

**NOMINATION OF WILLIAM JOSEPH BAER, OF
MARYLAND, NOMINEE TO BE ASSISTANT AT-
TORNEY GENERAL, ANTITRUST DIVISION, U.S.
DEPARTMENT OF JUSTICE**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

—————
JULY 26, 2012
—————

Serial No. J-112-91

—————

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

76-714 PDF

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

HERB KOHL, Wisconsin	CHUCK GRASSLEY, Iowa
DIANNE FEINSTEIN, California	ORRIN G. HATCH, Utah
CHUCK SCHUMER, New York	JON KYL, Arizona
DICK DURBIN, Illinois	JEFF SESSIONS, Alabama
SHELDON WHITEHOUSE, Rhode Island	LINDSEY GRAHAM, South Carolina
AMY KLOBUCHAR, Minnesota	JOHN CORNYN, Texas
AL FRANKEN, Minnesota	MICHAEL S. LEE, Utah
CHRISTOPHER A. COONS, Delaware	TOM COBURN, Oklahoma
RICHARD BLUMENTHAL, Connecticut	

BRUCE A. COHEN, *Chief Counsel and Staff Director*

KOLAN DAVIS, *Republican Chief Counsel and Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Kohl, Hon. Herb, a U.S. Senator from the State of Wisconsin	1
Lee, Hon. Michael S., a U.S. Senator from the State of Utah	2

STATEMENT OF THE NOMINEES

Baer, William Joseph, Nominee to be Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, DC	4
Biographical information	5

QUESTIONS AND ANSWERS

Responses of William Joseph Baer to questions submitted by Senators Coons, Durbin, Grassley, Klobuchar and Lee	85
---	----

SUBMISSIONS FOR THE RECORD

Bipartisan Attorneys, February 28, 2012, joint letter	105
Former Assistant Attorney Generals, February 16, 2012, joint letter	108

**NOMINATION OF WILLIAM JOSEPH BAER, OF
MARYLAND, NOMINEE TO BE ASSISTANT AT-
TORNEY GENERAL, ANTITRUST DIVISION,
U.S. DEPARTMENT OF JUSTICE**

THURSDAY, JULY 26, 2012

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

The Committee met, pursuant to notice, at 1:07 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Herb Kohl, presiding.

Present: Senators Kohl and Lee.

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

Senator KOHL. We will commence. We welcome you here today, and we meet regarding the nomination of Bill Baer to be Assistant Attorney General to head the Antitrust Division. Mr. Baer possesses an impressive list of qualifications for this important position. A proud native of Wisconsin, he served as Director of the FTC's Bureau of Competition during the 1990s and for the last decade has been the head of the antitrust practice at the major Washington law firm of Arnold & Porter.

Mr. Baer, we congratulate you on your nomination. Your nomination comes at a crucial time for antitrust enforcement. As our economy continues to face challenges and consumers' pocketbooks are stretched, we depend on vigorous competition to spur economic growth in our economy. Aggressive enforcement of our Nation's antitrust laws will ensure that competition flourishes and consumers obtain the highest-quality products at the lowest possible prices.

The last 3 years have seen a revival of antitrust enforcement at the Justice Department. These efforts culminated in last year's courageous decision to file suit to oppose an anticompetitive AT&T/T-Mobile merger which led to the parties' abandoning the deal. But antitrust enforcement requires constant vigilance, and the issues facing the Antitrust Division today are no less serious.

For example, the Division is currently examining transactions between Verizon and four of the Nation's largest cable TV companies. As my letter to the Justice Department in May pointed out, it is crucial that the Justice Department ensures that nothing in this deal will harm the competitive battle between Verizon and the

cable companies for Internet and video service, often the only real choice for these vital telecom services for millions of consumers.

And in other key industries as diverse as the Internet and high-tech, media and book publishing, aviation and agriculture, to name just a few, the Justice Department will be called upon to stand as a bastion protecting competition.

Moreover, the Justice Department is currently implementing its plans to close four of its seven regional field offices. Many antitrust experts, including most of the senior leadership of these field offices, and also myself, have serious concerns about what this closure will mean for the detection and antitrust enforcement directed against local conspiracies. We will be closely watching your leadership and the Antitrust Division to ensure that you maintain the resources necessary to combat local antitrust conspiracies in the many areas of the Nation that will no longer have local antitrust offices.

Mr. Baer, the position of Assistant Attorney General for Antitrust carries with it a special burden and a special responsibility. Companies over whom the Antitrust Division has jurisdiction have ample resources to hire skilled and talented counsel to represent their best interests. But no one represents the interests of the American consumer other than the Antitrust Division. If you are confirmed, millions of consumers will be depending on your efforts and your judgment. You will inherit a proud legacy at the Antitrust Division, and it is our sincere hope and full expectation that you will uphold this legacy once you are confirmed.

Senator Lee, for your comments.

**STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE
STATE OF UTAH**

Senator LEE. Thank you, Mr. Chairman. Today we consider the nomination of William Baer to be the next Assistant Attorney General over the U.S. Department of Justice's Antitrust Division. This is a position of enormous significance. Since its establishment nearly 80 years ago, the Antitrust Division, together with the Federal Trade Commission, has been tasked with the enforcement of our Nation's antitrust laws.

As head of the Antitrust Division, the Assistant Attorney General oversees the Department's criminal and civil enforcement of antitrust laws, assisted by five Deputy Assistant Attorneys General and hundreds of attorneys and economists.

Over the past decade, the Division has conducted an average of 90 merger investigations and 28 non-merger investigations each year. And over the last decade, the Division has levied \$4.4 billion in fines on individuals and on corporations.

Obviously much is at stake as the Division establishes enforcement priorities, reviews mergers, investigates conduct, and litigates cases. The Antitrust Division's charge is to administer our Nation's antitrust laws faithfully so as to safeguard our free market economy.

Robust competition maximizes consumer welfare by ensuring access to a broad variety of products at low prices. Competition is also essential to innovation as businesses have access to markets

and are able to secure a reasonable return on productive investments.

There is much good for the economy and for consumers that can be accomplished through antitrust enforcement. But there is also potential for abuse. As a result, I believe the role of antitrust is important, but it is also limited.

Although much of antitrust law is by necessity forward looking, onward speculation about the potential effects that a transaction may have on various markets must not be allowed to overtake fundamental economic analysis.

Antitrust regulators must also be wary of attempts to subvert their investigation or review process to advance political objectives or private financial ends.

I believe the Division should resist efforts by politicians to encourage antitrust enforcement as a back-door means to implement desired policy outcomes. Antitrust officials must also be on guard against the inevitable attempts of competitors to use investigatory and enforcement processes primarily to harm their rivals.

In short, antitrust officials must stay focused on the true purpose of our antitrust laws, which is to safeguard competition rather than competitors so as to maximize consumer welfare.

The Government has a proper role in ensuring that businesses compete fairly and do not collude. Such enforcement can forestall the need for more burdensome regulatory structures that impose greater costs on our economy and on our society as a whole. But it is improper for antitrust enforcers to pick winners and losers in the marketplace or to interfere with private enterprise where robust market forces are in operation.

I look forward to discussing these principles with Mr. Baer as we consider his nomination. Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator Lee.

I would like now to introduce our witness, Bill Baer. Since January 2000, Mr. Baer has worked as a partner at Arnold & Porter, LLP, where he led the firm's antitrust practice group. Prior to this position, he served as the Director of the Bureau of Competition at the FTC from 1995 to 1999.

A native of Milwaukee, Wisconsin, Mr. Baer has strong ties to my own State. He attended college at Lawrence University in Appleton, Wisconsin, and currently serves as the university's vice chair of the board of trustees.

Mr. Baer's father, Joe Baer, is also present at the hearing today. He resides in Milwaukee and is a retired teacher and high school guidance counselor. He is a World War II veteran and a Purple Heart recipient.

Thank you, Mr. Baer, for appearing to testify today. I now ask you to rise and raise your right hand as I administer the oath. Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BAER. I do.

Senator KOHL. Thank you.

We now ask you, Mr. Baer, to make your statement and if you would wish to introduce some of your family members who are here.

STATEMENT OF WILLIAM JOSEPH BAER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. BAER. Thank you, Mr. Chairman. Thank you, Senator Lee.

I am pleased that my spouse, Nancy Hendry; my two boys, grown boys, Michael and Andrew are here; Nancy's dad, my father-in-law, Jim Hendry, from Chestertown, Maryland; my brother, Mike, who came in from Portland, Oregon; my sister, Kathy, from Sherwood, Wisconsin, whose son Nick happens to work for the Milwaukee Bucks organization and is proud of it. And I am especially glad that Dad, Joe Baer, could be here.

I am also honored, Mr. Chairman, Senator Lee, that a couple of dear friends, current and former antitrust officials, took the time to be here. Behind me are FTC Chairman Jon Leibowitz; the former Assistant Attorney General for Antitrust under George Herbert Walker Bush, my friend Jim Rill; and the former FTC Chair under President George W. Bush, Tim Muris. They, together with my dear friend Bob Pitofsky, former Chair of the FTC and a long-time friend of this Committee, have been mentors, colleagues, and friends for years, and I am grateful for that.

It is an honor to be here, Mr. Chairman, Senator Lee, and I thank the President for his expressing his confidence by nominating me to this very important law enforcement position. I thank the Committee for the opportunity to appear before you here today.

I have been privileged to spend a number of years working in the antitrust field, including two 5-year stints at the FTC. Mr. Chairman, you mentioned my time there between 1995 and 1999. Previously, right out of law school, I was there between 1975 and 1980.

Over that time, I have seen firsthand the importance of our antitrust laws to American consumers. I have learned a lot over the years—and it has been pretty many years—most importantly that antitrust enforcement is best when it has a sound analytical foundation and when it focuses on behavior that poses serious risk of economic harm to the American people.

If confirmed, I would hope to use that learning to work with the Antitrust Division and its very talented and dedicated staff to pursue enforcement policies that are vigorous, that are effective, and that are fair.

Once again, thank you, and I look forward to answering your questions.

[The biographical information follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

William Joseph Baer

2. **Position**: State the position for which you have been nominated.

Assistant Attorney General, Antitrust Division, Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Arnold & Porter LLP
 555 12th Street NW
 Washington, D.C. 20004

Home: Bethesda, Maryland

4. **Birthplace**: State date and place of birth.

1950; Baraboo, Wisconsin

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Stanford University Law School, 1972-75; J.D., 1975
Lawrence University, 1968-72; B.A., 1972

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Arnold & Porter, LLP
01/2000 to Present
Partner
555 Twelfth Street, NW
Washington, DC 20004
202-942-5936

Lawrence University
01/2001 to Present
Trustee
711 E. Boldt Way
Appleton, WI 54911
920-832-7000

Federal Trade Commission
04/1995 to 10/1999
Director, Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-2222

Arnold & Porter, LLP
01/1984 to 04/1995
Partner
1200 New Hampshire Avenue, NW
Washington, DC 20009
202-942-5936

Arnold & Porter, LLP
10/1980 to 01/1984
Associate
1200 New Hampshire Avenue, NW
Washington, DC 20009
202-942-5936

Federal Trade Commission
09/1975 to 10/1980
Assistant General Counsel and Director of Congressional Relations
Attorney Advisor to Chairman, Assistant to Director, Bureau of Consumer
Protection, Trial Attorney, Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-2222

Police Foundation
05/1974 to 09/1974
Consultant
1201 Connecticut Avenue, NW
Washington, DC 20036
202-833-1460

Wisconsin Department of Transportation
06/1973 to 09/1973
Law Clerk
4802 Sheboygan Avenue
Madison, WI 53707
608-266-1078

Governor Patrick Lucey
 06/1972 to 09/1972
 Summer Intern
 115 East Capitol
 Madison, WI 53702
 608-266-1212

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

I registered for selective service but did not serve.

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

Lawrence University, *cum laude* (1972)
 Lawrence University, National Honor Society (1972)
 Stanford University, Hilmer Ohlman Jr. Award for Excellence in Legal Writing (1973)
 Stanford University, Stanford Law Review, Senior Article Editor (1974-75)
 Federal Trade Commission, Award for Distinguished Service (1999)
 Arnold & Porter LLP, "The Attorney of the Year Award," April 2009, awarded by Arnold & Porter staff
 In recent years, various publications have published lists of "best" or "top-ranked" lawyers. The recognitions I have received in the last few years include:

- o The Best Lawyers in America 2012 for Antitrust Law
- o Best Lawyers "Washington, DC Antitrust Lawyer of the Year" 2010 and 2012
- o The Legal 500 US 2011 "Leading Lawyer" for Antitrust
- o Chambers USA: America's Leading Lawyers for Business 2011 for Antitrust
- o The International Who's Who of Competition Lawyers in 2011
- o Chambers Global: The World's Leading Lawyers for Business 2011 for Competition/Antitrust
- o PLC Which Lawyer? Yearbook 2011: Endorsed for Competition/Antitrust
- o Washingtonian's "Best Lawyers" 2011 for Antitrust
- o Washington, DC Super Lawyers 2011: "Top 10 Lawyers in DC"
- o The National Law Journal, "The Decade's Most Influential Lawyers" 2010
- o Chambers USA's Award for Excellence 2008 for Antitrust
- o Leading Competition Lawyer in the World, Who's Who Legal Awards, 2006 and 2007

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

American Bar Association, Antitrust Section, 1995 to Present

- o Antitrust Section Positions
 - FTC Vice Chair of Clayton Act Committee, 1995-1999
 - Member, Civil Litigation Task Force, 2000-2001
 - Member, Task Force on Civil Practice and Procedures, 2000
 - Editorial Board of Publications Committee, 2001-2002
 - Member, Criminal Practice and Procedure Committee, 2002-2003
 - Member, Merger Review Working Group, 2002-2003
 - Member, Remedies Task Force, 2003-2004
 - Member, Directions on Antitrust Task Force, 2004-2005
 - Member, Cartel Task Force, 2011-2012

District of Columbia Bar, 1980- Present

International Bar Association
271 Regent Street
London W1B 2AQ, UK
Bar Number 100405
2004-Present

Brussels, Belgium Bar Association
Bar Number 15599
2003 to Present

10. **Bar and Court Admission:**

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

There have been no lapses in my memberships.

