their jurisdiction and this includes the Department's practices, processes and procedures under the False Claims Act. I also agree that this oversight role legitimately extends to a review of Department decisions to resolve FCA cases where litigation has been completed or final settlements have been reached and where there are no related open matters.

6. **A critically important aspect of my work is maintaining oversight of the DoJ, its operations, and activities. In that regard, insuring that I receive prompt and complete responses to my letters is critical. Unfortunately, all too often, my deadlines are completely ignored by DoJ. Often, I am not even provided the courtesy of a call saying that the DoJ will be late and given a date when I can expect the material requested. Now, I understand that from time to time there are sensitivities with regard to certain information; but it seems to me this is becoming a practice of the DoJ rather than an occasional event. Will you commit to insuring, when you are able to, that I am provided prompt and complete information when I request it?**

Response: Oversight is an important function of Congress and a necessary part of our system of checks and balances. If I am fortunate enough to be confirmed as Deputy Attorney General, I intend to be responsive to Members of Congress. In addition, I will work to improve the overall timeliness of responses to congressional inquiries and requests.

7. **I occasionally utilize the GAO to examine issues at the DoJ. Over the past year, I have noticed that the GAO is having more difficulty gathering responsive information from the DoJ. Because of this problem, I have asked that the GAO report to me in the event they notice delay tactics being used by DoJ. Do you commit to insuring that the GAO gets what it needs promptly?**

Response: It is my sincere hope that neither the GAO, nor Members of Congress, are left with the impression that the Department is utilizing delay tactics. I know firsthand that collection and review of information responsive to various inquiries can be a difficult and arduous task. It is, however, highly important to effective and appropriate congressional oversight. If I am fortunate enough to be confirmed as Deputy Attorney General, I will ensure that the Department is responsive to GAO.

Responses of James B. Comey
Nominee to be Deputy Attorney General
to Questions from Senator Orrin Hatch

1. **It is my understanding that the Radiation Exposure Compensation Act (RECA) program's trust fund will be without funding by May 2004. As a result, RECA claimants who have approved claims will receive IOUs from the Department of Justice until additional funding is made available to the trust fund on October 1, 2004. I am deeply concerned about this matter and would like to be apprised of the Department's plans to make this trust fund whole so the Department will not be issuing IOUs to approved RECA claimants.**

Answer: The Department of Justice shares your interest and concerns regarding the Radiation Exposure Compensation Act Program. It is important that deserving Americans can continue to receive benefits under this unique statute. If I am confirmed, I will commit to reviewing this issue. I have been told that the General Accounting Office found, in its recent report on the RECA Program, that the amendments to the law in 2000 significantly increased the number of eligible claimants. Based on the data from the past three fiscal years, I am informed that it is anticipated that the current strict annual caps on funding will be inadequate to meet the projected numbers of approved claims for this fiscal year and successive years. If I am confirmed, I look forward to working together with you and the Congress toward ensuring a continued viable Trust Fund for RECA claimants.

2. **One of my top priorities as the senior Senator from Utah is the viability of the RECA program. May I count on you to be a vigorous advocate for this program and work within the Administration to ensure that adequate funding for the RECA trust fund is a priority of the Department of Justice so that claimants are never given IOUs?**

Answer: It is unfortunate that in the past RECA claimants whose claims were approved had to be told that the funds made available to pay approved claims had been exhausted. If I am confirmed as Deputy Attorney General, I look forward to working with you on this program. It is my sincere hope that we are never again in the position of having to give that answer to claimants who properly need to know the status of their award of compensation. You can count on the Department to continue to work hard to avoid that situation from recurring in the future. I am advised that staff from the Department would like to arrange a meeting with your staff in the near future to discuss this issue.

Responses to Questions from Senator Edward M. Kennedy
to James B. Comey, Jr.
Supplementing Questions at Hearing of October 29, 2003

WHITE HOUSE LEAK AND INTIMIDATION INVESTIGATION

On pages 38-39 of the preliminary transcript, I listed a number of things that, based on my earlier conversation with you, I believed you would do with respect to the pending investigation of the alleged White House leak and intimidation activities if confirmed as Deputy Attorney General. The last item on the list was my belief that, in the absence of any controlling statute at this time, as was the case when Mr. Richardson appointed Mr. Cox as Special Prosecutor, you would naturally want to consult with members of this Committee on the selection of and the mandate for a special counsel as Mr. Richardson and Mr. Cox had done in 1973. You will recall that I had given you a copy of relevant excerpts from Mr. Richardson's confirmation hearings, which reflected the extensive consultations between Mr. Richardson and the Committee on the subject of the Special Prosecutor, prior to his confirmation.

Because our subsequent exchange at the hearing was somewhat unclear, I would like to clarify it through the following questions and your answers thereto:

As you pointed out, the Code of Federal Regulations, 28 CFR Sec. 600, includes a guidance regarding the appointment of Special Counsels, which was promulgated in 1999 upon expiration of the Independent Counsel law. However, this Section is not binding on subsequent attorneys general, and should not be followed if in a particular case the integrity of the process requires a broader delegation of authority to the Special Counsel. In any event the guideline leaves a great deal of discretion to an Attorney General, or in your case, an Acting Attorney General exercising the Special Counsel powers of a recused Attorney General. For example, it places no limitations on consultations with Congress and explicitly leaves to the appointing official the determination of the scope of the delegation of powers in each case.

Thus, in view of our discussions of the very constructive and important input from the members of this Committee in the analogous situation in 1973, and in view of your general desire to cooperate with and be receptive to the views of members of the jurisdictional Senate Committee on important matters in the Department, I continue to believe that, for your own sake, for the sake of the Department, and for the sake of the public's interest in an investigative of the highest credibility and completeness, you would be well-advised to, and in fact would, consult with us in the manner I stated.

Answer: I thank you for your clarification. I very much enjoyed our private discussion and am grateful for the materials concerning former Attorney General Richardson. As I said at the hearing, I am reluctant to attempt to comment on a pending investigation or to predict from my current position what steps I would or would not take in connection with the matter. As I said at

my hearing and in our discussions, I pledge that, if confirmed, I will approach the matter with an open mind and a passionate commitment to doing what is right. As a general matter, I very much look forward to a close working relationship with the Members of the Committee and am always available to respond to concerns or to answer questions.

1. **Do you see any barriers in law or in the previous guideline, or do you see any differences in the present case from the Watergate precedent, which would prevent you or otherwise lead you not to seek our input in your selection of and delegation to a Special Counsel?**

Answer: In 1999, Attorney General Reno, drawing on the lessons of the Department's experience (including, but not limited to, Watergate) and after careful study, promulgated regulations governing the appointment of Special Counsel. Those regulations seek to guarantee that a Special Counsel is properly selected and that the jurisdiction of the Special Counsel is appropriately defined. They provide, among other things, that an "individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decision-making, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously, and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies." They further provide that the jurisdiction of a Special Counsel shall "include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation." The regulations provide that the Attorney General will notify the Chairmen and ranking members of the Senate and House Judiciary Committees upon appointing a Special Counsel. As I understand it, the regulations neither foreclose nor contemplate the Attorney General consulting with members of this Committee (or of Congress generally) regarding selection of a Special Counsel and assignment of the Special Counsel's jurisdiction. Whether to consult with the Committee would therefore appear to be a matter committed to the Attorney General's discretion. I do not think it is appropriate for me to speculate as to whether such a consultation would occur in any particular instance.

2. **In reading the text of the mandate given by Mr. Richardson to Mr. Cox, and the discussion of the reasons for specific features of that mandate, do you see any provisions which for any reason you would be precluded from adopting as Acting Attorney General for these purposes? Based on your present knowledge of the case do you see any reason why you would not give a Special Counsel for this matter all of the powers given to Mr. Cox? Do you see any reason why you could not limit yourself to the "extraordinary improprieties" standard for terminating the Special Counsel in the Cox mandate rather than the much lower and more subjective standard in the 1999 guidance? Do you have any objection to providing the Richardson/Cox excerpts, as well as a transcript of your hearing and your follow-up questions and answers, to any person being considered as a candidate for Special Counsel before that person is asked to agree to become the Special Counsel?**

Answer: The regulations that Attorney General Reno promulgated in 1999 resulted from careful study of the lessons of the Department's experience – including, but not limited to, Watergate. It is my understanding that those regulations were not designed to garner partisan advantage but rather to strike the right balance between independence and accountability. As I stated during my testimony, I do not think it would be prudent for me to make any comments with regard to this particular case. However, in any matter potentially involving these regulations, I would think there should be a strong presumption that those regulations ought to be followed. Although there might be occasions in which departures from those regulations would be warranted, there is a danger that advocacy for any departures from established rules might be perceived as politicizing the criminal justice process. I certainly believe that any person being considered as a candidate for Special Counsel in a particular matter ought to understand fully the rules that would govern the Special Counsel before agreeing to serve in that capacity. I would not object to providing such a person relevant materials, including materials that may be in the public record in the event that a Special Counsel were ever considered for any matter.

3. **A member of the Justice Department staff was heard proclaiming at the press table after your hearing that the Attorney General has the absolute right to be fully informed of the details of the leak and intimidation investigation, apparently regardless of any actual conflict of interest or appearance of conflict of interest or any resulting dilution of the credibility of the investigation. His statements did not seem to be consistent with the statements you made both privately and at the hearing to members of the Committee. Was he speaking on your behalf? Do you agree with his assertions? Has the Attorney General indicated to you that you would be restricted in any way from making your own decisions on this and related issues?**

Answer: I am not familiar with the statements that you describe and therefore cannot specifically comment on them. However, as I believe I discussed during the hearing in touching upon a situation in which I recused my office, such decisions can often be responsibly made only after development of the factual record through additional investigation. In my experience, there is nothing improper about any supervisor, including the Attorney General, receiving status briefings in order to make informed and intelligent decisions on these and other issues.