The District of Columbia Bar Association
1250 H Street, NW
Washington, DC 20005-3908
202-737-4700
September 16, 1980
Bar Number 324723

State Bar of Wisconsin (*Inactive*)
5302 Eastpark Boulevard
Madison, WI 53718-2101
December 22, 1975
Bar Number 1016537

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

There have been no lapses in my memberships.

U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
202-354-3107
July 2, 1990
Bar Number 324723

District of Columbia Court of Appeals
500 Indiana Avenue, NW, Room 4200
Washington, DC 20001
202-879-2710
September 16, 1980
Bar Number 324723

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
202-479-3000
January 11, 1999

11. **Memberships:**

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

Lawrence University Board of Trustees, Member, 2001 to Present, Vice Chair
2011 to Present
Bethesda Country Club, Member, 2001 to Present
Stanford Law School Board of Visitors, Member, at various points between 1995
and 2005
American Judicature Society, Member, 1997
Lobbyists and Lawyers for Campaign Finance Reform, Chair, 1987 to 1992
Bethesda YMCA, Member, 1985-1988

I have made financial contributions to other organizations over the years. I have not included in the list above any organization to which I gave funds and did not otherwise participate in programmatic activities, although the organization may have labeled me a member.

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

No, to my knowledge.

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

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

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

William J. Baer, et al., "ACPERA's Civil Damages Limitation Provisions Extended for 10 Years," *Arnold & Porter Advisory*, July 2010, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer, et al., "US Agencies Release Proposed Revision to Horizontal Merger Guidelines," *Arnold & Porter Advisory*, May 2010, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer, et al., "Ninth Circuit Rules That Product Improvement is Exempt From Scrutiny Under the Federal Antitrust Laws," *Arnold & Porter Advisory*, Jan. 2010, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer, et al., "FTC Wins a Merger Preliminary Injunction: FTC v. CCC Holdings, Inc.," *Arnold & Porter Advisory*, May 2009, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer, et al., "Commissioner Jon Leibowitz Named FTC Chair," *Arnold & Porter Advisory*, Mar. 2009, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer, et al., "The Antitrust Division Provides Guidance on Application of Criminal Leniency Policy," *Arnold & Porter Advisory*, Dec. 2008, <http://www.arnoldporter.com>. Copy Supplied.

William J. Baer & Deborah Feinstein, "Changing Emphasis: How Whole Foods Advances the FTC's Efforts to Transform Merger Litigation," *GCP*, Sept. 2008, <http://www.globalcompetitionpolicy.org>. Copy Supplied.

William J. Baer, et al., "Cartel Prosecution in the US and the EU - Recent Developments," chapter in *PLC Cross-Border Competition Handbook, Vol. 1, 2007/2008*. Copy Supplied.

William J. Baer, et al., "International Leniency Coordination," chapter in *The Antitrust Review of the Americas*, 2007. Copy Supplied.

William J. Baer & Luc Gyselen, "Merger Remedies Policy In The EU and USA," chapter in *PLC Cross-Border Competition Handbook, 2006/2007*. Copy Supplied.

William J. Baer, et al., "International Leniency Regimes: New Developments and Their Strategic Implications," chapter in *The Antitrust Review of the Americas*, 2006. Copy Supplied.

William J. Baer, et al., "International Leniency Regimes: New Developments and Their Strategic Implications," chapter in *Antitrust Review of the Americas*, 2005, <http://www.globalcompetitionreview.com>, reprinted in *The Antitrust Counselor*, June 15, 2005. Copy Supplied.

William J. Baer, et al., "Taking Stock: Recent Trends in U.S. Merger Enforcement," *Antitrust*, Spring 2004. Copy Supplied.

William J. Baer & Deborah L. Feinstein, "Item 4(c): the Next Step in HSR Reform," *Antitrust*, Spring 2002. Copy Supplied.

"Guidelines for Merger Remedies, Prospects and Principles," *Berkeley Center for Law & Technology and Ecole des Mines de Paris Conference*, Jan. 17-18, 2002. Copy Supplied.

William J. Baer, et al., "Recent Developments & Future Directions in Antitrust Enforcement and Getting your Merger through the Bush FTC and DOJ," 2002 National CLE Conference, Antitrust Law, Law Education Institute, Inc., Jan. 11-16, 2002. Copy Supplied.

William J. Baer & Ronald C. Redcay, "Solving Competition Problems In Merger Control: The Requirements For An Effective Divestiture Remedy," 69 *Geo. Wash. L. Rev.* 915, Oct.-Dec. 2001. Copy Supplied.

"Past as Prologue? Recent Developments & Future Directions in Antitrust Enforcement," *Arnold & Porter*, Nov. 2001. Copy Supplied.

William J. Baer & Myles Hansen, "B2B Marketplaces and Common-Sense Antitrust Precautions," *Computer & Internet Lawyer*, Sept. 2000. Copy Supplied.

William J. Baer & Franklin R. Liss, "A Forgiving Policy; But DOJ Grants Amnesty Only to the First Firm in the Door," *Legal Times*, Apr. 3, 2000. Copy Supplied.

"International Antitrust Policy," *Annual Proceedings of the Fordham Corporate Law Institute, International Antitrust Law & Policy*, 1999. Copy Supplied.

William J. Baer & David A. Balto, "The Politics of Federal Antitrust Enforcement," 23 *Harv. J.L. & Pub. Pol'y* 113, Fall 1999. Copy Supplied.

"A Study of the Commission's Divestiture Process," *Bureau of Competition of the Federal Trade Commission*, June 21, 1999. Copy Supplied.

"Letters to the Editor: They Must Disgorge Ill-Gotten Gains," *Wall Street Journal*, May 18, 1999, at A27. Copy Supplied.

"Letters to the Editor: Why FTC Opposes The Staples Merger," *Wall Street Journal*, May 1, 1997, at A19. Copy Supplied.

"Surf's Up: Antitrust Enforcement and Consumer Interests in a Merger Wave," *The Journal of Consumer Affairs*, 1996. Copy Supplied.

"Reflections on 20 Years of Merger Enforcement Under the Hart-Scott-Rodino Act," *Antitrust Law Journal*, 1997. Copy Supplied.

"The New Face of U.S. Criminal Antitrust Enforcement and the Increasing Importance of Corporate Antitrust Compliance Programs," Arnold & Porter, 1991. Copy Supplied.

"We Can Limit the Cost of Campaigns," *The Daily Press*, Sept. 5, 1989. Copy Supplied.

"At the Turning Point: The Commission in 1978," *Journal of Public Policy & Marketing*, 1988. Copy Supplied.

"Where to From Here: Reflection on the Recent Sage of the Federal Trade Commission," *Oklahoma Law Review*, 1986. Copy Supplied.

William J. Baer & Michael N. Sohn, "Injunctions Emerge as FTC's Powerful New Weapon," *Legal Times*, Mar. 22, 1982. Copy Supplied.

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

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

"2008 Transition Report," American Bar Association Section of Antitrust Law, 2008. Copy Supplied.

"The State of Federal Antitrust Enforcement -- 2004," Cover letter and report for Task Force for the American Bar Association Section of Antitrust Law Transition, FTC-DOJ Merger Guidelines Workshop - Economists and Lawyers Roundtable, Feb. 19, 2004. Copy Supplied.

"1993 Clinton Transition Report," Federal Trade Commission, 1993. No Copy Available.

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

The list below consists of material identified based on my recollection and searches of internet databases. Despite my searches, there may be other items I have been unable to identify, find or remember.

Remarks at Federal Trade Commission Workshop on Horizontal Merger Guidelines Review Project, FTC, Jan. 26, 2010. Copy Supplied.

Letter to Senate Committee on the Judiciary, United States Senate, regarding the nomination of Christine Varney, Mar. 4, 2009. Copy Supplied.

Remarks at FTC panel on Unilateral Effects Analysis and Litigation Workshop, FTC, Feb. 12, 2008. Copy Supplied.

Remarks at Sherman Act Section 2 Joint Hearing of the Federal Trade Commission and the Department of Justice on Understanding Single-Firm Behavior and Section 2 Policy Issues, DOJ and FTC, May 1, 2007. Copy Supplied.

Remarks before the Antitrust Modernization Commission Hearings, U.S. Enforcement Policy, Federal Trade Commission, Nov. 17, 2005. Copy Supplied.

Letter from William J. Baer, et. al., to Msrs. James and Muris, FTC, Dec. 21, 2001, <http://www.ftc.gov/opa/2002/02/clearance/clearideas.htm>. Copy Supplied.

Remarks at the Hearing before the Alaska State Legislature Joint Special Committee on Mergers --British Petroleum-ARCO Merger, July 28, 1999. Copy Supplied.

Remarks before the Subcommittee on Energy and Power of the Committee on Commerce on the Exxon-Mobil Merger, House of Representatives, 106th Congress, First Session, Serial No. 106-12, Mar. 10-11, 1999. Copy Supplied.

Remarks before the Subcommittee on Finance & Hazardous Materials of the Committee on Commerce on the Financial Services Competitiveness Act of 1997, House of Representatives, 105th Congress, First Session on H.R. 10, Serial No. 105-38, July 17, 25, 30, 1997. Copy Supplied.

Remarks at Legal Times Round Table, "An Inside View of Associates in the '90s; Partners Find Serious Newcomers Asking About the Business of Law," Legal Times, Apr. 26, 1993. Copy Supplied.

Remarks before the Committee on Rules and Administration on Senate Campaign Finance Proposals of 1987, United States Senate, 100th Congress, First Session, Serial Nos. 2, 50, 179, 207, 615, 625, 725, and Amendment No. 36 (to S. 2), Mar. 5, 18, 1987 and Apr. 22 & 23, 1987. Copy Supplied.

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

“Part II: Efficiencies, Entry and Economics: What Role, If Any, Do they Have in Merger Analysis Today?” Panelist for Part 2 at ABA Section of Antitrust Law, Fall Forum, Nov. 15-16, 2005. Copy Supplied.

“The Evolution of Market Analysis,” Presentation at NERA’s 24th Annual Antitrust & Trade Regulation Seminar, July 7-11, 2005. Copy Supplied.

“Successful Litigation of International Civil Actions,” Panelist at International Competition Law, Real World Issues and Strategies for Success, June 16-17, 2005. Copy Supplied.

“The Globalization of Leniency,” Presentation at Competition Law Forum, June 10, 2005. Copy Supplied.

“Life Sciences Licensing: Current Issues in U.S. Antitrust Enforcement,” Presentation for IBC UK Transactions in the Life Sciences Sector Conference, Apr. 22, 2005. Copy Supplied.

“Transatlantic Perspective on Antitrust Compliance,” Arnold & Porter LLP teleconference event, Apr. 21, 2005. No Copy Available.

“The Future of Merger Control,” Panelist on Global Competition Review Panel, Mar. 3, 2005. No Copy Available.

“The Role of Economics in U.S. Civil Antitrust Litigation: Daubert and Beyond,” Presentation at Association of Competition Economics 2nd Annual Conference, Dec. 2-3, 2004. Copy Supplied.

Remarks at “Coordinating International Cartel Investigations, from Dawn Raid Procedures to Leniency Applications,” Competition Law Forum, June 25, 2004. No Copy Available.

“Antitrust Considerations, EU and US Perspective,” Presentation, Arnold & Porter LLP, June 21-22, 2004. Copy Supplied.

Remarks at ABA Section of Business Law’s Spring Meeting, “Joint Ventures: In the Antitrust Gunshots Again?” Apr. 3-6, 2004. No Copy Available.

Remarks at Symposium, “The Bayer Judgment: The Implications for the Developing Legal Environment Relating to Parallel Imports & Generics,” Arnold & Porter LLP, Jan. 9, 2004. No Copy Available.

Remarks at Second Annual Merger Control Conference, “Merger Enforcement,” The British Institute of International and Comparative Law, Dec. 2003. No Copy Available.

Remarks at MedAdNews Conference Pharmaceutical Leadership Forum, "Examining the Wave of Mergers and Acquisitions: What Does it Mean for Industry? What Does it Mean for You?" Nov. 16-18, 2003. No Copy Available.

Remarks at ABA International Section 2003 Fall Meeting, "Article 82 & Section 2: Observations on Similarities and Differences," Oct. 16, 2003. No Copy Available.

Remarks at The Conference Board 2003 Antitrust Conference, "Challenges to Dominant Firm Exclusionary Conduct," Mar. 18-19, 2003. No Copy Available.

"The Enterprise Act 2002: The New Law on Cartels and Mergers," Presentation, Arnold & Porter, Feb. 25, 2003. Copy Supplied.

"Current Issues on Merger Enforcement," Presentation at ABA 2002 Fall Forum, ABA Section of Antitrust Law, Nov. 7-8, 2002. Copy Supplied.

"Regulatory Antitrust Update with Q&A re Recent Developments in Antitrust Enforcement," Presentation at Grocery Manufacturers of America Legal Conference, Oct. 22-23, 2002. Copy Supplied.

"New Directions in Competition Policy: Continuity and Change in the Bush Administration Enforcement Agencies," Presentation at 2002 Antitrust Conference: Antitrust Issues in Today's Economy, The Conference Board, Mar. 7-8, 2002. Copy Supplied.

"Antitrust Developments in the New Administration," Presentation at The 40th Annual Corporate Counsel Institute, Northwestern University School of Law, Oct. 11-12, 2001 and Dec. 6-7, 2001. Copy Supplied.