As a general rule, I believe it would be unwise for me to comment about whether I have had discussions with the Attorney General on any matter, and in particular on an issue concerning a pending investigation. As I stated during the hearing, if I am fortunate enough to be confirmed as Deputy Attorney General, I will master the facts, understand the law, make my best judgement, and take appropriate action or give my best advice on this and other matters.

4a. **It appears that the Department of Justice denied requests to make public its report on diversity, prepared by the consultant firm of KPMG in June 2002. What was the basis for the Department's refusal to share the conclusions of that report?**

Answer: It is my understanding that the report is an outside consultant's candid assessment of the attorney workforce of the Department of Justice and that it contains facts, opinions, and analytical assessments about the diversity of the Department's workforce, as well as recommendations which were provided to assist the Department in developing policy initiatives. I do not know the details of the FOIA process with respect to this report.

4b. As you noted in your testimony before the Senate Judiciary Committee, the former Deputy Attorney General, Larry Thompson, had a leading role in the Department of Justice's efforts to examine diversity within the Department and to correct any problems. If confirmed to the position of Deputy Attorney General, what steps will you take to promote diversity within the Department of Justice?

Answer: Larry Thompson is a friend, and I am proud of his work in examining diversity at the Justice Department. He and I share a belief that the Justice Department must strive to reflect the diversity of the communities it serves. In my experience in U.S. Attorney's offices, lawyers from diverse backgrounds add tremendous value in many ways, including by being able to draw upon unique life experiences to enrich an office's decision-making process; in addition, their presence and participation justifiably increases public confidence – particularly in minority communities – that the prosecutor's office is fair and balanced. I have spoken on many occasions to young minority lawyers to explain my belief that they can make contributions to the cause of justice by being prosecutors, something many have never considered.

I know that the leadership at the Justice Department has made a genuine commitment to diversity in its attorney workforce by applying resources in time, manpower and substantial funding to the effort of diversity. If I am confirmed as Deputy Attorney General you have my firm commitment to continue to institutionalize the diversity initiatives announced in February of this year and to continue to look for ways to increase diversity in the Department.

4c. Do you believe it is important for the Department of Justice leadership, including the Deputy Attorney General, to communicate the Department's commitment to diversity to Department managers and employees?

a. If so, how will you do so?
b. If not, why not?

Answer: I think communication is an important tool in working with managers and employees. As U.S. Attorney in the Southern District of New York I regularly communicated the necessity for outreach to increase diversity. It is also my understanding that a commitment to diversity is reflected in the Senior Executive Service Performance Appraisal. If become Deputy Attorney General, I will communicate just such a commitment within the Department.

4d. Reportedly, the KPMG report commissioned by the Department of Justice found that female and minority attorneys are under-represented among the Senior

Executive Service (SES) compared to their white male counterparts. If you are confirmed as Deputy Attorney General, will you ensure that the training and information needed to prepare attorneys for promotion to SES positions are made available to all attorneys at the GS-15 level? If so, how? If not, please explain why you believe this is unnecessary.

Answer: I understand that one of the initiatives announced in February is a career development program. This program is open to GS-14 and 15 attorneys and is designed to identify and train qualified candidates for Senior Executive Service (SES) and supervisory positions. At the end of the program participants are SES certified.

4e. If you are confirmed as Deputy Attorney General, will you take steps to ensure that the Department monitors its progress in the area of attorney diversity, including by examining fairness in distribution of assignments, awards, training, pay, promotion up to and including the GS-15 level, and promotion to SES positions? If so, how?

Answer: The Department of Justice has made a commitment to monitoring progress in the area of attorney diversity. I understand the Department is conducting ongoing attitudinal studies to assess the success of programs implemented and to identify areas of concern. Additionally, the Department is presently assessing the human resources processes and procedures and examining worklife issues such as case assignment, training and other areas that impact attorneys' experiences at the Department.

4f. If confirmed, will you ensure that all opportunities for promotion to managerial positions in the Department of Justice are advertised within the Department so that eligible employees have an opportunity to compete for these opportunities?

Answer: In February, as part of the diversity initiative the Department announced the centralization of permanent attorney vacancy announcements. The Department now requires mandatory posting of Department-wide vacancies on the DOJ Intranet.

4g. If you are confirmed, will you require managers to adopt uniform, consistent standards for distributing performance-based awards? If not, please explain why you believe such measures are unnecessary.

Answer: It is my understanding that uniform, consistent standards for distributing performance based awards are already in place; if confirmed as Deputy Attorney General, I will continue to enforce the standards.

5. During your testimony before the Senate Judiciary Committee, you indicated that, if you are confirmed as Deputy Attorney General, civil rights enforcement would be a priority for you personally and for the Department. What specific steps will you take to ensure that the Department acts promptly in response to civil rights

violations? Will you seek to increase the number of cases brought by the Department of Justice's Civil Rights Division?

Answer: As U.S. Attorney and as a career prosecutor, I have taken civil rights cases very seriously. As I stated during my testimony, I believe that the ability of the Department of Justice to prosecute civil rights violations is one of the things that makes the Department special. If confirmed as Deputy Attorney General, I commit to you that it will remain a top priority for me personally and for the Department that the Civil Rights Division avails itself of the full panoply of enforcement tools in its arsenal so as to safeguard the civil rights of individuals under federal law. In this endeavor, I will work closely with the Associate Attorney General and the Assistant Attorney General for Civil Rights to ensure that cases before the Civil Rights Division receive a full and complete investigation and that the Civil Rights Division takes appropriate action. I am reluctant to pledge to increase the number of cases brought, lest I open a door for defendants to complain they are the victim of a numbers game. What I do pledge is to continue our historical commitment to aggressive enforcement.

IMMIGRATION-RELATED QUESTIONS

(1.) Analysis of DOJ and DHS Responses to the OIG Report

As you know, the Office of the Inspector General issued a June report reviewing the treatment of detainees in connection with the Department's terrorism investigation. The OIG made 21 recommendations related to the issues in the report. The OIG received written responses to these recommendations from the Deputy Attorney General's office. The OIG concluded that while they are pleased that DOJ is taking the recommendations seriously and is moving forward on some of the recommendations, there are a number of recommendations that are not addressed with sufficient specificity, and significant wok remains before all of the recommendations are fully implemented.

Question: **The initial OIG report was issued in early June and we are approaching six months since the report was issued. Can you tell me when you expect the Department of Justice to fully implement all of the OIG's recommendations? Will implementation of these recommendations be a priority under your leadership?**

Answer: I know that the Department of Justice has taken this report seriously and that the Department is still working with the Inspector General on appropriate implementation of the recommendations. In July 2003, the Department provided the Inspector with an initial response to the recommendations, and I have been advised that the Department is finalizing its follow-up response to the Inspector General. That follow-up response is to be submitted to the Inspector General in the very near future, and I believe that the response will reflect that many of the recommendations have been implemented. I agree with the Attorney General that the Inspector General is a valued member of the Department and that his reports on this and other issues will help us improve our operations. If confirmed, I will ensure that the Department completes its implementation of the recommendations as described in the response to the Inspector General.

Question: **Many of the OIG's continuing concerns include the Department's lack of detail in implementation plans. The OIG requested additional documents or detailed actions plans by October 3rd. Have those additional documents been made available to the OIG?**

Answer: It is my understanding that the additional response and documents will be submitted to the Inspector General in the very near future.

(2.) *Matter of RA* Domestic Violence Victim Asylum Seeker

Attorney General Ashcroft told the Judiciary Committee in March that he had certified to himself the important asylum case known as *Matter of RA*. Counsel for RA requested the opportunity to submit a brief in the case, a request that the Attorney General recently denied.

***Matter of RA* is the leading case that will clarify whether women fleeing gender persecution -- domestic violence, sex trafficking, honor killing and the like -- will be granted asylum in the United States. The record in this case was closed six years ago, in 1997. Since that time, the Department has issued new regulations that are directly on point and there are other relevant new legal developments.**

Question: **Given the significant changes in the law since 1997, wouldn't you agree that fundamental fairness requires that the Department of Justice allow further briefing in this case?**

Answer: While I am aware that decisions of the Board of Immigration Appeals may be referred to the Attorney General, I am not in a position to provide an opinion as to whether further briefing should be allowed in this individual case. While I am generally aware of the issue in the case, I am not fully versed on the history of this case and the Department's policies on cases pending before the Attorney General. If confirmed, I will study the matter.

(3.) State / Local Enforcement of Immigration Laws

Attorney General Ashcroft and other officials from the Department have indicated that there is a new, unpublished legal opinion from the Office of Legal Counsel providing that state and local police officers have "inherent authority" to enforce federal immigration laws. The limited scope of state and local law enforcement authority over the nation's immigration laws is now defined by the Immigration and Nationality Act and a 1996 OLC legal opinion. Any opinion that state and local police have "inherent authority" to enforce the immigration laws would conflict with these authorities. Furthermore, police chiefs and police associations throughout the country have spoken out against this proposed policy, saying that the policy would violate the core values of community policing. I have repeatedly requested a copy of OLC's recent legal opinion on this issue. I have not received it.

Question: **If a new legal opinion has in fact been issued, why hasn't the Department of Justice made this important document public?**

Answer: I am advised that, the Department has made public the fact that the Office of Legal Counsel withdrew the advice set forth in section II.B of the 1996 OLC opinion to which you refer. I further understand that, as a general rule, any advice internal to the Department is confidential, and the reasons for disclosing or not disclosing any such advice are also confidential.

Question: **I have spoken with mayors, police chiefs, and sheriffs throughout Massachusetts. Hundreds of Massachusetts police officers are guardsmen and reservists who have been called up to serve in Iraq. Police departments are now stretched to the limit trying to fight crime and protect the homeland. At the same time, the Administration has drastically cut back on needed federal funds for police and first responders. How would adding the responsibility of enforcing our immigration laws to police departments which are already over-extended, under-funded, and under-staffed contribute to our domestic security?**

Answer: I understand that in his announcement of June 6, 2002, the Attorney General asked state and local police to assist in arresting aliens who have violated criminal or civil provisions of immigration law and who are listed on the NCIC. The Attorney General has only requested state and local assistance with respect to this narrow mission and did not request state and local law enforcement to undertake general responsibility to enforce immigration law. It is also important to note that any assistance that local law enforcement provides is entirely voluntary. If a state or municipality does not wish to assist the federal government in making arrests of violators of federal immigration laws, they retain the prerogative to do nothing. I also understand that the Department has encouraged all local and state law enforcement agencies to seek legal advice regarding whether state or local law precludes the exercise of their authority to arrest such aliens.

Question: **Isn't this is a function that the federal government should retain exclusive jurisdiction over?**

Answer: As discussed above, the Attorney General stated on June 6, 2002, that, "the Justice Department's Office of Legal Counsel has concluded that this narrow, limited mission that we are asking state and local police to undertake voluntarily - arresting aliens who have violated criminal provisions of the Immigration and Nationality Act or civil provisions that render an alien deportable, and who are listed on the NCIC - is within the inherent authority of the states."

I am told that the federal government has never retained exclusive jurisdiction over arrests for violations of the INA. It has, for example, long been recognized that state and local police may, consistent with their authority under state law, make arrests for criminal violations of the INA.

(4.) Concurrent Jurisdiction between DHS and DOJ

As you know, the Homeland Security Act transferred all immigration authority within DOJ to the new Department of Homeland Security, except for authority over immigration judges. The DOJ, however, retained concurrent jurisdiction over substantial areas of immigration law and policy.

Question: **What is the Department of Justice's authority for retaining jurisdiction over these areas, given the clear intent of Congress to transfer them to the new Department? What will happen when the two Departments begin to issue conflicting policies and rules on immigration policy – whose authority will trump the other's?**

Answer: It is unclear to me which areas of immigration law and policy the question refers to, nor is this an area of law and procedure in which I am expert. My understanding is that, under the Homeland Security Act of 2002, in addition to the functions of EOIR, the Attorney General and the Department of Justice also retain several other functions having immigration implications that were not transferred to the Department of Homeland Security, such as those traditional litigation and adjudicatory functions which were not within the authority of the INS.

For example, the traditional role of the Office of Immigration Litigation of the Civil Division in performing the Attorney General's function to conduct civil litigation involving the interests of the United States as well as criminal prosecutions remains a part of the Department. Moreover, because the Alien Terrorist Removal Court (ATRC) is an Article III federal court, the Department of Justice would also represent the government in proceedings before the ATRC. Those litigation functions under the immigration laws had never been delegated to INS by the Attorney General, and are retained under the Attorney General's authority.

Additionally, the Office of Special Investigations detects and investigates individuals who took part in Nazi-sponsored acts of persecution abroad before and during World War II, and who subsequently entered, or seek to enter, the United States illegally and/or fraudulently. The Office of Special Investigations then takes appropriate legal action seeking their exclusion, denaturalization and/or removal.

I am also informed that the Attorney General retains the functions of the Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division which were not affected by the HSA. Existing law also makes clear that the Attorney General's determinations of law in interpreting the INA are conclusive, and that provision was left unchanged by the HSA and its amendments.

Question: **Concurrent jurisdiction will necessarily cause backlogs and delays while these conflicts are resolved. There will be wasted executive resources and prolonged ambiguity about the agency in charge of immigration. Is the**

Department of Justice concerned about the risk that conflicting interpretations and policies will undermine the nation's efforts to protect its borders and enforce its law?

Answer: I understand that the Department of Justice and the Department of Homeland Security consult regularly and I do not believe either thinks that significant conflicting interpretations or policies will arise.

(5.) Detention without Charge

In section 412 of the PATRIOT Act, Congress authorized the detention without charge of non-citizens, formally designated by the Attorney General as terrorist suspects, for up to seven days, at which point they must be charged or released. Yet the Department of Justice issued an internal regulation, without public comment, on September 20, 2001, which permits Justice officials to detain persons without charge for an unspecified period of time [a "reasonable period of time"] in "an emergency or other extraordinary circumstance."

Question: **How can the Department give itself far greater power to detain individuals without charge than what Congress was willing to give it in the Patriot Act? Doesn't the Act trump an internal agency rule? And isn't it just plain wrong for the AG to give himself unlimited power to detain people without charge in our democracy? How does that square with the idea of limited government that was central to the framers' vision?**

Answer: I know that, following the attacks of September 11, 2001, the detention of aliens who were determined to be illegally present in the United States and who were encountered during the investigation was one of many law enforcement tools the Department of Justice necessarily employed to guard against another terrorist attack. I am aware that the immigration law explicitly authorizes the detention of aliens until a determination is made whether the alien is to be removed from the United States. It is my understanding that the purpose of such detention is not to punish, but to ensure that the alien does not abscond before the completion of the immigration proceedings and to protect the public safety in those cases where the alien may engage in harmful conduct before he or she can be removed from the United States. I am also aware that the practice has always been to charge detained aliens as quickly as practicable.

I am not familiar with the specific provisions of the regulations referenced above and how they relate to Section 412 of the USA PATRIOT Act. I am however aware that, while the Attorney General was responsible for promulgating these regulations on September 17, 2001, these regulations are now within the authority of the Secretary of Homeland Security.

Responses of James B. Comey, Jr.
Nominee to be Deputy Attorney General
to Questions from Senator Patrick Leahy

1. **There have been reports that Attorney General Ashcroft is less reliant on the advice of career prosecutors than former Attorney Generals, and more reliant on political advisors. For example, on October 13, 2003, the *Legal Times* reported that "[u]nlike other attorneys general who held daily or weekly meetings with the heads of DOJ units and agencies, Ashcroft only rarely sits down face-to-face with members of the department's senior management," and that "most matters are filtered through longtime Chief of Staff David Ayres and Deputy Chief of Staff David Israelite." What expectations do you have for your working relationship and interactions with the Attorney General?**

Answer: During my time as U.S. Attorney, and while serving on the Attorney General's Advisory Committee, it has been my experience that the Attorney General has repeatedly made himself available to hear the concerns and thoughts of the U.S. Attorneys. I am aware that the Attorney General routinely meets with members of the Department's senior management. If confirmed, I have no doubt that I will have a close working relationship with the Attorney General and the direct line of communication that has long characterized the best relationships between Attorneys General and Deputy Attorneys General.

2. **What is your understanding of your obligations to respond to Congressional oversight, and will you make yourself available for appearances before the Committee?**

Answer: Oversight is an important function of Congress and a necessary part of our system of checks and balances. I anticipate building a strong relationship with Members of this Committee and engaging in an open and active dialogue. If I am fortunate enough to be confirmed as Deputy Attorney General I look forward to returning to testify before this Committee as well.

3. **Jose Padilla was arrested on May 8, 2002, in Chicago, on a material witness warrant issued by a court in your jurisdiction, the Southern District of New York. Three weeks later, President Bush designated Padilla an "enemy combatant" and had him transferred to a naval brig in South Carolina. More than a year later, he is still there. Padilla – a U.S. citizen – is one of three terrorism suspects who have been removed from the civilian justice system and transferred to military custody, where they may be held indefinitely, without access to a lawyer, or perhaps brought to trial before a military commission.**

(A) As the U.S. Attorney in charge of the Padilla case, were you involved in the decisionmaking process that led to Padilla's designation as an "enemy combatant"?

Answer: No.

(B) What distinguished the Padilla case from other terrorist cases that have been prosecuted in civilian courts?

Answer: In cases involving terrorism, as in all cases, the decision whether to bring criminal charges against an individual is influenced by a host of factors. In the terrorism context in particular those factors include: the strength of the evidence that the individual has committed a federal crime; the potential that publicly disclosing at trial evidence necessary to obtain a conviction might compromise national security by exposing sensitive intelligence sources and methods; whether there is a need to incapacitate the individual immediately; whether a criminal case has already been fully developed; and whether there is need to obtain intelligence from the suspected offender. Although I was not a party to any decisions concerning Mr. Padilla, it is my understanding that, taking into account factors such as these, it was determined that detaining Mr. Padilla as an enemy combatant provided the best course for securing all the interests of the United States.

4. **According to press reports, you have been deeply involved in the Zacarias Moussaoui case, even though it is being prosecuted in the Eastern District of Virginia and not in the Southern District of New York. Like the Moussaoui case, which originated in Minnesota, many of the high-profile terrorism cases since the 9/11 attacks have landed, one way or another, within the jurisdiction of the Fourth Circuit Court of Appeals. These cases include—**

John Walker Lindh, a U.S. citizen who was caught fighting with the Taliban and brought back to face charges in the Eastern District of Virginia;

Yaser Hamdi, a U.S. citizen who was arrested during the fighting in Afghanistan, and who is now being held as an "enemy combatant" in a naval brig in Virginia;

Jose Padilla, a U.S. citizen who ware arrested at Chicago's O'Hare Airport on a "material witness" warrant obtained by your office in Manhattan, then designated as an "enemy combatant" and transferred to a brig in South Carolina; and

Ali al-Marri, a Qatari student initially charged in the Central District of Illinois, then designated as an "enemy combatant" and transferred to a brig in South Carolina.