"New Technologies/New Administrations," Presentation at ABA Section of Antitrust Law 2001 Fall Forum, Georgetown University Law Center, Nov. 15-16, 2001. Copy Supplied.

"Merger enforcement in the US & EU: Lessons from the General Electric and Honeywell Merger Investigations;" "Exclusive Dealing as Monopolization & Restraint of Trade: Microsoft, Toys R Us, & More;" "Joint Ventures and Strategic Alliances, Where is the Line?" "The Interface Between Intellectual Property & Antitrust Doctrine; When is Settling a Patent Dispute an Antitrust Violation?;" "Recent FTC Enforcement Actions & Implications for the Future," Presentations at The Third Annual Sedona Conference on Antitrust Law and Litigation, Nov. 8-9, 2001. No Copies Available.

"Substantive Differences in Competition Laws as They Apply to Exclusionary Conduct: Implications for Global Competition and New Competition Regimes," Presentation at Columbia University Workshop, Oct. 27, 2001. No Copy Available.

Remarks at Grocery Manufacturers of America Legal Conference, Oct. 23-24, 2001. Copy Supplied.

Remarks at ABA Annual Meeting, "Recent Merger Litigation - What have We Learned?" July 6-12, 2001. Copy Supplied.

“The Antitrust Interface,” Presentation at The 22nd Annual Computer and Internet Law Institute, The Law School University of Southern California, May 10-11, 2001. Copy Supplied.

Remarks at FTC’s Public workshop on Emerging Issues for Competition Policy in the World of E-Commerce, “Relationship of competition policy to B2B mergers and interoperability arrangements,” May 7, 2001. No Copy Available.

“Internet Committee Program re Antitrust Issues in High Tech Joint Ventures,” Presentation at ABA 49th Annual Section of Antitrust Law Spring Meeting, Mar. 28-30, 2001. No Copy Available.

“Solving Competition Problems In Merger Control: The Requirements For An Effective Divestiture Remedy,” Presentation at The George Washington Law Review Symposium, Mar. 22-23, 2001. Copy Supplied.

“Antitrust Enforcement in the Bush Administration,” Presentation, Arnold & Porter LLP, Apr. 2001. Copy Supplied.

“Antitrust Enforcement,” Presentation at Tulane Law School Continuing Education, 13th Corporate Law Institute, Mar. 2, 2001. Copy Supplied.

“Antitrust Enforcement in the Bush Administration,” Presentation at Law Education Institute, Inc. National CLE Conference, Jan. 10, 2001. Copy Supplied.

“Antitrust Update, Recent Developments in Merger and Joint Venture Enforcement,” Presentation at 2000 GMA Legal Conference, 2000. Copy Supplied.

“Antitrust Update,” Presentation at GMA Legal Conference, Oct. 24-25, 2000. Copy Supplied.

“Antitrust Enforcement in a High Tech Economy,” Presentation at Israeli CFOs Conference, Sept. 11, 2000. No Copy Available.

“B2B & B2C: The Antitrust Risks,” Presentation at The Standard’s Net Returns Conference, Sept. 6-9, 2000. Copy Supplied.

Keynote Address at 2000 Marketing and Public Policy Conference, “Antitrust and Consumer Protection in an E-Commerce World,” West Virginia University, College of Business and Economics, June 2, 2000. Copy Supplied.

Keynote Address, “Close Up,” Close Up Foundation, Washington, DC, Apr. 3, 2000. No Copy Available.

“Talking Points on Disgorgement,” 2000 Antitrust Conference of the Conference Board, Mar. 9, 2000. Copy Supplied.

“The Direction of Antitrust Enforcement: Antitrust Policy & Economic Theory Entering the Next Millennium,” Presentation at Law Seminars International, Cutting Edge Antitrust Conference, Feb. 17, 2000. Copy Supplied.

Remarks Outline at ABA, 1999. Copy Supplied.

Remarks at ABA Meeting, "Report on Recent Antitrust Developments at the Federal Trade Commission," Sept. 1999. Copy Supplied.

Remarks before the American Bar Association, Antitrust Section Spring Meeting, "Report from the Bureau of Competition (1999)," Federal Trade Commission Committee, Apr. 15, 1999. Copy Supplied.

Remarks before the Federalist Society's Symposium on Law and Public Policy, "Does Politics Corrupt Antitrust Enforcement?" Apr. 10, 1999. Copy Supplied.

Remarks at Panel II: The Economic and Regulatory Issues of Convergence, in Fordham Intellectual Property, Media and Entertainment Law Journal, 1999. Copy Supplied.

Remarks before the American Bar Association, Sections of Business Law, Litigation, and Tort and Insurance Practice's Science & Technology National Institute on Representing High Technology Companies, "Antitrust Enforcement and High Technology Markets," FTC, Nov. 12, 1998. Copy Supplied.

Remarks at Antitrust and Trade Policy Roundtable, International Antitrust Law & Policy Conference, Fordham Corporate Law Institute, Oct. 23, 1998. Copies Supplied.

Remarks to the National Association of Attorneys General, Sept. 23, 1998. Copy Supplied.

Remarks before the American Bar Association, Antitrust Section, Spring Meeting, "Report from the Bureau of Competition (1998)," Federal Trade Commission Committee, Apr. 2, 1998. Copy Supplied.

Remarks before 34th Annual Symposium on Associations and Antitrust, Bar Association of D.C., "The Impact of Federal Trade Commission Antitrust Policy on Associations," FTC, Feb. 18, 1998. Copy Supplied.

Remarks before the New York State Bar Association, "The Federal Trade Commission and Innovation Markets," FTC, Jan. 29, 1998. Copy Supplied.

Remarks before the Conference on The New Rules of the Game for Electric Power: Antitrust & Anticompetitive Behavior, "FTC Perspectives on Competition Policy and Enforcement Initiatives in Electric Power," FTC, Dec. 4, 1997. Copy Supplied.

William J. Baer & David A. Balto, "New Myths and Old Realities: Recent Developments in Antitrust Enforcement," *Columbia Business Law Review*, 1999; and Remarks before the Bar Association of the City of New York, Nov. 17, 1997. Copies Supplied.

Remarks at FTC news conference on the McDonnell Douglas-Boeing Merger, Federal Document Clearing House, Inc., July 1, 1997. Copy Supplied.

Remarks before the American Bar Association, Antitrust Section Spring Meeting, "Report of the Bureau of Competition (1997)," FTC and Clayton Act Committees, Apr. 9-10, 1997. Copy Supplied.

Remarks before a Workshop by the OECD and the Fair Trade Commission of Japan, "The Role of the Competition Agency in Regulatory Reform," Dec. 3, 1996. No Copy Available.

Address before The Conference Board, Oct. 29-31, 1996 and before the Northwestern University School of Law's 35th Annual Corporate Counsel Institute, Oct. 31, 1996. Copy Supplied.

Remarks before the ABA's 1996 Health Law Forum/Antitrust Section Program on Health Care Antitrust, "Current Issues in Health Care Antitrust Enforcement at the Federal Trade Commission," FTC, Oct. 24, 1996. Copies Supplied.

Remarks before the ABA's Section of Antitrust Law's 44th Annual Antitrust Spring Meeting, "Report from the Bureau of Competition: Looking Back and Going Forward," Federal Trade Commission Committee, Mar. 28, 1996. Copy Supplied.

Remarks before the New York State Bar Association Annual Dinner Meeting, "The Dollars and Sense of Antitrust Enforcement," FTC, Jan. 25, 1996. Copy Supplied.

Remarks before the ABA Annual Meeting, Annual Developments Program, "A Report on Recent Antitrust Developments at the Federal Trade Commission," FTC, Aug. 9, 1995. Copy Supplied.

Remarks at Joint Venture Seminar, Mar. 16, 1992. Copy Supplied. I do not recall the location of the remarks or the group who sponsored the event.

Remarks at United States Department of State, Foreign Service Institute, The Senior Seminar, "The American Political System: Executive/Legislative Relations," Jan. 27-31, 1986. No Copy Available.

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

I have done my best to identify all interviews given, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Christopher Norton, "Most Admired Attys: Arnold & Porter's Bill Baer," *Law360.com*, Aug. 23, 2010, <http://www.law360.com/>. Copy Supplied.

"Best of WSJ.com's Money Blogs -- From Deal Journal, MarketBeat and Wealth," *The Wall Street Journal*, Apr. 17, 2010, at B4; also printed at "From Deal Journal, MarketBeat and Wealth Report: The New Stigma Is Luxury Goods, Extravagant Spending Barely Beats Smoking For Promoting Happiness," *The Wall Street Journal Online*, Apr. 16, 2010, at <http://www.blogs.wsj.com/deals>. Copies Supplied.

Cecile Kohrs Lindell, "Government Merger Filings Indicate Autumn 'Thaw,'" *The Deal*, Oct. 1, 2009. Copy Supplied.

Andrew Martin, "Whole Foods Gets Judicial Approval for Purchase of Wild Oats," *The New York Times*, Aug. 17, 2007, at C3. Copy Supplied.

Kimberly Atkins, "Federal Trade Commission looks at competing interests," *Lawyers Weekly USA*, June 18, 2007. Copy Supplied.

"William Baer Once Again Named Competition Lawyer of the Year," *Who'sWhoLegal, International Bar Association*, May 15, 2007. Copy Supplied.

Stephen Taub, "Supreme Court Rules for Joint Ventures," *Economist.com*, Mar. 1, 2006. Copy Supplied.

Adam Cohen & Mary Jacoby, "EU's Kroes Puts Antitrust Stance In Line With U.S. -- Shift on Deal Reviews Gives Less Weight to Competitors, More to Consumer Benefits," *The Wall Street Journal*, Sept. 26, 2005, at A17. Copy Supplied.

David Samuels, "Merger Control in the Rear-View Mirror," *Global Competition Review*, May 1, 2005. Copy Supplied.

"Leading Lawyers Twelve of D.C. Area's Top Antitrust Attorneys," *Article, Legal Times*, Mar. 21, 2005. Copy Supplied.

"Strength in numbers?: R.J. Reynolds, Brown & Williamson pull trigger on merger; Special Report; Company Profile," *National Petroleum News*, Dec. 1, 2003, at 14; also printed at "Strength In Numbers?: R.J. Reynolds, Brown & Williamson Pull Trigger On Merger," *NPN-National Petroleum News*, Dec. 2003, at 14; "Strength In Numbers? R.J. Reynolds, Brown & Williamson Pull Trigger On Merger," *Tobacco Retailer*, Dec. 2003, at 28; "FTC Likely to Scrutinize Tobacco Deal," *Convenience Store News*, Oct. 29, 2003. Copies Supplied.

Jaret Seiberg, "Feds may frown on PBM deal," *The Deal*, Sept. 4, 2003. Copy Supplied.

Jaret Seiberg, "FTC to get new competition chief," *The Deal*, July 11, 2003. Copy Supplied.

David Bank & Mylene Mangalindan, "Leading the News: PeopleSoft Rejects Oracle's Bid -- Board Feels Takeover Offer Undervalues the Company, Cites Antitrust Concerns," *The Wall Street Journal*, June 13, 2003, at A3, also printed at David Bank & Mylene Mangalindan, "WSJ UPDATE: PeopleSoft Formally Rejects Oracle Bid," *Dow Jones Newswires*, June 12, 2003. Copies Supplied.

Jaret Seiberg, "Helpful tips from the FTC," *The Deal*, Dec. 23, 2002. Copy Supplied.

Kim Peterson, "Some Cheered Microsoft Ruling, but Some Fear Little Will Change," *Seattle Times*, Nov. 3, 2002; also printed at Kim Peterson, "Some Cheered, But Some Fear Little Will Change: Everyone Seems to Agree on One

Thing: Ruling was a Huge Victory for Microsoft,” *Seattle Times*, Nov. 2, 2002, at A10. Copies Supplied.

Jaret Seiberg, “Libbey pulls out the stops,” *Daily Deal*, May 8, 2002. Copy Supplied.

Carrie Johnson, “On Many Web Sites, Comparing Salaries Raises Legal Fears,” *The Washington Post*, Jan. 14, 2002, at E01. Copy Supplied.

Yochi J. Dreazen, “AOL Bid for AT&T Unit Finds a Warmer Climate -- Odds of Regulator Approval for Deal Improve,” *The Asian Wall Street Journal*, Dec. 6, 2001, at 8; also printed at Yochi J. Dreazen, “Technology Journal: AOL Bid for AT&T Broadband Discovers a Warmer Climate -- Odds of Regulatory Approval for Deal Improve,” *The Wall Street Journal Europe*, Dec. 6, 2001, at 11; “AT&T Broadband Deal Likely To Invite Antitrust Scrutiny,” *The Bulletin’s Frontrunner*, Dec. 5, 2001; Yochi J. Dreazen, “AOL’s Bid For AT&T Unit Finds Warmer Atmosphere: New Washington Climate Means Offer Has Better Chance of Passing Regulatory Muster,” *The Globe and Mail (Canada)*, Dec. 5, 2001, at B13; Yochi J. Dreazen, “AOL Bid for AT&T Broadband Finds Warmer Atmosphere -- New Climate in Washington Means Deal Has Better Chance of Passing Regulatory Muster,” *The Wall Street Journal*, Dec. 5, 2001, at B4. Copies Supplied.

Jaret Seiberg, “Prosecute Like It’s 1999,” *The Deal*, Nov. 28, 2001. Copy Supplied.

Brier Dudley, “Microsoft to Donate \$ 1 Billion to Schools under Deal to Settle Lawsuits,” *Seattle Times*, Nov. 21, 2001; also printed at Brier Dudley, “\$1 Billion to Schools Under Microsoft Deal, Company Donation Would Settle Class Action,” *Seattle Times*, Nov. 21, 2001, at A1. Copies Supplied.