Mr. Comey, you have served in the Southern District U.S. Attorney's Office

for many years, both as an AUSA and as U.S. Attorney. That Office has a distinguished record for prosecuting complex terrorism cases. Yet it now appears that the Justice Department is selectively maneuvering as many terrorism cases as possible into the Fourth Circuit, which is widely viewed as the most conservative court of appeals in the nation.

(A) Would you agree with me, and many legal experts, that the government is engaging in a form of forum shopping when it comes to terrorism prosecutions?

Answer: Since the September 11 attacks, a number of high-profile cases have been brought in various districts throughout the country, including the Southern District of New York, the Western District of New York, the Eastern District of Michigan, and the District of Oregon. To my knowledge, the venue decision in each case was made based on the law and the particular facts and circumstances presented. I was personally involved in discussions surrounding venue for the Moussaoui case, but because the matter is pending, it would not be appropriate for me to talk specifically about that prosecution.

In general however, venue in federal criminal cases is governed by federal statutes, including 18 U.S.C. 3238, which provides that it is appropriate to proceed against a person who has committed a crime outside the jurisdiction of any state in the jurisdiction in which they are arrested or first brought. Accordingly, it may be appropriate to charge someone in the jurisdiction in which they are first held in custody. Whereas venue may legally be brought in several districts, it is appropriate to look at all of the facts and circumstances of the particular case. Advantages of prosecuting major terrorism cases in the Eastern District of Virginia include the experience of judges, prosecutors, and defense lawyers in that district in dealing with national security cases involving large amounts of classified information, the relative speed of the docket, and the proximity of the district to the headquarters of the Department of Justice as well as the Department of Defense, CIA, and other agencies involved in counterterrorism efforts.

In addition, it is my understanding that individuals designated as enemy combatants are held under the control of military authorities. The Department of Defense determines where such individuals should be held consistent with military necessity.

(B) Do you believe this sort of maneuvering is appropriate?

Answer: As discussed above, venue in these cases is in compliance with the law and based on the facts and circumstances of the particular case. I do not believe that any inappropriate maneuvering has taken place.

5. Earlier this year, Congress passed some ill-considered legislation that sharply restricts the ability of Federal judges to depart from the Sentencing

Guidelines. This legislation, commonly known as the "Feeney Amendment," has come under attack by Chief Justice Rehnquist, the U.S. Judicial Conference, and a number of Federal judges nationwide. One respected judge in your district – the Honorable John Martin – was so outraged by the Feeney Amendment's assault on judicial independence that he announced that he would resign from the bench.
Judge Martin was appointed to the bench by the first President Bush in 1990, after years of service as a Federal prosecutor, including 3 years as the U.S. Attorney for the Southern District of New York. He explained his decision to resign in a *New York Times* op-ed, as follows:

> **"Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant's incarceration. *For a judge to be deprived of the ability to consider all of the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been a hallmark of the American system of justice.*"**

(A) Do you agree with Judge Martin on this point?

Answer: I have great respect for Judge Martin and consider him a friend. I agree with Judge Martin's comments about the effect of every sentence not only on the defendant but often also on his/her innocent family members. Sentencing is a profound responsibility, and I agree that judges should consider everything that Congress permits them to consider under the law. When Judge Martin and I have discussed sentencing issues generally, I have responded that as U.S. Attorney, my role has been to make sure that the laws passed by Congress, such as this one, are fairly carried out. Likewise, my role as U.S. Attorney and, as Deputy Attorney General if I am confirmed, will be to ensure that attorneys under my supervision enforce the laws and faithfully execute their responsibilities.

(B) You were quoted in the *L.A. Times* on September 15 of this year as saying, "One of the myths we're battling is that corporate criminals get a slap on the wrist and that is wildly off the market, given the sentences we hand out here." As a general matter, is it your experience that the sentences being handed down in Federal court are too short?

Answer: It would be difficult to provide general comments on the nature of federal sentencing. As I testified in June 2002 before the Senate Judiciary's Subcommittee on Crime and Drugs, I believe that the certainty of real and significant punishment best serves the purposes of deterring crime. For white collar offenses in particular, certainty of punishment and appropriate severity are vital. As with other serious crimes, white collar criminals who have broken serious laws should be subjected to substantial periods

of incarceration. In the Sarbanes-Oxley Act of 2002 ("Act"), Congress recognized this principle by increasing maximum penalties for corporate fraud and obstruction-of-justice cases and directing the U.S. Sentencing Commission to amend the sentencing guidelines to provide for increased criminal penalties. I continue to believe that it is critical that offenders of serious crimes face substantial incarceration and Sarbanes-Oxley was an important step in that direction.

6. **As Deputy Attorney General, you will have substantial responsibility over decisions involving the Federal death penalty, including the decision whether to accept a U.S. Attorney's request not to seek the death penalty, and the decision whether to accept a U.S. Attorney's request for authorization to enter a plea or cooperation agreement that requires withdrawal of a notice of intent to seek the death penalty. What deference do you believe is due to the recommendations of local prosecutors and U.S. Attorneys in death cases?**

Answer: Death penalty recommendations are among the most difficult decisions prosecutors have to make. As U.S. Attorney, I know that these recommendations are made after careful consideration and deliberation. The Attorney General's review and decision-making process accord significant deference to the recommendations of the U.S. Attorneys in all death-penalty-eligible cases, including those against potential cooperating witnesses. That is as it should be. These are often difficult, close questions. At the same time, I believe that the Department has an obligation to make sure that the death penalty is administered fairly throughout the federal system. This requires that the Department review cases throughout the country and ensure that like cases – whether in New York or California -- are treated with consistency.

7. **Earlier this year, the Department of Justice reversed its previous interpretation of the Alien Tort Claims Act ("ATCA"), filing a brief in the Ninth Circuit arguing that victims of severe human rights abuses abroad could not use the ATCA to sue their persecutors. If this position were adopted, it would put an end to more than two decades of precedent allowing such suits. Senator Specter wrote an op-ed in the *New York Times* earlier this year protesting the Department's decision, pointing out that the ATCA has been interpreted to apply only to war crimes, piracy, slavery, torture, unlawful detention and summary execution. These are serious offenses, and I agree with Senator Specter that our courts should continue to hear cases brought by the victims of such heinous crimes.**

   (A) **Do you agree with the position the Department has taken?**

   (B) **If confirmed as Deputy Attorney General, would you agree to reevaluate the Department's position?**

Answer: I am not familiar enough with this issue to offer an opinion. I am aware that the United States has asked the Supreme Court to grant review in Sosa v. Alvarez-Machain, No. 03-339, in order to address that issue.

I also know there are serious foreign policy concerns implicated by the ATCA and I know it is within Congress's power to create an express cause of action for the violation of international law. I expect this is an issue with which I will become familiar should I be confirmed.

8. Earlier this year, we held an oversight hearing about the DOJ Inspector General's report on the treatment of 9/11 detainees. As you know, the report criticized the Department's handling of the 762 people detained on immigration charges as part of the investigation into the attacks. The Deputy Attorney General and his assistants were among those criticized in the report, and it was unfortunate that the Committee did not hear testimony from anyone in the Deputy's office at the hearing.

(A) Almost all of the 762 detainees – whom the Attorney General referred to as "suspected terrorists" – were cleared of any ties to terrorism by the FBI. What improvements, if any, do you think the Department should make in its criteria for suspicion in future investigations?

Answer: As an initial matter, as the Attorney General and other Department of Justice officials have discussed, the fact that an illegal alien who had been detained in connection with the September 11 investigation was "cleared" does not mean that law enforcement had no concerns regarding such individual's connection with terrorism. The fact that an alien was deported rather than prosecuted does not mean that the alien had no knowledge of, or connection to, terrorism. In certain cases, evidence of an alien's knowledge of, or connection to, terrorist activity may not be sufficient to prove a terrorism crime beyond a reasonable doubt, or proving a criminal offense may require the disclosure of sensitive sources or classified information. In these sorts of situations, the best available alternative may be simply to remove the alien from the United States and do our best to ensure that he does not return.

It is my understanding that the Department is actively working to implement appropriate recommendations from the Inspector General's report. Most importantly, several information-sharing entities have been established, including the Foreign Terrorist Tracking Task Force, the Terrorist Threat Information Center, and the Terrorist Screening Center, all of which will expedite the investigative process in the event of another large-scale attack. Also, I understand that the FBI has established investigative priorities and is discussing with the Department of Homeland Security the possibility of entering into a memorandum of understanding. In fact, the creation of a new Department of Homeland Security (DHS) has changed the way such a situation will be handled in the future. Initial

decisions whether to seek to detain illegal aliens during the course of an investigation into their possible terrorist ties will be made by DHS. The Department of Justice and the FBI will continue to provide information for DHS to use in that process.

(B) The IG report described controversy and confusion within the Department concerning the legality of holding immigrants with removal orders beyond the 90-day statutory maximum. Eventually, the Office of Legal Counsel concluded that it is permissible for the Attorney General to take more than the 90-day removal period to remove an alien even when it would be within his power to effect the removal within 90 days, provided the delay in removal is related to effectuating immigration laws and policies, including investigating whether and to what extent an alien has terrorist connections. Do you agree with the OLC's conclusion on this point? Why is it lawful to hold people long after the time that their immigration cases have been resolved, especially where you lack affirmative evidence that they are dangerous or a flight risk?

Answer: Although I am not familiar with the details of this issue as a general matter, the Department of Justice's Office of Legal Counsel's (OLC) opinion sets forth the definitive legal position of the Department and the Executive Branch. I am informed that OLC concluded that illegal aliens may be detained during their removal proceedings and after a final order of removal for the purpose of investigating their possible ties to terrorism, for at least the six months deemed presumptively reasonable by the Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001). OLC's comprehensive opinion is available on the Department's website.

(C) I am concerned that the Department's commitment to the right to counsel has declined markedly during Attorney General Ashcroft's tenure. For example, the IG reported that the Deputy Attorney General's office told the head of the Bureau of Prisons "not to be in a hurry" to allow the detainees to have outside communications with attorneys, and that the detainees appear to have been held incommunicado for several weeks. As we know now, virtually all of these detainees were guilty of nothing more than civil violations of our immigration laws. If confirmed as the Deputy Attorney General, would you inform your staff that they should not take steps to hinder the right to counsel?

Answer: I believe that the right to and access to counsel are critical components of our justice system, and I am certain that the professionals of the Department of Justice agree. The Bureau of Prison's policy then and now is to provide inmates with attorney correspondence privileges, an opportunity for private legal visits, and the ability to make

telephone calls to legal counsel as often as prison resources allow. With respect to issues that may have arisen during the detention of a certain number of the 762 aliens who were the subject of the Inspector General's report, I understand that BOP is reviewing and refining its detention policies to ensure that detainees held in highly-restrictive conditions of confinement have appropriate communication with and access to counsel.

9. **As a general matter, do you believe that it is appropriate to use immigration law as a pretext to hold people for criminal investigatory purposes when the government lacks evidence that they are dangerous or a flight risk? If so, under what circumstances?**

Answer: I must respectfully disagree with the assertion that the detention of illegal aliens who are of interest to an ongoing criminal terrorism investigation would be "pretextual." I believe that effective counter-terrorism requires the use of all lawful tools to disrupt our enemy. I also believe discussion about the use of immigration tools after September 11 requires some context. In the fall of 2001, the FBI and all elements of law enforcement were engaged in an extraordinary investigation under extraordinary conditions. For example, in the weeks following September 11, the FBI in New York was housed in a midtown car repair garage, where agents slept on cots after spending their waking hours trying to detect and prevent the second wave of attacks so many feared. There is no doubt, as the Inspector General found, that mistakes were made and that the status of aliens was not resolved as quickly as they might have been in another time. I do not believe, however, that, even in the calm light of hindsight, it was irresponsible to be extraordinarily conservative in our approach to illegal aliens encountered during the immediate post-9/11 investigation.

10. **Larry Thompson, your predecessor as Deputy Attorney General, testified last year before the Sentencing Commission in opposition to any decrease in sentencing for crack cocaine offenses. He suggested that the Commission should instead *increase* sentences for powder cocaine offenses if it wanted to address the sentencing disparity between powder and crack cocaine offenses. However, he also said that he was not aware of any evidence that existing powder cocaine penalties are too low.**

    What do you think should be done, if anything, to address the disparity between sentences for powder and crack cocaine offenses?

    Do you believe that sentences for powder cocaine offenses are insufficiently severe under current law?

Answer: The Department of Justice has extensively studied federal cocaine sentencing policy. I agree with the Administration's position that current federal sentencing policy and current federal sentencing guidelines for crack cocaine offenses are proper. To the

extent that there is any differential between crack and powder penalties, I believe it would be more appropriate to address that differential by increasing the penalties for powder cocaine. Having personally seen the harm associated with crack cocaine use and trafficking, particularly its devastating impact on minority communities, I believe that crack cocaine is associated with greater dangers than powder cocaine. I am also extremely concerned that lowering crack penalties would signal an unwarranted retreat from the battle against drug trafficking and abuse.

11. **As U.S. Attorney for the Southern District of New York, you are no doubt familiar with the difficulties faced by the families of those who died in the World Trade Center on September 11, 2001. The December 22, 2003 deadline for victims to file a claim with the September 11th Victim Compensation Fund is rapidly approaching, but many eligible victims still cannot face the emotional pain of preparing a claim. In a recent survey, 87 percent of the 356 victims who responded expressed support for extending the deadline by one year. I have introduced a bill to do just that. Would you agree with me that the 9/11 victims deserve a bit more time to file with the September 11th Fund?**

Answer: The September 11th Victim Compensation Fund of 2001 (the "Fund") truly is a testament to taxpayer and congressional generosity. Although no amount of money can make whole the victims (and the families of the victims) of the September 11 terrorist attacks, the Fund is accomplishing with compassion what it was created to do. With that said, although a one-year extension to the program may appear to be compassionate and generous, I believe the Department and the Fund need to make sure that eligible claimants are not confused at this crucial moment. Indeed, if claimants expect Congress to pass a bill that would extend the filing deadline of the program but such a bill does not pass, some may unintentionally miss the deadline. I think we need to continue providing certainty to the families at this crucial juncture, so that no eligible persons miss the deadline relying on an extension that may never arrive.

12. **As part of our oversight responsibilities, I and other Members of Congress have repeatedly voiced concerns that the material witness statute (18 U.S.C. §3144) invites confusion and abuse. Unfortunately, efforts to clarify or reform that statute have been met with disinterest by the Administration. Indeed, even efforts to oversee the basic use of the statute have been stonewalled. At least one Federal judge has ruled that the Department is improperly using the statute, and another has ruled that the Department is erroneously keeping secret basic information about the scope of the statute's use. In your role as an Assistant U.S. Attorney or as U.S. Attorney, did you seek and obtain the detention as a material witness of any individual who was ultimately released without having provided testimony and without having been charged with a crime? If so, please describe the circumstances**

for each case.

Answer: The Department has consistently taken the position that Rule 6(e) of the Federal Rules of Criminal Procedure does not allow it to disclose details of individual cases because doing so would reveal secret grand jury information, as well as potentially jeopardizing the underlying investigations. Therefore, I cannot comment on the specifics of any case. Without discussing any specific case, however, I can say that sometimes material witnesses do not provide their information directly to the grand jury before they are released, either because their information is provided in other ways, such as interviews or proffers, or because the witness insists on immunity before testifying and the decision is made not to grant such immunity. Also, it is not at all unusual for material witnesses not to be charged with a crime. Their detention as material witnesses is based on their status as witnesses – that is, for the purpose of obtaining the material information they possess – not because they are to be charged with a crime themselves. An individual is detained under the material witness statute (18 U.S.C. § 3144), only when a federal judge finds probably cause that (1) his testimony is "material in a criminal proceeding, " (2) it may become impracticable to secure his presence by subpoena, and (3) he meets the criteria for detention under the Bail Reform Act (18 U.S.C. § 3142). The purpose of the statute is to allow the government to secure the testimony of witnesses with material information which may otherwise be lost.

13. **In October 2001, the Attorney General promulgated a regulation to permit law enforcement personnel to monitor certain communications of detainees who are subject to "special administrative measures."** ***See*** **66 Fed. Reg. 55062 (Oct.31, 2001). As fellow prosecutors, you and I both know that the rule of law is essential to our American freedoms, and that the right to a lawyer with whom one can communicate candidly and effectively is essential to the adversary process by which the rule of law operates in America. There are few more fundamental safeguards to liberty than the Sixth Amendment, which guarantees the right to a lawyer throughout the criminal process, from initial detention to final appeal.**

    When the detainee's legal listens in on his communications with his attorney, that fundamental right, and the adversary process upon which it depends, are profoundly compromised. You served as a criminal defense attorney while working in private practice, and I am sure you appreciate the critical importance of unfettered communication between a criminal defendant and his or her attorney. Did you have any concerns about this regulation when it was promulgated? Do you have any concerns about its use and the impact of any such use since it went into effect?

Answer: The Sixth Amendment right to counsel is a fundamental right and we must ensure that it is protected vigorously. Like you, I have great appreciation for the sanctity

of the attorney-client privilege. However, I believe that there are times when that privilege must be balanced against national security concerns. As such, it is my understanding that special administrative measures (SAMs) are imposed in those cases where the Attorney General has determined that there is a substantial risk that the individual's communications or contacts with others could result in death or serious bodily injury to persons or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

There are a number of safeguards in place to ensure that the SAMs do not impede the right of an accused to prepare a full and effective defense and to assuage concerns about abuse of the attorney-client privilege. The attorney-client communications of a detainee under a SAM, pursuant to 28 C.F.R. § 501.3(a), for example, can be monitored only if there is reason to believe that the detainee is involved in terrorist activities and will pass messages through his attorney for the purpose of continuing those terrorist activities. 28 C.F.R.§ 501.3(d) specifically provides that prior to authorizing the monitoring of a detainee's attorney-client privileged communications, the Attorney General must find, based on information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular inmate may use communications with attorneys or their agents to further or facilitate acts of terrorism. I note that the Attorney General has made only one such certification to date. Extensive protections were put in place and a "wall" was erected to prevent the disclosure of any privileged communications to the prosecution.

14. Both the President and Attorney General Ashcroft have called on Congress to further expand on the powers we granted in the PATRIOT Act by authorizing the use of so-called "administrative subpoenas" in terrorism investigations. Unlike grand jury subpoenas and orders issued under FISA, administrative subpoenas can be issued without any involvement by a court or even an Assistant U.S. Attorney. An FBI agent can simply pull a form out of his desk, fill it out, sign his name, and serve it. As a long-time federal prosecutor, do you have any concern with excluding line prosecutors from the subpoena approval process?