Sallie Hofmeister & Jube Shiver, “Satellite TV Deal Facing Challenges: Mergers: EchoStar Says Its Purchase of DirecTV is Good for Consumers, But Opponents Voice Antitrust Concerns,” *Los Angeles Times*, Oct. 30, 2001, at 1. Copy Supplied.

“Reaction to Justice Department’s announcement not to pursue efforts to break up Microsoft,” *National Public Radio*, Sept. 7, 2001. Copy Supplied.

Matt Andrejczak, “Microsoft decision: Indicative or unique?” *CBS MarketWatch*, Sept. 6, 2001. Copy Supplied.

John R. Wilke & Jacob M. Schlesinger, “Computer Megamerger: Will Bigger Be Better? Antitrust Agencies Are Likely to Give Deal a Hard Look,” *The Wall Street Journal*, Sept. 5, 2001, at A14. Copy Supplied.

John R. Wilke, “Microsoft Asks Jurists to Throw Out Rest of Government’s Antitrust Case -- Legal Experts Say Appeal Is Unlikely to Be Accepted by U.S. Supreme Court,” *The Asian Wall Street Journal*, Aug. 9, 2001, at 8; also printed at John R. Wilke, “Companies: Microsoft Asks Supreme Court To Throw Out Antitrust Case -- Legal Experts Say Appeal Is Unlikely to Be Accepted By U.S. Jurists -- Company Claims District Judge ‘Flagrantly Violated’ Judicial Ethics,” *The Wall Street Journal Europe*, Aug. 9, 2001, at 5. Copies Supplied.

Campion Walsh, "Some Analysts Expect FTC to Approve Chevron's Buy of Texaco Soon," *Dow Jones Business News*, Aug. 9, 2001. Copy Supplied.

John R. Wilke, "Microsoft Takes Its Case to Supreme Court -- Company Wants the Finding That It is a Monopolist To Be Thrown Out," *The Wall Street Journal*, Aug. 8, 2001, at A3. Copy Supplied.

Dan Richman, "Microsoft Breakup Order Struck Down Finding Of Monopoly Upheld, Mixed Decision Gives All A Win," *Seattle Post-Intelligencer*, July 25, 2001, at A1. Copy Supplied.

Brier Dudley, "Appeal by Microsoft Could Buy Time until Windows XP Launch," *The Seattle Times*, July 21, 2001; also printed at Brier Dudley, "Appeal Could Buy Time Until Launch Microsoft Trial Windows XP Could Be Released Without Restrictions," *The Seattle Times*, July 21, 2001, at D1. Copies Supplied.

John R. Wilke & Ted Bridis, "Microsoft Requests That Appeals Court Rehear Part of Case," *The Wall Street Journal*, July 19, 2001, at A2. Copy Supplied.

Peter Kaplan, "Bush Carries Big Antitrust Stick; White House Seen As Harder On Big Business Than Expected," *The Houston Chronicle*, July 05, 2001, at 3. Copy Supplied.

Paul Adams, "UAL-US Air Deal Unravels; Airlines In Talks To Terminate Proposed Merger; Weeks Of Speculation; Antitrust Concerns A Huge Barrier To \$12 Billion Marriage," *The Baltimore Sun*, July 3, 2001, at 1C. Copy Supplied.

Dan Richman, "Microsoft Breakup Order Struck Down: Finding Of Monopoly Upheld; Ruling 'Lifts Cloud,' Gates Says; Mixed Decision Gives All A Win," *Seattle Post-Intelligencer*, June 29, 2001, at A1. Copy Supplied.

John R. Wilke & Ted Bridis, "Microsoft Avoids Breakup But Isn't Off the Hook - U.S. Appeals Court Finds That the Company Holds Monopoly Power -- A New Judge Will Decide How to Restore Competition to the Computer Industry," *The Wall Street Journal Europe*, June 29, 2001, at 1. Copy Supplied.

Rob Reynolds, "Federal Appeals Court Overturns Ruling Forcing Microsoft To Split Up," *CNBC News*, June 29, 2001. Copy Supplied.

Snigdha Prakash, "Justice Department To Appeal Predatory Pricing Case Against American Airlines To The Surprise of Many," *National Public Radio, Morning Edition*, June 28, 2001. Copy Supplied.

Paul Kangas & Susie Gharib, "Nightly Business Report," *Community Television Foundation of South Florida, Inc., The Nightly Business Report*, June 21, 2001. Copy Supplied.

Carrie Johnson, "Heinz Calls Off Beech-Nut Merger," *The Washington Post*, Apr. 28, 2001, at E01. Copy Supplied.

Cynthia Wilson & Philip Dine, "With TWA Deal Done, Mergers Will Get A Closer Look; Marriage Between United And Usair Faces More Scrutiny From Regulators," *St. Louis Post-Dispatch*, Apr. 11, 2001, at A1. Copy Supplied.

"American Gets Nod for TWA Takeover," *Edmonton Journal (Alberta)*, Mar. 18, 2001, at B6; also printed at Karen Gullo, "American, TWA Given OK Justice Department Clears Way to Acquire Bankrupt Carrier," *Arkansas Democrat-Gazette*, Mar. 17, 2001, at D1; Karen Gullo, "Justice Department Clears TWA Merger DC Air Deal, Consent for American to Take Over International Routes are Last Hurdles," *Arkansas Democrat-Gazette*, Mar. 17, 2001, at D6; Karen Gullo, "Justice Dept. Clears Airline Merger," *Associated Press Online*, Mar. 17, 2001; Karen Gullo, "Justice Dept. Clears Airline Merger," *Associated Press Online*, Mar. 17, 2001; "Justice Department Clears American's Purchase of TWA," *Deseret News (Salt Lake City)*, Mar. 17, 2001, at B04; Karen Gullo, "American's Plan to Buy TWA Gets Federal Nod," *The Associated Press*, Mar. 17, 2001; Karen Gullo, "Justice Dept. Clears Airline Merger," *Associated Press Online*, Mar. 16, 2001; Karen Gullo, "Justice Clears American-TWA Merger," *The Associated Press*, Mar. 16, 2001. Copies Supplied.

Matt Andrejczak, "DOJ approves American, TWA deal," *CBS MarketWatch*, Mar. 16, 2001. Copy Supplied.

Jaret Seiberg, "Group Aims to Derail Nestle-Ralston Deal," *Daily Deal*, Mar. 15, 2001. Copy Supplied.

Philip Dine & Cynthia Wilson, "TWA Sale Still Faces A Number Of Hurdles," *Scripps Howard News Service*, Mar. 14, 2001; also printed at Philip Dine & Cynthia Wilson, "TWA Sale Still Must Overcome A Number Of Hurdles; Unions, Justice Dept. And Congress All Could Hold Up American's Takeover," *St. Louis Post-Dispatch*, Mar. 14, 2001, at A1. Copies Supplied.

Tom Incantalupo, "Obstacles Remain For TWA Takeover," *Newsday*, Mar. 13, 2001, at A46. Copy Supplied.

Laura Goldberg, "Airline Talks Get Attention Of Politicians," *The Houston Chronicle*, Feb. 07, 2001, at 1; also printed at Laura Goldberg, "Airlines' Merger Talks Get Attention of Politicians," *The Houston Chronicle*, Feb. 7, 2001. Copies Supplied.

Paul Adams, "Airlines' Merger Proposals Spark Concerns For BWI; State Officials Fear Higher Ticket Prices, Drop In Competition," *The Baltimore Sun*, Jan. 12, 2001, at 1C. Copy Supplied.

Stephen Labaton, "An Antitrust Hurdle," *The New York Times*, Jan. 10, 2001, at 2. Copy Supplied.

Paul Kangas & Susie Gharib, "Nightly Business Report," *Community Television Foundation of South Florida, Inc., Nightly Business Report*, Jan. 10, 2001. Copy Supplied.

Jaret Seiberg, "Politicians Attack Airline Tie-Ups," *The Deal*, Jan. 8, 2001. Copy Supplied.

Alec Klein, "A Hard Look at Media Mergers: FTC Chief Likely To Be Key Force In AOL Decision," *The Washington Post*, Nov. 29, 2000, at E01. Copy Supplied.

Paul J. Nyden, "Pittsburgh Generic Drug Firm, Executives Give 60,000 to West Virginia Governor," *The Charleston Gazette*, Oct. 23, 2000. Copy Supplied.

"Clinton Supports Chevron's Proposed \$43bn Texaco Merger But FTC Unsure," *The Irish Times*, Oct. 17, 2000, at 19. Copy Supplied.

Nancy Rivera Brooks & James F. Peltz, "Critics Line Up Against Chevron-Texaco Merger; Energy: Consolidation In Industry Has Yet To Boost Oil Explorations, Making Many Wary Of Latest Deal," *Los Angeles Times*, Oct. 17, 2000, at 1. Copy Supplied.

Jeff Yastine & Susie Gharib, "Nightly Business Report," *Community Television Foundation of South Florida, Inc., Nightly Business Report*, Oct. 16, 2000. Copy Supplied.

"Former FTC Official William Baer Talks About The US Supreme Court's Decision Not To Hear Microsoft's Appeal In Its Antitrust Case," *National Public Radio, Morning Edition*, Sept. 27, 2000. Copy Supplied.

James V. Grimaldi, "Microsoft Case Sent To Lower Court; Justices' Move Called Blow to Breakup Bid," *The Washington Post*, Sept. 27, 2000, at A01. Copy Supplied.

Dina El Boghdady, "Government Takes Stock Of B2B Sites: Balance Sought Between Commerce, Competition," *The Washington Post*, Sept. 20, 2000, at G07. Copy Supplied.

Dina El Boghdady, "FTC Clears Car Firms' Online Parts Venture," *The Washington Post*, Sept. 12, 2000, at E03. Copy Supplied.

Jaret Seiberg, "Automakers' B2B Venture OK'd," *The Deal*, Sept. 11, 2000. Copy Supplied.

Neil Irwin, "Fate of Airlines' Merger Cloudy; United-US Airways Deal May Face Broader Federal Review," *The Washington Post*, July 29, 2000, at E02. Copy Supplied.

James V. Grimaldi, "Drug Company in Record Settlement; Mylan to Reimburse \$135 Million for Price Gouging on Anti-Anxiety Pills," *The Washington Post*, July 13, 2000, at A02. Copy Supplied.

Jenna Greene, "B2B: New Target for Antitrust," *Legal Times*, July 10, 2000. Copy Supplied.

Ken Moritsugu, "Look into Gas Costs Likely to Come Up Empty, Experts Say High Prices, Political Outcry Prompt Regulators to Investigate Industry Again," *Arkansas Democrat-Gazette (Little Rock, AR)*, July 02, 2000, at G1. Copy Supplied.

Ken Moritsugu, "Federal Oil Probes Running on Empty; Nothing Amiss Found When Gas Prices Spike," *Times-Picayune (New Orleans, LA)*, July 2, 2000, at F1; also printed at Ken Moritsugu, "High Gas Prices Spark Inquiry, Again," *San Jose Mercury News*, June 30, 2000, at 26A; Ken Moritsugu, "Federal Probe of High

Gas Prices Likely to Come Up Empty, Antitrust Experts Say," *Knight Ridder Washington Bureau*, June 29, 2000. Copies Supplied.

Ken Moritsugu, "Investigation of Gas Prices a Long Shot; Critics Say Such Inquiries Waste Government Prosecutors' Time," *Saint Paul Pioneer Press (Minnesota)*, July 1, 2000, at 1C; also printed at Ken Moritsugu, "Gas-Price Inquiry May Turn Up Dry," *Lexington Herald Leader*, June 30, 2000, at A8. Copies Supplied.

Ken Moritsugu, "Gasoline Probe May Go Nowhere Analysts Note Failures in Past Investigations," *Detroit Free Press*, June 30, 2000, at 1E. Copy Supplied.

Janet L. Fix, "Internet Alliances Under Scrutiny," *Detroit Free Press*, June 23, 2000, at 1F. Copy Supplied.

Seena Simon, "Airline Mergers Face 'Careful Scrutiny,'" *The Commercial Appeal (Memphis, TN)*, June 9, 2000, at C2. Copy Supplied.

Seena Simon, "DC Air May Not Satisfy Justice; Regulators May Still Have Antitrust Problems With Airline Merger," *Pittsburgh Post-Gazette*, May 31, 2000, at C-3. Copy Supplied.

Seena Simon, "Proposed DC Air Will Get Close Look," *Chicago Sun-Times*, May 28, 2000, at 45. Copy Supplied.

James Rowley, "Microsoft Prosecutors Won't Budge; Sources Say the Government Will Stick With Its Plan to Break Microsoft into Two Companies When It Delivers Its Final Plan," *Contra Costa Times (California)*, May 26, 2000, at B01. Copy Supplied.

James V. Grimaldi, "Government Still to Seek 2-Way Split Of Microsoft," *The Washington Post*, May 26, 2000, at E01. Copy Supplied.

Jerry Guidera, "FTC To Study B2B Sites For Possible Competition Risks," *Dow Jones News Service*, May 12, 2000. Copy Supplied.

Hampton Pearson, "Microsoft Submits Rebuttal To Justice Department's Breakup Plan," *CNBC, Business Center*, May 10, 2000. Copy Supplied.

John R. Wilke & Martin Peers, "FTC Move Is Expected to Bring Lower CD Prices," *The Wall Street Journal*, May 10, 2000, at A3. Copy Supplied.

Rachel Scheier, "Experts See Product-Line Breakup," *Daily News (New York)*, Apr. 25, 2000, at 3; also printed at "How They'd Make Baby Bills," *Daily News (New York)*, Apr. 25, 2000, at 3. Copies Supplied.