Answer: I support the President's call to authorize the use of administrative subpoenas in terrorism investigations. I would expect, however, that agents will still want to work very closely with Assistant United States Attorneys in criminal investigations; that close cooperation has long been the strength of the federal system. The President's proposal however, should not interfere with this good working relationship. Agents already exercise administrative subpoena authority in investigating crimes such as health care fraud and drug trafficking. I am informed that there are more than 300 separate administrative subpoena authorities in the U.S. Code today. The President's proposal simply ensures that law enforcement agents are as equipped to fight terrorism as they are to investigate more ordinary crimes.

15. **On January 16, 2002, the Justice Department issued a press release touting the award of a contract, funded by taxpayers, to KPMG Consulting and Taylor Cox Associates to assess the diversity of DOJ's workforce. The release quoted Department officials as stating, "We are committed to maintaining a qualified and diverse work force to enhance the integrity and performance of the Justice Deparment . . . The success of the Justice Department's mission depends on public confidence in the ability of the Department to ensure fair and impartial administration of justice for all Americans."**

Yet when DOJ received the consultants' report in June of 2002, it refused to make it available, even after receiving several FOIA requests for it. Apparently the Department based its decision to decline to release the report on the "pre-decisional deliberative information" exemption to FOIA, 5 U.S.C. § 552(b)(5). This exemption has traditionally been used to protect privileged information that forms the basis of policy discussions. It does not appear to be an appropriate exemption in this specific case because the report was not withheld to protect an internal discussion of Department policy options, but rather to withhold from public view the unflattering findings of the report.

After heightened public criticism, DOJ released the report to the public last week, but the public document was a heavily redacted version that did not include any of the report's conclusions and recommendations.

(A) Do you agree that the misuse of FOIA exemptions to hide unflattering reports does not further the Department's goals of enhancing its integrity or ensuring public confidence in the Department's commitment to diversity?

Answer: It is my understanding that the report is an outside consultant's candid assessment of the attorney workforce of the Department of Justice and that it contains facts, opinions, and analytical assessments about the diversity of the Department's workforce, as well as recommendations which were provided to assist the Department in developing policy initiatives. I would never support "misuse" of FOIA exemptions for any reason.

(B) Do you agree that a review of the data, conclusions and recommendations in the report is essential to determining how well the Department is meeting its responsibilities to ensure a diverse workforce?

Answer: I have not had the opportunity to review the data so I am unable to comment on whether the data, conclusions and recommendations in the report are essential to determining how well the Department is meeting its responsibilities to ensure a diverse workforce. I am, however, proud of my friend Larry Thompson for spearheading the effort to take a look at where the Department stands on this important issue.

(C) Do you agree that continued data collection on DOJ's minority workforce is critical to determining DOJ's progress on diversity?

Answer: I agree that data collection can be a useful tool to assess the Department's progress on diversity.

(D) As you know, the Judiciary Committee maintains oversight over the policies and practices of the Department of Justice, including its employment practices. This responsibility requires us to review this report - in its entirety - to determine whether the Department's diversity policies are serving the best interests of the Department and the American people. Would you support the immediate release of this report to the Committee and the timely release of future reports on DOJ's minority workforce?

Answer: As I understand the Department's process, if the Committee were to make a request for this document in the course of conducting oversight of the Department's diversity policies, I anticipate that the document then would be made available for review. I would expect that the Department would also respond appropriately to any future requests by the Committee regarding future reports.

(E) As Deputy Attorney General, will you follow both the letter and the spirit of FOIA and commit to members of this Committee that you will not manipulate the protections offered by FOIA in order to evade public accountability?

Answer: If I am confirmed as Deputy Attorney General you will have my firm commitment to continue the faithful implementation of the Freedom of Information Act, as amended by the Electronic Freedom of Information Act Amendments of 1996.

(F) In response to criticism over the failure to release the complete report, a senior counsel to the Acting Deputy Attorney General stated, "This was a study that we commissioned of our own volition to get a look at what our work force looked like . . .We didn't have to let people know we were doing this." Do you agree that the Department did not have to let this Committee or the public know that it was doing this study? If so, please explain your reasons. Should you be confirmed, is this

the position that you would want your senior counsel and other staff to adopt regarding the Department's actions on important issues like diversity?

Answer: I am aware that the Department has many assessments and studies conducted on a variety of topics related to the Department and that many are not announced publicly. If I am confirmed, you have my commitment to ensure that the Committee is kept informed of the important work of the Department with respect to pursuing workplace diversity and to diversity issues generally.

Responses to Questions submitted by Senator Schumer
for James B. Comey, Jr.
November 3, 2003

1. **As Deputy Attorney General, will you approach the question of whether you or someone in the Department of Justice should recuse himself or herself from a matter using the same standards you applied as U.S. Attorney?**

Answer: Yes. As a general rule, the same standards of ethical conduct, and in particular the standard regarding recusal, that applied to me as U.S. Attorney would apply to me if I were to become Deputy Attorney General. Therefore, I would approach that decision in a manner consistent with the applicable regulations and my past practice.

2. **Will you apply the same recusal standard to the Attorney General as you will apply to yourself and to all lower-level employees?**

Answer: As I understand it, as a general rule, the same standards of ethical conduct that apply to the Attorney General apply to other officers and employees in the Department of Justice. I would apply these standards in a consistent manner.

3. **Does the special counsel regulation requires the appointment of a special counsel where there is a conflict of interest for DOJ and where it is in the public interest to appoint a special counsel?**

Answer: The special counsel regulation provides for appointment of a special counsel when the "Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, . . . determines that criminal investigation of a person or matter is warranted" *and* that "investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances" *and* that "under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."

4. **Does the special counsel regulation require the appointment of a special counsel, even in the absence of an actual conflict of interest, when there are other extraordinary circumstances present?**

Answer: As the language quoted in my answer to question 3 indicates, a determination by the Attorney General or Acting Attorney General that investigation or prosecution of a person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present "other extraordinary circumstances" is an alternative means of satisfying the

second required determination.

5. **In your confirmation hearing, you testified about two instances where you recused your office from investigating and prosecuting cases. If the recusal decision in those instances had been governed by the standards articulated in the special counsel regulation, would you have made the same decisions to recuse your office?**

Answer: Yes, under the totality of the circumstances.

6. **If you find that any investigation or prosecution in the Department of Justice is being compromised and you cannot use your authority to bring it into line, will you commit to ensuring that Congress has enough information to conduct appropriate oversight on the matter?**

Answer: I have great respect for the individuals who serve the Department of Justice. They are dedicated public servants who share my love of the law and love of the institution. It is difficult for me to imagine the situation that you describe ever occurring. However, consistent with ensuring that the integrity of ongoing criminal investigations and prosecutions is not compromised, I am committed to ensuring that Congress receives the information that it needs to conduct appropriate oversight.

7. **Under what circumstances may executive privilege legitimately be claimed by the White House in declining to disclose documents to the Department of Justice?**

Answer: I regret that I am not sufficiently knowledgeable about matters of executive privilege to answer your question.

8. **Please respond to the following hypothetical question. You are investigating the potential criminal activity of employees at Corporation X. You determine that documents within the possession of employees at Corporation X, potentially including employees responsible for the criminal activity, are likely to be useful in your investigation. You contact the general counsel of Corporation X and inform her that you will be seeking production of relevant documents (whether by subpoena or otherwise). You ask her to notify all employees not to destroy any document that might be relevant to your investigation. The general counsel asks you if, instead of sending out that notice immediately, she may wait until the next day to disseminate such notice. Absent a compelling reason for such a delay, would you accede to her request? What would some compelling reasons be for such a delay to be granted?**

Answer: As I stated during my hearing, this is a very difficult question to answer in the abstract. Every decision depends upon a host of factors, including, among other things, our relationship with the general counsel or representing firm, our sense of the entity, obligations that may

already exist not to destroy any documents, and the circumstances of the timing. To the extent that your question indicates a concern about ensuring that individuals not destroy documents, Congress has provided us with very useful tools, in the Sarbanes-Oxley Act and elsewhere, to deal with individuals who obstruct justice. Under federal law, for example, if an individual knowingly destroys a document before the Government serves a subpoena, with the intent to impede, obstruct or influence the investigation, then they have committed a crime. That tool has been particularly useful to prosecutors in various investigations.

9. **In the same hypothetical detailed in Question 8, after notifying Company X that it is under investigation, you learn that Company X has undertaken an internal inquiry running parallel to your investigation. As a general matter, do you prefer that such an internal investigation take place or not take place? As part of your investigation, do you want to interview the employees who conduct the internal inquiry?**

Answer: In my experience, parallel investigations – both internal and otherwise – are fairly common. As I indicated during my testimony, there are times when parallel internal investigations useful to prosecutors and there are times when they are not. Such investigations, however do not affect my approach to the underlying criminal investigation. I believe that it is critically important that prosecutors and agents run out the facts themselves. Given that each case presents a unique set of circumstances, it is difficult for me to answer in the abstract whether I would want to interview the individuals who conduct the internal inquiry.

10. **In the same hypothetical detailed in Question 8, you learn that Company X contracts with employees at Company Y for services that directly relate to the possible criminal activity. As part of your investigation, do you want to interview the Company Y employees who work on Company X's account?**

Answer: Again, it is difficult for me to comment in the abstract on the decisions that I might make during the course of an investigation. Any particular decision as to who I might want to interview could involve a whole host of factors. I can assure you, however, that it has been my practice to investigate every case aggressively and fairly and to follow all relevant facts and leads. If confirmed as Deputy Attorney General, to the extent that I might have oversight over various investigations, I will ensure that practice is continued.