Rachel Scheier, "Insurance Firm Sues Microsoft over Payment of Costs of Antitrust Suits," *Daily News (New York)*, Apr. 22, 2000; also printed at "Microsoft In New Fight Insurer Balks at Financial Liability From Lawsuits," *Daily News (New York)*, Apr. 22, 2000, at 40. Copies Supplied.

Rachel Scheier, "Microsoft Judge Faces Tough Task," *Daily News (New York)*, Apr. 5, 2000, at 33; also printed at "Microsoft Ruling Leaves Open Questions of Punishment," *Daily News (New York)*, Apr. 5, 2000. Copies Supplied.

John R. Wilke and Rebecca Buckman, "Ruling Is Expected In Microsoft Case, As Mediation Fails -- Software Firm to Extend Lead During Prolonged Litigation," *The Asian Wall Street Journal*, Apr. 4, 2000, at 1; also printed at "Microsoft Settlement Efforts Collapse -- Software Firm Has Time To Solidify Its Position On Internet Products," *The Wall Street Journal*, Apr. 3, 2000, at A3. Copies Supplied.

Jeff Yastine & Susie Gharib, "Nightly Business Report," *Community Television Foundation of South Florida, Inc., The Nightly Business Report*, Apr. 3, 2000. Copy Supplied.

"FTC and Internet Firms, CNNFN," *Cable News Network, Digital Jam*, Mar. 22, 2000. Copy Supplied.

Jaret Seiberg, "Sizing Up the Oil Giants' Lawyers," *Daily Deal (New York)*, Mar. 8, 2000. Copy Supplied.

Hampton Pearson, "Now that America Online has Merged with Time Warner, its Position on Open Access to Broadband Cable Lines has Changed," *CNBC, Inc., Business Center*, Feb. 14, 2000. Copy Supplied.

Judith Radler Cohen, "Arbs Bemoan Recent Antitrust Uncertainty: Bill Baer, Former Lead FTC Staffer, Said Street Perception Is Inaccurate," *Mergers and Acquisitions Report*, Jan. 24, 2000. Copy Supplied.

Rob Lever, "Internet is Big Winner In AOL-Time Warner Merger," *Agence France Presse*, Jan. 11, 2000. Copy Supplied.

John R. Wilke and Kathy Chen, "You've Got Time Warner! -- Merger Partners Vow Open Access To Cable Lines," *The Wall Street Journal*, Jan. 11, 2000, at B1. Copy Supplied.

Rudi Bakhtiar, et al., "Newsroom for January 11, 2000," *Cable News Network, CNN Newsroom*, Jan. 11, 2000. Copy Supplied.

Greta Van Susteren & Roger Cossack, "Media Conglomerate Time Warner Merges with America Online," *Cable News Network, CNN Burden of Proof*, Jan. 10, 2000. Copy Supplied.

Jim Moret & Charles Bierbauer, "AOL-Time Warner Deal Faces Regulatory Hurdles," *Cable News Network, CNN the World Today*, Jan. 10, 2000. Copy Supplied.

Mary Ann Tawasha, "Octel/Oboadler Deal Settles FTC Charges," *Chemical News & Intelligence*, Sept. 7, 1999. Copy Supplied.

"US FTC Kroger and Groub Preserves Supermarket Competition Agreement With Ion In Indiana," *M2 Presswire*, Aug. 24, 1999. Copy Supplied.

"Kroger, Groub in Agreement with FTC to Divest 3 Stores," *CBS MarketWatch*, Aug. 23, 1999. Copy Supplied.

Ben Spiess, "Alaskan Lawmakers Urged to Protect State's Interest in BP Amoco Merger," *Anchorage Daily News*, July 29, 1999. Copy Supplied.

“US FTC Competition Director Baer to Leave Post This Fall,” *M2 Presswire*, July 26, 1999. Copy Supplied.

“FTC Antitrust Enforcer To Step Down,” *The Roanoke Times (Virginia)*, July 24, 1999, at A5. Copy Supplied.

“US FTC Agreement with Shaw’s Supermarkets and Star Markets Preserves Competition in Greater Boston,” *M2 Presswire*, June 29, 1999. Copy Supplied.

“US FTC Agreement with Albertson’s and American Stores Requires Selling of 144 Stores,” *M2 Presswire*, June 23, 1999. Copy Supplied.

Joseph Guinto, “Antitrust Targets Vertical Deals,” *Investor’s Business Daily*, June 17, 1999, at A1. Copy Supplied.

“US FTC Agreement With Kroger & Fred Meyer Preserves Supermarket Competition in Arizona, Wyoming and Utah,” *M2 Presswire*, May 28, 1999. Copy Supplied.

“US FTC Settlement Preserves Competition in US Market for Life-Saving Heart-Lung Machines,” *M2 Presswire*, May 17, 1999. Copy Supplied.

“California, Nevada, New Mexico and FTC Announce Settlement in Albertson’s/American Stores Merger,” *National Association of Attorneys General Antitrust Report*, May/June 1999, at 2. Copy Supplied.

David Albertson, “FTC Keeps Door Ajar to Scrutiny of PBM Merger,” *Employee Benefit News*, Apr. 15, 1999; also printed at David Albertson, “FTC Keeps Door Ajar to Scrutiny of PBM Merger,” *Employee Benefit News*, April 15, 1999, at 29. Copies Supplied.

“US FTC Companies to Pay \$450, 000 Civil Penalty for Violation of Hart-Scott-Rodino Waiting Period,” *M2 Presswire*, Apr. 13, 1999. Copy Supplied.

“US FTC Merchant Banking Firm, Partner Settle FTC Charges for Incomplete Pre-Merger Report,” *M2 Presswire*, Mar. 31, 1999. Copy Supplied.

“Metro Business: Trust Case Settled By Investment Fund,” *The New York Times*, Mar. 31, 1999, at B6. Copy Supplied.

“Banker, Firm Fined \$2.85Million For False Merger Filing,” *Dow Jones News Service*, Mar. 30, 1999. Copy Supplied.

“US FTC Merger of Zeneca and Astra, Two Significant Suppliers of Pharmaceuticals, Cleared with Conditions,” *M2 Presswire*, Mar. 26, 1999. Copy Supplied.

“Exxon, Mobil to Take Vote on Merger May 27,” *Oil & Gas Journal*, Mar. 22, 1999, at 42. Copy Supplied.

Nathaniel Harrison, “Intel and FTC Do a Deal,” *The Australian*, Mar. 16, 1999 at 51. Copy Supplied.

Darren Yates, "Merced Chips on the Boat," *Sydney Morning Herald (Australia)*, Mar. 16, 1999, at 6. Copy Supplied.

Marcia Savage & Darryl K. Taft, "First Intel Settles, is Microsoft Next?" *Computer Reseller News*, Mar. 15, 1999. Copy Supplied.

Tom Quinlan, "U.S. Antitrust Litigation Gets a Baer Hug," *San Jose Mercury News & Business*, Mar. 14, 1999. Copy Supplied.

"US FTC Review of Exxon/Mobil Merger to Focus on Competitive Effects and Risks to Consumers - FTC," *M2 Presswire*, Mar. 12, 1999. Copy Supplied.

"Exxon, Mobil Chiefs Say Merger Fuelled By Increased Competition," *AFX News*, Mar. 11, 1999. Copy Supplied.

David Johnston, "Probing Exxon Mobil, FTC Eyes California Retail, Gulf Coast Product Lines," *Platt's Oilgram News*, Mar. 11, 1999, at 1. Copy Supplied.

"Also...," *San Jose Mercury News (California)*, Mar. 11, 1999, 3C. Copy Supplied.

"FTC's Baer: Low Oil Prices Affect Exxon-Mobil Merger Review," *Dow Jones News Service*, Mar. 10, 1999. Copy Supplied.

"FTC Exxon-Mobil Review - 2: FTC Extends Investigation," *Dow Jones News Service*, Mar. 10, 1999. Copy Supplied.

Charles Piller, "Regulators, Intel Settle Antitrust Case; Computers: Surprise Pact is Seen as a Victory for the Chip Maker, Which Admits to No Monopoly But Agrees Not to Pressure PC Manufacturers," *Los Angeles Times*, Mar. 9, 1999, at 1. Copy Supplied.

Stephen Labaton, "Intel and the U.S. In Tentative Deal in Antitrust Case," *The New York Times*, Mar. 9, 1999, at 1. Copy Supplied.

"Tentative Settlement in Intel Suit; Deal Fuels Talk of Accord for Microsoft," *Seattle Post-Intelligencer*, Mar. 09, 1999, at A1; also printed at "Hardware Stocks Love Intel's Move," *CBS MarketWatch*, Mar. 8, 1999; Cara Cunningham, "FTC, Intel Reach Proposed Settlement in Antitrust Case," *InfoWorld Daily News*, Mar. 8, 1999; Cara Cunningham, "FTC, Intel Reach Proposed Settlement in Antitrust Case," *InfoWorld Daily News*, Mar. 8, 1999. Copies Supplied.

"Intel, U.S. FTC Settle - 2 (FTC Says Proposal Would Resolve Complaint)," *AFX News*, Mar. 8, 1999; also printed at "Intel, U.S. FTC Settle - 2 (FTC Says Proposal Would Resolve Complaint)," *Extel Examiner*, Mar. 8, 1999. Copies Supplied.

Marcia Savage, "Looking Inside Intel -- Folks Weary Of The Marathon Justice Department Probe Of Microsoft Had Better Steel Themselves: The FTC Is About To Open Its Inquiry Into Intel," *Computer Reseller News*, Mar. 8, 1999. Copy Supplied.

"Monier Will Sell 3 Plants To Settle FTC Charges," *The Wall Street Journal Europe*, Mar. 4, 1999, at 5. Copy Supplied.

"US FTC Monier Lifetile Will Sell Assets to Settle FTC Antitrust Charges," *M2 Presswire*, Mar. 3, 1999. Copy Supplied.

"Monier to Sell 3 Plants To Settle FTC Charges," *The Wall Street Journal*, Mar. 3, 1999, C12. Copy Supplied.

Charles Piller, "Intel's Dominance Under Siege: A Confluence of Threats - Ranging From Dropping PC Prices To a U.S. Federal Lawsuit - Could Mean the Microprocessor Giant's Days of Unchallenged Supremacy Are Numbered," *National Post (Canada)*, Feb. 26, 1999, at C15; also printed at Charles Piller, "The Cutting Edge: The Chips are Down: Intel Faces Serious Threat to Its Dominance; Government, Changing Computing Landscape Pose Challenges," *Los Angeles Times*, Feb. 22, 1999, at 1. Copies Supplied.

Tom Quinlan, "Intel's Power is Put to the Test," *San Jose Mercury News*, Feb. 24, 1999; also printed at Tom Quinlan, Article on FTC's lawsuit against Intel, *San Jose Mercury News*, Feb. 21, 1999; Tom Quinlan, "Legal Challenges to Intel's Power Put FTC, Federal Judge in Pivotal Position," *San Jose Mercury News*, Feb. 21, 1999, at 1E. Copies Supplied.

Jennifer Berry Hawes, "Generic Drug Price Hikes Challenged in S.C.," *The Post and Courier (Charleston, SC)*, Feb. 11, 1999, at 01. Copy Supplied.

Keith Perine & Thomas M. Burton, "U.S. Trade Agency Accuses Mylan of Trade Restraint, Seeks Penalty," *The Asian Wall Street Journal*, Dec. 23, 1998, at 9. Copy Supplied.

"FTC Files Lawsuit Against Drug Maker," *The Express-Times (Easton, PA)*, Dec. 22, 1998, at D5. Copy Supplied.

"National Digest," *Fort Worth Star-Telegram (Texas)*, Dec. 22, 1998, at 5. Copy Supplied.

Sharon Bernstein, "Antitrust Regulators Crack Down on Health Industry; Consumers: In Latest Anti-Monopoly Move, FTC Will Seek \$120 Million in Fines Against Drug Company Mylan," *Los Angeles Times*, Dec. 22, 1998, at A1. Copy Supplied.

"US FTC Mylan, Generic Drug Maker, Charged with Restraint of Trade, Conspiracy & Monopolization," *M2 Presswire*, Dec. 22, 1998; "US FTC: Mylan, Generic Drug Maker, Charged With Restraint Of Trade, Conspiracy & Monopolization," *M2 Presswire*, Dec. 22, 1998. Copies Supplied.

"Generic Drugmaker Mylan Accused of Price-Fixing," *The Miami Herald*, Dec. 22, 1998, at 3C. Copy Supplied.

Robert Pear, "U.S. Will Sue Drug Maker Over Pricing," *The New York Times*, Dec. 22, 1998, at C1. Copy Supplied.

"FTC Sues Mylan, Accuses Firm of Cutting Off Competition," *The Oregonian (Portland, Oregon)*, Dec. 22, 1998, at C02. Copy Supplied.

Teresa F. Lindeman, "FTC, States' Complaints Target Pittsburgh-Based Drug Company," *Pittsburgh Post-Gazette*, Dec. 22, 1998; also printed at Teresa F. Lindeman, "Mylan to Be Hit by FTC Complaint; U.S., State Governments Charge Drug Maker with Trying to Corner Market on Certain Drugs," *Pittsburgh Post-Gazette*, Dec. 22, 1998, at E-1. Copies Supplied.

Kevin G. DeMarrais, "Federal Trade Commission Accuses Drug Makers of Price-Fixing," *The Record (New Jersey)*, Dec. 22, 1998; also printed at Kevin G. DeMarrais, "FTC Accuses Drug Makers of Price-Fixing Cambrex Cited in \$120m Action," *The Record (New Jersey)*, Dec. 22, 1998, at B01. Copies Supplied.

Edward R. Silverman, "Mylan Labs Accused of Price Fixing," *The Star-Ledger (Newark, New Jersey)*, Dec. 22, 1998, at 59. Copy Supplied.