11. **At your hearing, we discussed the importance of the public being made aware of the structure of the leak investigation. Will you commit to informing Congress of who is in the decision-making chain and what their roles are, who is being briefed and generally what they are being briefed regarding, who is communicating (whether directly or indirectly) with those in the decision-making chain, and who is communicating with White House officials regarding the investigation?**

Answer: It is very important to me that this investigation, like any other, be handled aggressively, thoroughly, and professionally. I am certain that my sentiments are shared by the

career prosecutors in the Department, including those in the Counterespionage Section who are conducting the investigation, and by John Dion, the highly respected and experienced career prosecutor who serves as Chief of that Section.

My experience tells me that in order to maintain the integrity of the investigation, I cannot commit to providing all of the specifics you may desire. I can commit to you, however, that if confirmed, I will be in the chain of command. I will also commit to assessing what information may be appropriately provided to the Committee. As I understand it, under the Department's well-established organizational structure, Mr. Dion reports to Deputy Assistant Attorney General Bruce Swartz, himself a career Department attorney, who reports to Assistant Attorney General Christopher Wray. Mr. Wray then reports to the Deputy Attorney General and to the Attorney General.

The active, ongoing status of this investigation prevents me from discussing further details publicly.

SUBMISSIONS FOR THE RECORD

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
October 29, 2003

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STATEMENT OF SENATOR EDWARD M. KENNEDY AT THE HEARING ON THE NOMINATION OF JAMES B. COMEY AS DEPUTY ATTORNEY GENERAL

I welcome Mr. Comey to the Committee. I have had the opportunity to meet him and have heard much praise of him by those who know him well, so I am encouraged that we will have a Deputy Attorney General of high caliber and integrity if we confirm him.

The Deputy Attorney General is one of the most important officials in the federal government. Especially when the Attorney General has close ties to the President, the Deputy may often be in day-day-charge of the Department.

When my brother was Attorney General, his Deputy Attorney General was an outstanding Denver lawyer, Byron White, who performed so well as Deputy that President Kennedy appointed him to the U.S. Supreme Court in 1962. His successor was Nicholas Katzenbach, a war hero and law professor, who also did an outstanding job and was promoted to Attorney General when my brother came to the Senate in 1965.

Mr. Comey has many superb models to guide him as he meets this new challenge. Perhaps the most relevant one today is that of William Ruckelshaus, Deputy to Elliot Richardson, who was Attorney General during the Watergate crisis.

As part of his own confirmation proceedings, Mr. Richardson made a clear commitment to the Committee, the Congress, and the nation that he would not fire the Watergate Special Prosecutor, Archibald Cox, except for "extraordinary improprieties." When Cox investigated the White House too well, President Nixon ordered him fired. Richardson refused, and resigned. Ruckelshaus, as Acting Attorney General, also refused, and resigned.

Those acts of courage and integrity by both the Attorney General and the Deputy Attorney, which took place exactly 30 years ago this month, stand out in the annals of the Justice Department as a moment which all of us hope will never have to be repeated.

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We are faced today, however, with a serious problem of possible White House abuse of power involving the disclosure of the name of a CIA covert employee. The President himself has asked for a vigorous examination of the alleged security leak and intimidation campaign at the White House. The Justice Department has begun an investigation, but it is far from clear that the integrity of that investigation is being respected, especially in the light of the close ties between the Attorney General, the President, and the White House staff.

Many of us on both sides of the aisle are hopeful that the appointment of Mr. Comey will facilitate Attorney General Ashcroft's decision to recuse himself from the investigation, so that Mr. Comey would be serving as the Acting Attorney General for the purposes of this investigation.

Obviously, we don't expect Mr. Carey to become part of a new Archibald Cox situation. But his impressive qualifications and the timing of his nomination are auspicious.

I am hopeful that your testimony today will contain an agreement in principle as to the steps you will take on this matter once you are confirmed, along the lines we discussed on Monday, and that the committee can work out the details quickly with you before you are confirmed. Based on our meeting this week, I think your own integrity, and dedication to the integrity of the Department, will lead you to co-operate with the members of this Committee, so that when you are confirmed we and the public can be confident that we will know what really happened, who was responsible, and that Justice has been done.

I also look forward to hearing your views on a number of other key issues involving the Department, including:

- the Department's civil right activities, which are so central to its mission in so many areas.
- the Department's challenges to the sentencing responsibilities of judges, including the so-called "blacklisting" of judges.
- the need for hate crimes legislation and plastic gun legislation,
- the Department's current role in immigration activities, and
- the Department's refusal to release a variety of documents that should be public.

I commend Mr. Comey on his nomination, and I look forward to working with him.

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U.S. SENATOR PATRICK LEAHY

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Statement of Senator Patrick Leahy
Executive Nomination of James B. Comey
to be Deputy Attorney General
October 29, 2003

I am pleased that the Senate Judiciary Committee is considering the nomination of James Comey to be Deputy Attorney General ("DAG") of the Justice Department. The DAG is second in command at the Department of Justice and plays a key role as a top advisor to the Attorney General. I had high regard for the last person who held this position – Larry Thompson – and for those who preceded him – Eric Holder and Jamie Gorelick. Mr. Comey also has a sterling reputation as a vigorous, principled and fair prosecutor, and I look forward to learning more about him.

The Deputy Attorney General has traditionally assumed responsibility for the day-to-day operations of the Department. He or she also oversees the Criminal Division and the FBI, and acts as a liaison between Main Justice and the 94 U.S. Attorneys Offices.

Two years after terrorists brought down the World Trade Center, there are particular challenges facing the incoming DAG. The Justice Department has a critical role in combating the terrorists that threaten our safety. The Department is also in the midst of investigating the unconscionable leak of a CIA operative's identity. If confirmed, Mr. Comey's experience in prosecuting terrorists and other criminals will likely enhance the Department's ability to fulfill its mission on these important issues.

The new DAG will also play a key role in resolving the many policy controversies that have erupted under the leadership of Attorney General Ashcroft. There is a pervasive uneasiness throughout the Nation about whether the Department, in its pursuit of terrorists, has run roughshod over civil liberties.

For example, since 9/11, the Department has taken an expansive view of the material witness statute in order to detain suspects with no provable connection to terrorist activity. It has detained immigrants without charges and without counsel for weeks or months, despite a provision in the PATRIOT Act that was intended to limit such detentions to seven days. It also seeks additional surveillance powers, like administrative subpoenas, that are not subject to the critical check of judicial review.

Even as citizens express their concerns about such matters, the Attorney General has brushed them off as "hysterical" and as "fear mongers" who are merely helping the terrorists. At the same time, the Justice Department's persistence in classifying as many

cases as possible -- however minor -- as "terrorism" cases may be providing Americans with a false sense of security.

There have also been some troubling institutional changes at the Justice Department. The Attorney General's policies on plea bargaining, charging, sentencing departures and death penalty matters have centralized decision-making on these issues within Main Justice, and weakened the discretion of line prosecutors over their cases. Equally disturbing are reports that Attorney General Ashcroft seeks advice primarily from a select inner circle of political appointees, and does not regularly engage department and unit heads and other career prosecutors.

I am also deeply disturbed by the Department's dismissive attitude toward oversight and accountability. The Attorney General has failed to appear regularly before this Committee, and has refused or significantly delayed answers to oversight questions.

These are all serious concerns, but I have confidence in Mr. Comey's ability to tackle these challenges. I am pleased that we are considering such a seasoned prosecutor, and look forward to his testimony.

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N New York's Senator
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FOR IMMEDIATE RELEASE
October 29, 2003

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STATEMENT OF SENATOR SCHUMER ON NOMINATION OF JAMES COMEY

I want to thank James Comey for the opportunity to introduce him. It's a sign of the kind of person Mr. Comey is that after we met yesterday, he still wanted me to introduce him. Because while I told him I'd praise his experience, reputation, and character, I was going to insist on answers to some tough questions about the CIA leak investigation before I would decide how to vote. Nonetheless, Mr. Comey wanted me to introduce him and I'm proud to do so.

Before I get to his professional qualifications, I should note that Jim is a Yonkers native and, if he's confirmed, my state will lose seven constituents: Jim, his wife Patrice, and their five children. I've gotten to know Jim personally and I'm convinced that he's a man of honor and integrity. He puts family and country before all other interests and every day he works hard to ensure he serves both to the best of his abilities.

Everyone you talk to who knows him says great things about him and in a world where it's easy to make enemies, Jim Comey has managed to do nothing but win admirers. When it comes to the professional, it would be hard to find a more impressive resume and reputation.

Jim Comey is a prosecutor's prosecutor. When Mary Jo White left her post as the US Attorney in the Southern District of New York, she left some pretty big shoes to fill. The White House proposed Jim Comey and I don't know that they could have come up with a better man for the job. With his terrorism prosecution experience – including handling the Khobar Towers case – his management experience running the US Attorney's office in Richmond – and his reputation as a guy who doesn't pull punches, it was an easy choice to support him.

Since he became the Southern District's top prosecutor, Jim has only burnished his reputation. He has been an excellent US Attorney and has solidified his standing as one of the best.

So there's no question that he's qualified, there's no question he's a fine man, and, under normal circumstances, there would be no question of my unqualified support for him. But these are not normal circumstances.

Over the past several weeks, the Department of Justice has been handling – or should I say mishandling – the investigation into who leaked the identity of a covert CIA agent.

I take the Justice Department's criminal investigation into the leak of a covert CIA operative's identity very seriously because it is an act so vile and so heinous that it shocks the conscience. It demands a full, fair, and fearless investigation that is above politics. But so far, the way this probe has been conducted falls quite short of that bar.

There are serious concerns that the White House is being treated with kid gloves -- from unexplained delays to disturbing apparent conflicts of interest, we have many reasons to be worried that this investigation is being bungled so badly that the culprits will never be caught.

This leak is, in my opinion, a dastardly crime and it goes to the heart of our ability to deal with terrorism. We have to make sure we find the leakers, punish them as severely as possible, and send a clear message that playing politics with national security will not be tolerated.

Yesterday, Mr. Comey came by my office and we spent about 45 minutes discussing these issues. I know he agrees that this is an incredibly serious matter and it should be investigated in accord with the highest principles of prosecution.

If he is confirmed, Mr. Comey will oversee the Criminal Division and, as a result, oversee this investigation. The question we all want to know is, if he is confirmed will he straighten a ship that appears to be sailing way off course? I gave Mr. Comey a list of the questions I intend to ask him today. I did not want to catch him by surprise or say that he needed more time to think about how to answer. This investigation is just too important.

So today I will ask Mr. Comey what standards he will use in deciding whether to recommend that Attorney General Ashcroft recuse himself. I will ask Mr. Comey what principles he will use in deciding whether to recommend the appointment of a special counsel. To me, this investigation has many apparent conflicts as this chart will show. Mr. Comey has an obligation to explain how he will address these conflicts.

I will also ask Mr. Comey what he will do if he believes the investigation is being compromised and if he cannot use his authority to bring the investigation into line.

These are important questions and we have a duty to the American people to get satisfactory answers before we vote on this nomination. There's no question that Jim Comey is a good man and that he has the right credentials for the job.

But being involved in this investigation is an incredibly delicate and difficult undertaking. Jim is known for two qualities – loyalty and integrity – that may well come into conflict with one another as this probe progresses.

This Committee and the public need to know that Mr. Comey, in his new position, will ensure that the Justice Department will conduct this investigation in the most thorough, fearless, and comprehensive way possible. No matter where it leads.

I hope that Mr. Comey will give answers today that satisfy the questions the Committee and the public have about an investigation that thus far has been criticized. I look forward to hearing his answers to our questions.

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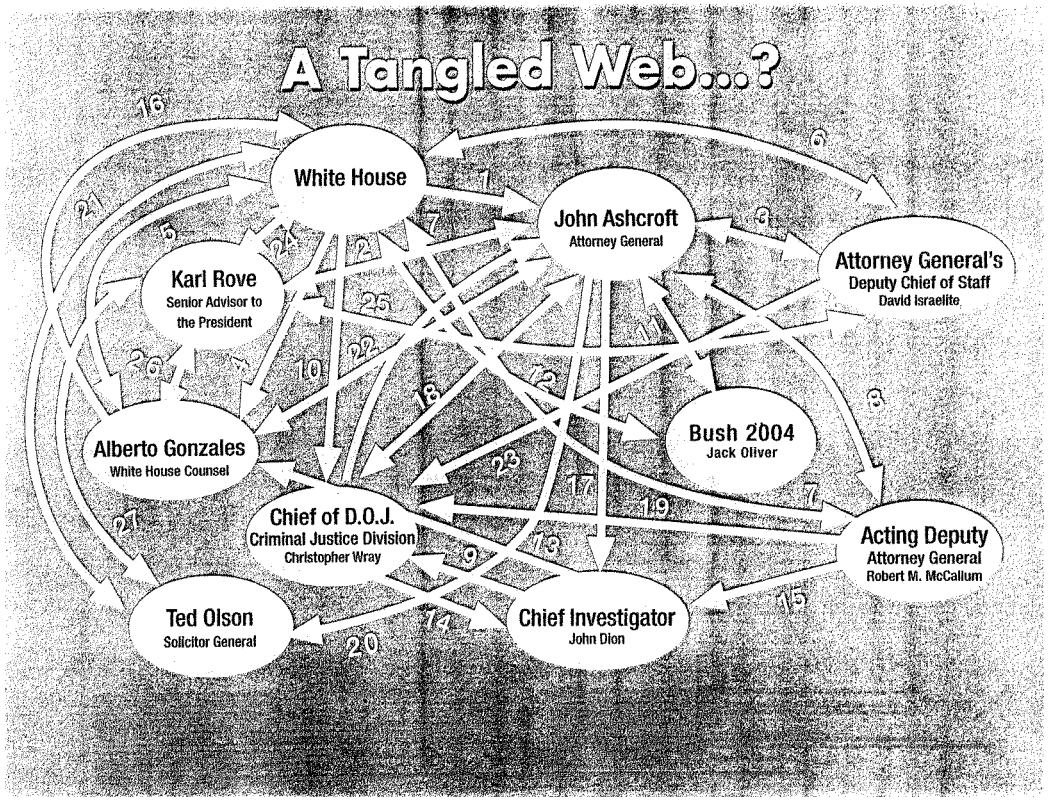
A Tangled Web...?
White House
John Ashcroft
Attorney General
Attorney General's
Deputy Chief of Staff
David Israelite
Karl Rove
Senior Advisor to
the President
Alberto Gonzales
White House Counsel
Bush 2004
Jack Oliver
Chief of D.O.J.
Criminal Justice Division
Christopher Wray
Acting Deputy
Attorney General
Robert M. McCallum
Ted Olson
Solicitor General
Chief Investigator
John Dion

1. President Bush appointed Attorney General Ashcroft and the Attorney General serves at the pleasure of the President.
2. Karl Rove worked for John Ashcroft on multiple Ashcroft campaigns for Governor and Senator.
3. David Israelite is the deputy chief of staff for Attorney General Ashcroft.
4. Alberto Gonzales was appointed by the White House as Chief Counsel
5. Then Governor Bush appointed Gonzales as Texas Secretary of State
6. Deputy Chief of Staff Israelite was the Political Director of the Republican National Committee during 1999-2000 and worked closely with the Bush campaign.
7. President Bush and Acting Deputy Attorney General McCallum were at Yale together and both members of the ultra-secretive brotherhood of the Skull and Bones society.
8. Attorney General Ashcroft is the ultimate superior of John Dion at the Department of Justice.
9. John Dion reports on the progress of the investigation to criminal division chief Christopher Wray
10. Christopher Wray reports to Attorney General Ashcroft on the progress of the investigation including names of subjects and other details.
11. Jack Oliver was deputy chief of staff for then Sen. Ashcroft and a trusted advisor.
12. Jack Oliver is the Deputy Finance Chair of Bush 2004
13. John Dion communicates with White House Chief Counsel Alberto Gonzales concerning requests for information and the preservation of documents
14. Christopher Wray is division chief of John Dion and his division boss.
15. Acting Deputy Attorney General Robert McCallum is responsible for the criminal division which Mr. Dion is part of, and in his direct line of superiors.
16. Gonzales was appointed by Bush to the Texas Supreme Court.
17. Attorney General John Ashcroft is the ultimate boss of John Dion in the Department of Justice and at the top of his direct line of superiors.
18. Attorney General John Ashcroft is the ultimate boss of Criminal Division head Christopher Wray and at the top of his direct line of superiors.
19. Acting Deputy Attorney General Robert McCallum is in the direct line of superiors of Christopher Wray.
20. Attorney General Ashcroft is ultimate boss of Solicitor General Olson
21. Theodore Olson was a prominent conservative lawyer who argued, among other cases, Bush v. Gore 2000.
22. Attorney General Ashcroft is a member of the National Security Council which White House Chief Counsel Gonzales is invited to attend every meeting of.
23. Deputy Chief of Staff Israelite works with Attorney General Ashcroft to review and organize the justice department, including the criminal division headed by Christopher Wray.
24. Karl Rove is one of Bush's oldest and most trusted advisor's
25. Worked together as key figures working in 1999-2000 on the Republican Presidential Campaign.
26. Both worked in Texas for the Governor George W. Bush
27. Interacted while Rove was campaign manager for Bush and Olson was Lead counsel in Bush v. Gore

STATEMENT TO THE JUDICIARY COMMITTEE
ON THE NOMINATION OF JAMES COMEY
TO SERVE AS DEPUTY ATTORNEY GENERAL OF THE UNITED STATES
OCTOBER 29, 2003

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

While Jim has been temporarily residing in New York, we in Virginia claim him as our own. Therefore, I am proud to present him today to the Committee as the President's nominee to be Deputy Attorney General. Jim is supported here today by his family, including his wife Patrice and their five children Maurene, Kate, Brien, Claire, and Abby.

Obviously, the Deputy Attorney General position is a very important one, tasked with a tremendous amount of responsibility - particularly during these challenging times.

How fortunate we are that someone as eminently qualified as Jim Comey is willing to serve in this critical position.

After graduating with honors from the College of William and Mary in 1982, Jim attended law school at the University of Chicago, earning his JD in 1985. He then clerked for Judge John Walker, Jr. of the United States District Court for the Southern District of New York.

Since completing his clerkship, Jim has practiced law for over seventeen years both in private practice and as a federal prosecutor.

In private practice, he worked for two very prestigious law firms - Gibson, Dunn & Crutcher and McGuire Woods of Richmond, Virginia.

As a federal prosecutor, he has served as Assistant United States Attorney for the Southern District of New York and as Managing Assistant United States Attorney for the Eastern District of Virginia, where he was widely recognized for his innovative and successful work.

Most recently, Jim was selected by the President to be United States Attorney for the Southern District of New York. Many would say this office is the most important U.S. Attorney Office in the nation today because of its lead role in the World Trade Center investigation as well as other terrorist proceedings. Jim has served in this role with distinction.

Mr. Chairman, Jim Comey is obviously a very accomplished American, and highly qualified to serve as Deputy Attorney General. I offer my highest recommendation in regard to this nominee, and urge my colleagues to support his nomination.

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