Keith Perine & Thomas M. Burton, "Mylan Faces Charge of Trade Restraint -- FTC Asks \$120 Million Fine Over Sharp Price Rise For Two Anxiety Drugs," *The Wall Street Journal*, Dec. 22, 1998, at A3. Copy Supplied.

Mark Wigfield, "U.S. Regulator Accuses Mylan Of Overpricing," *The Wall Street Journal Europe*, Dec. 22, 1998, at 2. Copy Supplied.

"U.S. FTC charges Generic Drug Maker Mylan with Restraint of Trade," *AFX News*, Dec. 21, 1998. Copy Supplied.

Anick Jesdanun, "Government Accuses Generic Drug Maker of Anti-Competitive Practices," *The Associated Press*, Dec. 21, 1998; also printed at Anick Jesdanun, "FTC Accuses Generic Drug Maker," *Associated Press Online*, Dec. 21, 1998, at Financial pages; Anick Jesdanun, "FTC Accuses Generic Drug Maker," *Associated Press Online*, Dec. 21, 1998, at Financial pages; Anick Jesdanun, "Government Accuses Generic Drug Maker of Anti-Competitive Practices," *The Associated Press State & Local Wire*, Dec. 21, 1998; Anick Jesdanun, "Government Accuses Drug Maker of Anti-Competitive Practices," *The Associated Press State & Local Wire*, Dec. 21, 1998; Anick Jesdanun, "Government Accuses Generic Drug Maker of Anti-Competitive Practices," *The Associated Press State & Local Wire*, Dec. 21, 1998; Anick Jesdanun, "Government Accuses Drug Maker of Anti-Competitive Practices," *The Associated Press State & Local Wire*, Dec. 21, 1998. Copies Supplied.

"FTC/Mylan: FTC Alleges Mylan Tried to Corner Market," *Dow Jones News Service*, Dec. 21, 1998; also printed at "FTC Will Seek Refunds From Mylan Labs in Probe of Drug Price Boosts," *Dow Jones Business News*, Dec. 21, 1998. Copies Supplied.

"Observers Debate Whether Megamergers are Good or Bad for Competition," *Orlando Sentinel (Florida)*, Dec. 13, 1998, at G1. Copy Supplied.

Tamara Lytle, "It Takes Much Paperwork to Make the Mergers Work," *Orlando Sentinel (Florida)*, Dec. 13, 1998, at G1. Copy Supplied.

George Leopold, "FTC, Intel Prep for Antitrust Trial," *Electronic Engineering Times*, Nov. 23, 1998. Copy Supplied.

Jack Lucentini, "Antitrust Law Enforcement Key to Global Competition," *Journal of Commerce*, Nov. 9, 1998, at 8A. Copy Supplied.

"FTC Accepts Ahold/Giant Settlement," *M2 Presswire*, Oct. 21, 1998. Copy Supplied.

Dawn Kopecki, "FTC OKs Ahold's Purchase of Giant," *The Washington Times*, Oct. 21, 1998, at B6. Copy Supplied.

Siobhan Gorman & Shawn Zeller, "Around the Agencies," *The National Journal*, Oct. 17, 1998, at 2446. Copy Supplied.

"FTC Upholds Ruling That Toys 'R' Us Stopped Club Sales," *The Wall Street Journal*, Oct. 15, 1998, at B4. Copy Supplied.

David Segal, "Toys R Us Told to Change Its Tactics: FTC Says Methods Limited Manufacturers' Sales to Discounters," *The Washington Post*, Oct. 15, 1998, at C12. Copy Supplied.

"FTC Wraps Up Record Year in Antitrust," *M2 Presswire*, Oct. 9, 1998. Copy Supplied.

"FTC Complaint Filed Over Irvine Tile Joint Venture," *Los Angeles Times*, Sept. 23, 1998, at 1; also printed at Anne Marie Squeo, "FTC Sues Over Irvine Roofing-Tile Partnership: The Deal Took Advantage of a Loophole in Antitrust Law, Officials Say," *Orange County Register (California)*, Sept. 23, 1998, at C02. Copies Supplied.

"FTC Charges Lafarge, Boral Violated Antitrust Laws," *M2 Presswire*, Sept. 23, 1998. Copy Supplied.

"FTC Negotiates Settlements in Albertson's/Buttrey Merger," *M2 Presswire*, Sept. 23, 1998. Copy Supplied.

Anne Marie Squeo, "FTC Approves Albertson's Buttrey Deal," *The Oregonian*, Sept. 23, 1998, at C01. Copy Supplied.

"Roofing-Tile Venture Charged With Violating Antitrust Provisions," *The Wall Street Journal*, Sept. 23, 1998. Copy Supplied.

"Dentists In Puerto Rico Agree To Settle FTC Charges," *M2 Presswire*, Sept. 17, 1998; also printed at "Dentists in Puerto Rico Agree to Settle FTC Charges That They Conspired to Fix Prices and Engaged in an Illegal Boycott Denying Dental Care to Residents of Puerto Rico," *National Association of Attorneys General Antitrust Report*, Sept. / Oct. 1998, at 22. Copies Supplied.

Bob Wallace, "Car Dealers Adjusting To Life With Net," *Computerworld*, Aug. 31, 1998, at 1. Copy Supplied.

Kalpana Srinivasan, "Drugmaker Agrees to Independence for Benefits Subsidiary," *The Associated Press*, Aug. 28, 1998; also printed at "Pharmaceutical Company Agrees to End Unfair Practices," *The Associated Press State & Local Wire*, Aug. 28, 1998; "Merck & Co., FTC Reach Agreement On

Unfair Practices,” *Dow Jones International News*, Aug. 28, 1998. Copies Supplied.

“U.S. FTC Merck- Medco Settles FTC Charges,” *M2 Presswire*, Aug. 28, 1998. Copy Supplied.

Edward R. Silverman, “Merck Settles Antitrust Charges,” *The Star-Ledger (New Jersey)*, Aug. 28, 1998, at 53. Copy Supplied.

Kalpana Srinivasan, “Merck & Co. To End Unfair Practices,” *Associated Press Online*, Aug. 27, 1998. Copy Supplied.

“U.S. FTC Summit And Visx Settle FTC Charges Of Violating Antitrust Laws,” *M2 Presswire*, Aug. 24, 1998; also printed at “Summit And Visx Settle FTC Charges Of Violating Antitrust Laws,” *Federal Trade Commission*, Aug. 21, 1998. Copies Supplied.

Lindsay Chappell, “FTC Enters Feud, Backs Web Sales,” *Press Journal (Vero Beach, FL)*, Aug. 15, 1998, at E5. Copy Supplied.

Anne B. Williams, “U.S. Auto Dealers Settle Internet Dispute,” *The Wall Street Journal Europe*, Aug. 7, 1998, at 4; also printed at Anne B. Williams, “Technology Journal / Health: Auto Dealerships Settle FTC Charges Of Boycott Threat Over Internet Deals,” *The Wall Street Journal*, Aug. 6, 1998, at B7. Copies Supplied.

“U.S. FTC Auto Dealers In Northwest Threatened Chrysler With Illegal Boycott - FTC Settles Charges,” *M2 Presswire*, Aug. 6, 1998. Copy Supplied.

“FTC Bars Boycott By Car Dealers; Settlement Reached In Threat To Chrysler; Over Practices Of Kellogg Dealership,” *Spokesman Review (Spokane, WA)*, Aug. 6, 1998. Copy Supplied.

“The FTC’s Eager Sherriff,” *Business Week*, July 6, 1998. Copy Supplied.

“Intel’s New \$1, 000 Chip Seen Offering Scant Relief For Giant’s Woes,” *Dow Jones Online News*, June 29, 1998. Copy Supplied.

“U.S. FTC Louisiana Group Of Doctors To Settle FTC Charges That It Fixed Prices,” *M2 Presswire*, June 22, 1998. Copy Supplied.

William J. Cook, et al., “Boys, Boys, Play Fair Now,” *U.S. News & World Report*, June 22, 1998. Copy Supplied.

Tom Foremski, “Major Anti-Trust Battle Looms After US Files Intel Complaint,” *Reed Business Information Ltd. Electronics Weekly*, June 17, 1998, at 12. Copy Supplied.

Edward F. Moltzen, “AMD Ponders Fate After FTC Charges Intel -- Chip Competitor Could Benefit From Action,” *Computer Reseller News*, June 15, 1998. Copy Supplied.

Karen Alexander, “The Other Antitrust Chief,” *Legal Times*, June 15, 1998. Copy Supplied.

"Intel Joins Microsoft in the Dock Latest Antitrust Case Will Examine if Other Big Boy of the Computer Industry Has Behaved Like a Bully Boy," *The Irish Times*, June 12, 1998, at 61. Copy Supplied.

John R. Wilke, et al. "Intel Will Fight U.S. Antitrust Charges -- Chip Maker Could Be Open to Further Action if Labeled a Monopolist," *The Asian Wall Street Journal*, June 10, 1998, at 10. Copy Supplied.

"Anti-Trust Net Falls Over Intel," *The Australian*, June 10, 1998, at 34. Copy Supplied.

"Intel President Says Firm Has Broken No Laws," *Agence France Presse -- English*, June 09, 1998. Copy Supplied.

"Intel Gets FTC Slap Over Tactics, Firm Bullying Foes, U.S. Says," *Arkansas Democrat-Gazette*, June 09, 1998, at A1. Copy Supplied.

Will Lester, "FTC Moves Against Computer Chip Maker," *The Associated Press*, June 9, 1998; also printed at "FTC Moves Against Intel," *Associated Press Online*, June 09, 1998; Will Lester, "FTC Moves Against Intel," *Associated Press Online*, June 09, 1998; Will Lester, "FTC Moves Against Intel," *Associated Press Online*, June 09, 1998. Copies Supplied.

"State Farm To Repay Auto Policyholders In 35 States, D.C.," *Bismarck Tribune (North Dakota)*, June 9, 1998, at 1C. Copies Supplied.

"FTC Opens Fire On Intel; Charged With Bullying Firms," *The Boston Herald*, June 9, 1998, at 25. Copy Supplied.

"Intel Faces Antitrust Claim," *Calgary Herald (Alberta, Canada)*, June 9, 1998, at D9. Copy Supplied.

Yochi Dreazen, "Antitrust Complaint Hits Intel," *Charlotte Observer (North Carolina)*, June 9, 1998, at A1. Copy Supplied.

"Agency Files Antitrust Suit Against Intel," *Charleston Daily Mail (West Virginia)*, June 09, 1998, at P5A. Copy Supplied.

Anne Gearan, "FTC Attacks Intel on Antitrust Ground," *Chicago Sun-Times*, June 9, 1998, at 45. Copy Supplied.

"Intel Faces Antitrust Allegations; Firm Denies Wrongdoing; Analysts Minimize Impact," *The Dallas Morning News*, June 9, 1998, at 1D. Copy Supplied.

Yochi Dreazen, "Intel Faces Antitrust Complaint FTC Says It Held Back Rivals," *Detroit Free Press*, June 9, 1998, at 1E. Copy Supplied.

"Intel Complaint Filed," *The Gazette (Montreal, Quebec)*, June 9, 1998, at D5. Copy Supplied.

James Rowley & Anne Marie Squeo, "Antitrust Agency Accuses Intel," *The Globe and Mail (Canada)*, June 9, 1998, at B13. Copy Supplied.

Mark Tran, "Intel Charged with Abuse of Its Power Over Patents; Mark Tran in New York Reports on the US Federal Trade Commission's Challenge to the World's Leading Chip-Maker," *The Guardian (London)*, June 9, 1998, at 20. Copy Supplied.

Brian Knowlton, "U.S. Moves to Sue Intel, Saying It Bullies Rivals; FTC Accuses Chipmaker of Antitrust Violations," *International Herald Tribune (Neuilly-sur-Seine, France)*, June 9, 1998, at 1. Copy Supplied.

Charles Piller & Robert L. Jackson, "Intel Violates Antitrust Laws, FTC Suit Alleges," *Los Angeles Times*, June 9, 1998, at 1. Copy Supplied.

"Intel Abuses Its Monopoly Power in Violation of Federal Law," *M2 Presswire*, June 9, 1998. Copy Supplied.

Yochi Dreazen, "FTC Antitrust Complaint Filed Against Chip Maker Intel," *The Miami Herald*, June 9, 1998, at A1. Copy Supplied.

Joel Brinkley, "F.T.C. Sues Intel, Saying It Violated Antitrust Laws," *The New York Times*, June 9, 1998, at 1. Copy Supplied.

Jim Barnett, "Intel Accused of Abusing Monopoly the Complaint: Trade Officials Say Firm Bullied Clients, Denied Access To Data," *The Oregonian*, June 9, 1998, at A01. Copy Supplied.

"Intel 'Uses Power As Club': U.S. Regulators File Suit Against Chip Maker," *The Ottawa Citizen*, June 9, 1998, at H1. Copy Supplied.

"Feds: Intel Chipped Away at Competition," *Philadelphia Daily News*, June 9, 1998, at 24. Copy Supplied.

Yochi Dreazen, "First Microsoft, Now Intel Corp.: FTC Alleges Antitrust Activities / The Government Says the Giant Chip Maker Bullied Its Competitors; The Company Says It Followed the Rules," *The Philadelphia Inquirer*, June 9, 1998, at C01. Copy Supplied.

Tom Quinlan & Rory J. O'Connor, "FTC Says Intel Abuses Monopoly Cutting Off Customers is at Basis of Its Complaint," *San Jose Mercury News*, at A1. Copy Supplied.

Dan Frost, "FTC Sues Intel Corp. Over Tactics; Chipmaker Abused Power, Suit Claims," *The San Francisco Chronicle*, June 9, 1998, at A1. Copy Supplied.

"Intel Defends Strategy Against Rivals; Regulators Say Chip Maker Has Misused Power; 2nd U.S. Action In A Month," *St. Louis Post-Dispatch*, June 9, 1998, at C6. Copy Supplied.

James Rowley, "Intel Accused of Antitrust Violations in Chip Market," *The Star-Ledger*, June 9, 1998, at 39. Copy Supplied.

James Rowley & Anne Marie Squeo, "FTC Accuses Intel of Unfair Practices," *The Stuart News/Port St. Lucie News (Stuart, FL)*, June 9, 1998, at B6. Copy Supplied.

"FTC Moves Against Computer Chip Maker," *Telegraph Herald (Dubuque, IA)*, June 9, 1998, at B5. Copy Supplied.

John R. Wilke & Dean Takahashi, "Intel Is Hit With FTC Antitrust Charges -- Chip Maker Allegedly Hurt Competition in Moves Over Technology Rights," *The Wall Street Journal*, June 9, 1998, at A3. Copy Supplied.

John R. Wilke & Dean Takahashi, "Intel Is Hit with Antitrust Charges -- U.S. Says Chip Maker Bullied Customers," *The Wall Street Journal Europe*, June 9, 1998, at 3. Copy Supplied.

Steve Young & Kitty Pilgrim, "FTC Files Against Intel, CNNfn," *Cable News Network, Trading Places*, June 9, 1998. Copy Supplied.

"U.S. FTC/Intel: Alleges Intel Used Monopoly Power 'To Impede Innovation,'" *AFX News*, June 8, 1998; also printed at "U.S. FTC/Intel: Alleges Intel Used Monopoly Power 'To Impede Innovation,'" *Extel Examiner*, June 8, 1998. Copies Supplied.

Anne Gearan, "FTC Moves Against Computer Chip Maker," *The Associated Press*, June 8, 1998; also printed at Anne Gearan, "FTC Moves Against Intel," *Associated Press Online*, June 08, 1998. Copies Supplied.

Anne Gearan, "FTC Moves Against Intel," *Associated Press Online*, June 08, 1998; also printed at Anne Gearan, "FTC Moves Against Intel," *Associated Press Online*, June 08, 1998; Anne Gearan, "Antitrust Case vs. Intel; FTC Votes To Bring Complaint," *Chicago Sun-Times*, June 8, 1998, at 1. Copies Supplied.

"Intel-FTC," *The Canadian Press*, June 8, 1998. Copy Supplied.

Scott Ritter, "FTC Cites Pattern of Unfair Retaliation In Intel Case," *Dow Jones News Service*, June 8, 1998. Copy Supplied.

Nancy Weil & Andy Santoni, "FTC Lodges Antitrust Complaint Against Intel," *InfoWorld Daily News*, June 8, 1998. Copy Supplied.

Yochi Dreazen, "FTC Sues Intel, Charging It Sought to Injure Rivals," *Knight Ridder/Tribune News Service, Knight Ridder Washington Bureau*, June 8, 1998. Copy Supplied.

"FTC Charges Intel with Abusing Monopoly Power," *Newsbytes*, June 8, 1998. Copy Supplied.

"Intel Says FTC is Trying New Laws with Today's Complaint," *Newsbytes*, June 8, 1998. Copy Supplied.

James Rowley & Anne Marie Squeo, "Intel Accused of Antitrust Violations," *The Seattle Times*, June 08, 1998, at A1. Copy Supplied.

"FTC Brings Complaint Against Intel," *Chicago Tribune*, June 8, 1998, at 1. Copy Supplied.

"Intel Ant-Trust Action," *CNBC/Dow Jones Business Video*, June 8, 1998. Copy Supplied.

Beverly Schuch, "FTC re Intel, CNNfn," *Cable News Network, In Play*, June 8, 1998. Copy Supplied.

"Federal Communications Commission News Briefing with FTC Bureau of Competition Director, William Baer, FTC Headquarters, Washington, DC, 2:40 pm EDT," *Federal News Service*, June 8, 1998. Copy Supplied.

James Rowley, "Compaq Purchase of Digital Approved," *Austin American-Statesman*, June 5, 1998, at D2. Copy Supplied.

"Punishing Success," *Orange County Register*, June 5, 1998, at B08. Copy Supplied.

"Compaq Purchase of DEC Approved," *Telegram & Gazette (Massachusetts)*, June 4, 1998, at E1; also printed at "Compaq Purchase of DEC Approved," *Telegram & Gazette Worcester, MA*, June 4, 1998, at E1. Copies Supplied.

"Intel Accused of Unfair Competition" *CBS MarketWatch*, June 2, 1998. Copy Supplied.

"FTC's Top Lawyer Reportedly Asked Agency to File Suit Against Intel," *Dow Jones Online News*, June 2, 1998. Copy Supplied.

"FTC Oregon Group of Institutional Pharmacies to Settle FTC Charges That It Fixed Prices," *M2 Presswire*, May 22, 1998. Copy Supplied.

"U.S. FTC Richard Parker Named Senior Deputy Director for Antitrust at Federal Trade Commission," *M2 Presswire*, May 13, 1998. Copy Supplied.

"U.S. FTC Kentucky Publisher and Mid-West Trade Association Settle FTC Charges," *M2 Presswire*, May 12, 1998. Copy Supplied.

Remarks on FTC lawsuit against Intel, *The NewsHour with Jim Lehrer*, June 8, 1998. Copy Supplied.

"FTC Sues Intel Alleging Abuses its Monopoly Power," *National Association of Attorneys General Antitrust Report*, May / June 1998, at 9. Copy Supplied.

"Oregon Group of Institutional Pharmacies to Settle FTC Charges that It Fixed Prices," *National Association of Attorneys General Antitrust Report*, May / June 1998, at 19. Copy Supplied.

"Louisiana Group of Doctors to Settle FTC Charges That it Fixed Prices," *National Association of Attorneys General Antitrust Report*, May / June 1998, at 21. Copy Supplied.

"The Daily Health Care Market Wrap-Up," *Federal Filings Newswires*, Apr. 20, 1998. Copy Supplied.

"FTC Seeks Block of Missouri Hospital Merger," *Reuters Health Medical News*, Apr. 20, 1998; also printed at "Tenet: FTC Moves To Block Missouri Merger," *American Health Line*, Apr. 17, 1998; "California: News and Insight on Business in the Golden State; The State / Health; FTC Seeks to Stop Tenet's Purchase of Hospital," *Los Angeles Times*, Apr. 17, 1998, at 2; "FTC Seeks to Block Merger

of Hospitals In Poplar Bluff, Mo.," *The Wall Street Journal*, Apr. 17, 1998, at B7F; "FTC Seeks To Block Merger of Two Missouri Hospitals," *Dow Jones Online News*, Apr. 16, 1998; "FTC Seeks to Block Merger of Two Missouri Hospitals," *Dow Jones News Service*, Apr. 16, 1998. Copies Supplied.

"FTC and Missouri Attorney General Seek to Block Merger of Only General Hospitals in Butler County," *M2 Presswire*, Apr. 17, 1998. Copy Supplied.

Sally Deneen, "Seeing the Light Laser Technology Ushers in a New Vision for Eye Surgery," *South Florida Business Journal*, Apr. 17, 1998, at 7B. Copy Supplied.

Jim Salter, "FTC, Attorney General Seek to Block Poplar Bluff Hospital Merger," *The Associated Press*, Apr. 16, 1998; also printed at Jim Salter, "FTC Seeks to Block Hospital Merger," *Associated Press Online*, Apr. 16, 1998. Copies Supplied.

Anne Marie Squeo, "Antitrust Evidence Doesn't Quite Compute," *The Times Union (Albany, NY)*, Apr. 13, 1998, at C8. Copy Supplied.

"FTC Bureau Director's Annual Report at ABA Antitrust Meeting," *M2 Presswire*, Apr. 6, 1998

Peter Morton, "Loewen to Pay US \$500, 000 Penalty for Takeover Violation," *The Financial Post*, Apr. 1, 1998, at 5. Copy Supplied.

Peter Morton, "Loewen to pay \$500US, 000 penalty for takeover violation." *Financial Post Daily*, Apr. 1, 1998, at 5. Copy Supplied.

"U.S. FTC Loewen Group to Pay Penalty to Settle Federal Charges of Hart-Scott-Rodino Act Violations," *M2 Presswire*, April 1, 1998. Copy Supplied.

"U.S. FTC CVS to Pay \$600, 000 Civil Penalty for Violating FTC Asset Maintenance Agreement," *M2 Presswire*, Mar. 30, 1998; also printed at "CVS Corp. to Pay \$600, 000 Fine; The Company is Alleged to Have Removed Computerized Records From Drugstores It was Ordered to Divest During Its Acquisition of Revco.," *Providence Journal-Bulletin (Rhode Island)*, Mar. 28, 1998, at 1B. Copies Supplied.

"Ticker: Drugstore Chain Fined \$600, 000," *Daily Press (Newport News, VA)*, March 28, 1998, at C8. Copy Supplied.

Aaron Zitner, "FTC: Summit, Calif. Firm Illegal Partners; Says Consumers Were Overcharged \$30M for Vision Surgery," *The Boston Globe*, Mar. 25, 1998, at F1; also printed at "Feds Target Summit; Rival Visx Also Accused of Price-Fixing," *The Boston Herald*, Mar. 25, 1998, at 26; Scott Ritter, "FTC Accuses Visx, Summit Technology of Fixing Prices for Laser Eye Surgery," *The Wall Street Journal*, Mar. 25, 1998, at B9; "FTC/Visx, Summit Tech-2: Consumers Overcharged By \$30M," *Dow Jones News Service*, Mar. 24, 1998; "FTC Charges Price Fixing By 2 Medical-Laser Firms Hurt Consumers," *Dow Jones Online News*, Mar. 24, 1998. Copies Supplied.

"FTC Charges Two Firms That Control the Market for Laser Eye Surgery with Price-Fixing Conspiracy," *M2 Presswire*, Mar. 25, 1998. Copy Supplied.

"FTC Willard Tom Named to New Antitrust Post at Federal Trade Commission," *M2 Presswire*, Mar. 25, 1998. Copy Supplied.

Scott Herhold, "Eye Laser Price Fix Is Alleged by FTC; Visx, 2nd Firm: Agency Says Actions Overcharged Consumers by \$30 Million Last Year," *San Jose Mercury News*, Mar. 25, 1998, at 1C; also printed at Scott Herhold, "FTC Accuses Two Lasers Companies of Price Fixing on Eye Surgery," *San Jose Mercury News*, Mar. 25, 1998; Scott Herhold, "FTC Accuses Two of Price Fixing on Eye Surgery," *San Jose Mercury News*, Mar. 24, 1998. Copies Supplied.

Judith VandeWater, "FTC Accuses 2 Laser Firms of Fixing Eye Surgery Prices; Visx, Summit Stock Plunges, Though Visx Denies Charges," *St. Louis Post-Dispatch*, Mar. 25, 1998, at C2. Copy Supplied.

"Feds Taking Closer Look at Mergers," *Chicago Sun-Times*, Mar. 16, 1998, at 51. Copy Supplied.

Allene Symons, "Wholesalers Assess Next Move After FTC Nixes Mergers," *Drug Store News*, Mar. 16, 1998, at 3; also printed at "U.S. FTC Hobbles Cardinal Merger Bid," *Columbus Dispatch (Ohio)*, Mar. 4, 1998, at 1G; "Mergers - FTC to Fight Acquisitions by Two Drug Wholesalers," *The Commercial Appeal (Memphis, TN)*, Mar. 4, 1998, at B4. Copies Supplied.

"Dissecting the Deal With an Eye to Competition, U.S. Taking Keener Interest in Mega-Mergers," *Pittsburgh Post-Gazette*, Mar. 15, 1998, at E-2.; also printed at Ralph Vartabedian, et al., "Small Business; Feds Taking a Harder Look at Mega-Mergers; Antitrust: The Going Gets Tougher as Regulators Worry About Market Concentration. But Experts See No Slowdown In Deals," *Los Angeles Times*, Mar. 11, 1998, at 1. Copies Supplied.

John George, "AmeriSource, FTC at Odds Over Merger," *Philadelphia Business Journal*, Mar. 13, 1998, at 1. Copy Supplied.

Pradnya Joshi, "New Life in Antitrust / U.S. Challenging Mergers After Years of Little Scrutiny. A Look at the Consolidation Wave," *Newsday (New York)*, Mar. 11, 1998, at A04. Copy Supplied.

"U.S. FTC Federal-Mogul Would Divest T&N's Bearings Assets as Part of Agreement with FTC," *M2 Presswire*, Mar. 9, 1998. Copy Supplied.

"FTC Says No to Drug Mergers," *CBS MarketWatch*, Mar. 4, 1998. Copy Supplied.

"National and International News at a Glance," *The Dallas Morning News*, Mar. 4, 1998, at 2D. Copy Supplied.

"Pharma Wholesalers: FTC Getting Tougher on Mergers," *Dow Jones News Service*, Mar. 4, 1998. Copy Supplied.

"U.S. FTC Will Seek to Block Mergers of Nation's Four Largest Drug Wholesalers Into Two Companies," *M2 Presswire*, Mar. 4, 1998. Copy Supplied.

David Morrow, "F.T.C. Votes to Halt Two Big Drug Mergers," *The New York Times*, Mar. 4, 1998, at 1. Copy Supplied.

"FTC Fighting Merger of Drug Wholesalers," *News and Observer (Raleigh, NC)*, Mar. 4, 1998, at D1. Copy Supplied.

"FTC Opposes Wholesaler Takeovers," *Philadelphia Daily News*, Mar. 4, 1998, at 18. Copy Supplied.

"The FTC Moves to Block 2 Deals / The Four Biggest Drug Wholesalers, Including One in Valley Forge, Would Form Two Firms with 80 Percent of the Market," *The Philadelphia Inquirer*, Mar. 4, 1998, at C01. Copy Supplied.

"FTC Seeks to Block Drug Mergers," *Plain Dealer (Cleveland, Ohio)*, Mar. 4, 1998, at 2C. Copy Supplied.

"FTC Bans Mergers of Top Drug Firms," *The Record (Bergen County, NJ)*, Mar. 4, 1998, at B02. Copy Supplied.

"FTC Blocks Mergers of Drug Wholesalers," *The Stuart News/Port St. Lucie News (Stuart, FL)*, Mar. 4, 1998, at C8. Copy Supplied.

"U.S. Challenges Drug Mergers," *Times-Picayune (New Orleans, LA)*, Mar. 4, 1998, at C1. Copy Supplied.

Scott Ritter, "FTC Votes to Block 2 Proposed Deals with Drug Firms," *The Wall Street Journal*, Mar. 4, 1998, at B5. Copy Supplied.

"McKesson, Cardinal Health, Bergen Brunswig, Amerisource; FTC Opposes Drug Wholesalers' Acquisition Tries," *Chicago Tribune*, Mar. 4, 1998, at 2. Copy Supplied.

"Trade Commission Votes to Block Merger of Drug Wholesalers," *The Associated Press*, Mar. 3, 1998; also printed at "FTC Votes to Block Drug Mergers," *Associated Press Online*, Mar. 03, 1998. Copy Supplied.

"FTC Votes to Block Planned Mergers of Four Big Drug Wholesalers," *Dow Jones Online News*, Mar. 3, 1998; also printed at "FTC - Drug Mergers: Price Concerns Cited," *Dow Jones News Service*, Mar. 3, 1998. Copy Supplied.

"U.S. FTC Stone Container Settles FTC Charges," *M2 Presswire*, Feb. 26, 1998; also printed at "Stone Settles Price-Fixing Charge," *Chicago Sun-Times*, Feb 25, 1998, at 4. Copies Supplied.

"U.S. FTC Settlement Would Preserve Competition in U.S. Market for Heart-Attack Treatments," *M2 Presswire*, Feb. 26, 1998. Copy Supplied.

"U.S. FTC Rite Aid to Pay \$900, 000 in Civil Penalties for Failure to Divest Three Drug Stores," *M2 Presswire*, Feb. 26, 1998. Copy Supplied.

"Rite Aid Agrees to Pay \$900, 000 Penalty; The Drugstore Chain Missed the Deadline to Sell Two Stores in Maine and One in New Hampshire," *Portland Press Herald (Maine)*, Feb. 26, 1998, at 1B; also printed at "Rite Aid Pays \$900, 000 Federal Penalty," *The Associated Press*, Feb. 25, 1998. Copies Supplied.

"Stone Container Reaches Settlement with FTC in Price-Fixing Case," *Dow Jones Online News*, Feb. 25, 1998. Copy Supplied.

"U.S. FTC Lawyers Title Corporation Agrees to Divest 12 "Title Plants" to Settle FTC Charges," *M2 Presswire*, Feb. 25, 1998. Copy Supplied.

"FTC Drops Price-Fixing Charges," *The Denver Post*, Feb. 20, 1998, at C-03. Copy Supplied.

"FTC Colorado Physician Group to Settle FTC Charges," *M2 Presswire*, Feb. 20, 1998. Copy Supplied.

"Trade Panel Allows Pacificorp Purchase of Energy Group PLC," *The Oregonian*, Feb. 19, 1998, at D01. Copy Supplied.

"U.S. FTC S.C. Johnson Agrees to Sell Assets to Settle FTC Charges," *M2 Presswire*, Jan. 26, 1998; also printed at "FTC Clears S.C. Johnson Buy of Dow Chemical's DowBrands," *Dow Jones Online News*, Jan. 23, 1998; "FTC Clears S.C. Johnson Buy of Dow Chemical's DowBrands," *Dow Jones News Service*, Jan. 23, 1998. Copies Supplied.

"FTC Settles Its Case Against Sensormatic and Checkpoint Inc.," *The Wall Street Journal*, Jan. 23, 1998, at A10C; also printed at "FTC Says Sensormatic, Checkpoint Systems Have Settled Ad Battles," *Dow Jones Online News*, Jan. 21, 1998; "FTC Says Sensormatic, Checkpoint Sys Settle Ad Charges," *Dow Jones News Service*, Jan. 21, 1998. Copies Supplied.

"U.S. FTC Electronic Article Surveillance System Manufacturers Settle FTC Charges," *M2 Presswire*, Jan. 22, 1998. Copy Supplied.

Stacy Singer, "Sensormatic Settles with FTC Over Ad," *Sun-Sentinel (Fort Lauderdale, FL)*, Jan. 22, 1998, at 1D. Copy Supplied.

"Cablevision-TCI Deal OK'd," *Daily Variety*, Jan. 19, 1998, at 18. Copy Supplied.

"U.S. FTC Cablevision Must Sell Cable Systems in Northern New Jersey," *M2 Presswire*, Jan. 19, 1998. Copy Supplied.

Anne Marie Squeo, "Cablevision Deal Clears Antitrust Hurdle," *The Star-Ledger (Newark, New Jersey)*, Jan. 17, 1998, at 25. Copy Supplied.

"Port Has Third-Best Year," *Tulsa World (Oklahoma)*, Jan. 17, 1998. Copy Supplied.

John D. McClain, "Shell, Texaco Shed Assets to Win FTC Approval of \$17B Partnership," *The Daily Record (Baltimore, MD.)*, Dec. 22, 1997, at 5. Copy Supplied.

"Joint Ventures: Texaco, Shell Agree to FTC Demands," *National Journal's Daily Energy Briefing*, Dec. 22, 1997. Copy Supplied.

"Shell, Texaco Agree to Shed Some Assets," *The Commercial Appeal (Memphis, TN)*, Dec. 20, 1997, at B3; also printed at "Shell, Texaco Get Antitrust OK with Asset Sales," *The Financial Post*, Dec. 20, 1997, at 26; Bill Mintz, "Federal Regulators Approve Shell Oil-Texaco Deal," *The Houston Chronicle*, Dec. 20, 1997; Bill Mintz, "FTC OKs Shell Oil-Texaco Deal; Western Venture Requires Asset Sales," *The Houston Chronicle*, Dec. 20, 1997, at 1; John D. McClain, "Shell, Texaco Settle FTC Complaint," *Associated Press Online*, Dec. 19, 1997; Stephen Green, "FTC Orders Sale of San Diego Gas Stations for Shell, Texaco Merger," *Copley News Service*, Dec. 19, 1997; John D. McClain, "Oil Giants Settle FTC Complaint," *Associated Press*, Dec. 19, 1997. Copies Supplied.

Bruce Ingersoll, "CUC, HFS Merger Wins FTC Support with Sale of a Unit," *The Wall Street Journal*, Dec. 18, 1997, at B6. Copy Supplied.

John D. McClain, "Food-Drink Merger Gets Tentative OK," *Associated Press Online*, Dec. 15, 1997; also printed at John D. McClain, "FTC Gives Tentative Approval for Huge Food-Liquor Merger," *Associated Press*, Dec. 15, 1997. Copies Supplied.

"Dewar's Scotch, Bombay Gin and Bombay Sapphire Gin to Find New Corporate Homes Under FTC Agreement," *National Association of Attorneys General Antitrust Report*, November / December 1997, at 16. Copy Supplied.

"Justice Still Seeks Restructuring to Solve Problems of Market Power," *Electric Utility Week*, Dec. 15, 1997, at 11. Copy Supplied.

"Attorney Wants Antitrust Help for New Players; DOJ Says Tougher Laws Needed," *Power Markets Week*, Dec. 8, 1997, at 3. Copy Supplied.

Ray Rivera, "Udall Joins Lawsuit Against Toys 'R' Us," *Santa Fe New Mexican*, Dec. 02, 1997, at D-1. Copy Supplied.

Daniel Gross, "The Visible Hand," *CFO The Magazine for Senior Financial Executives*, Dec. 1997, at 87-89. Copy Supplied.

Judy Radler Cohen, "FTC's New Antitrust Pro," *Mergers and Acquisitions Report*, Dec. 01, 1997. Copy Supplied.

Judy Radler Cohen, "The FTC Speaks: ADP Must Divest, and Soon," *Mergers and Acquisitions Report*, Nov. 10, 1997. Copy Supplied.

"FTC Puerto Rican Physicians Agree to Settle FTC Charges," *M2 Presswire*, Oct. 6, 1997. Copy Supplied.

Judy Radler Cohen, "Mediq's Universal Loss," *Mergers and Acquisitions Report*, Aug. 04, 1997. Copy Supplied.

"FTC Schnucks to Pay \$3m, Divest Two Additional Stores to Settle FTC Charges," *M2 Presswire*, July 31, 1997. Copy Supplied.

Anne Marie Squeo & James G. Neuger, "U.S., EU Meet Over Boeing Acquisition: Officials at Odds Over Merger with McDonnell Douglas," *The Ottawa Citizen*, July 14, 1997, at C2. Copy Supplied.

"Boeing Does Not Favour Sale of Douglas Aircraft to Meet EU Merger Concerns," *AFX News* July 11, 1997. Copy Supplied.

"EC Dismisses Douglas Divestiture, Sees Over-Ceiling Aid in U.S.," *Aviation Daily*, July 11, 1997, at 62; also printed at Dina Temple-Raston, "Clinton Sending Delegation to Lobby for Boeing Merger," *Seattle Post-Intelligencer*, July 10, 1997, at A1. Copy Supplied.

"U.S. FTC Repeats Boeing/McDonnell Merger No Threat to Global Competitors," *AFX News*, July 10, 1997. Copy Supplied.

"FTC Defends Boeing, McDonnell Merger OK," *Austin American-Statesman*, July 10, 1997, at D7; also printed at "FTC Defends Decision to Allow Boeing-McDonnell Merger," *Dow Jones News Service*, July 10, 1997. Copies Supplied.

"U.S. FTC Repeats Boeing/McDonnell Merger No Threat to Global Competitors," *Extel Examiner*, July 10, 1997. Copy Supplied.

"Boeing May Be Asked to Try to Sell Unit," *Fort Worth Star-Telegram (Texas)*, July 10, 1997, at 3. Copy Supplied.

Michele Kayal, "US Official Defends Boeing Deal to EU; FTC's Baer Disputes Brussels' Claims That Merger Will Hurt Competition," *Journal of Commerce*, July 10, 1997, at A1. Copy Supplied.

"EU Asks Boeing to Sell Douglas Jet Unit; Despite FTC Approval Of The Merger, Europe Is Concerned That Competition Will Be Harmed," *Orange County Register*, July 10, 1997, at C03. Copy Supplied.

"U.S. Jumping Into Eu-Boeing Dispute -- Clinton To Send Antitrust Delegation To Brussels," *The Seattle Times*, July 10, 1997, at E1. Copy Supplied.

"European Union May Ask Boeing to Sell Off Mac's Douglas Aircraft Unit," *St. Louis Post-Dispatch*, July 10, 1997, at 07C; also printed at Anne Marie Squeo, "EU May Ask Boeing to Try to Sell Douglas Unit," *The Stuart News/Port St. Lucie News*, July 10, 1997, at B11. Copies Supplied.

Gene Kramer, "FTC Defends Decision to Allow Boeing-McDonnell Douglas Merger," *Associated Press*, July 9, 1997. Copy Supplied.

Lorraine Woellert & Peter Kaplan, "EU Fears Could Hinder Boeing-McDonnell Move," *The Washington Times*, July 8, 1997, at B6. Copy Supplied.

"The Federal Trade Commission Last Week," *Aviation Week and Space Technology*, July 7, 1997, at 18. Copy Supplied.

Aaron Zitner, "Rulings Underscore Seeming Contradictions of Antitrust Law; But Officials Say There's Consistency in Deciding Which Deals to Block, Approve," *The Boston Globe*, July 4, 1997, at C1. Copy Supplied.

“Staples Merger Blocked By Court; Judge Concludes Deal with Office Depot Could Limit Competition, Office Supplies,” *The Baltimore Sun*, July 1, 1997, at 1C. Copy Supplied.

Tom Weisend, “Judge Axes Staples Deal,” *The Boston Herald*, July 1, 1997, at 20; also printed at “Judge Blocks \$4 Billion Merger of Staples Inc. and Office Depot,” *The Commercial Appeal (Memphis, TN)*, July 1, 1997, at B8; “Staples Likely to End Deal for Office Depot: Federal Judge Rules That The \$4-Billion Proposal Violates Antitrust Laws and Requires Review,” *Los Angeles Times*, July 1, 1997, at 1; Dale K. DuPont, “Ruling Trounces Office Depot Merger,” *The Miami Herald*, July 1, 1997, at 7B. Copies Supplied.

Remarks on McDonnell Douglas-Boeing Merger, *NBC - Professional*, July 1, 1997. Copy Supplied.

Julie Waresch, “Office Depot, Staples Merger May Be Dead,” *Palm Beach Post*, July 1, 1997, at 1A. Copy Supplied.

James V. Grimaldi, “Approves Boeing Merger -- McDonnell Deal’s Next Stop is Europe,” *The Seattle Times*, July 01, 1997, at A1. Copy Supplied.

David Beard, “FTC Judge Spikes Merger of Staples, Office Depot; ‘Consumers Won Today’ FTC Says,” *Sun-Sentinel (Fort Lauderdale, FL)*, July 1, 1997, at 1A. Copy Supplied.

Anne Marriott, “Judge Blocks Staples-Office Depot Deal,” *The Washington Times*, July 1, 1997, at B6. Copy Supplied.

Lauren Thierry, “Director of Competition from the Federal Trade Commission Discusses Office Depot/Staples Merger,” *Cable News Network, In the Game*, July 1, 1997. Copy Supplied.

“McDonnell Douglas-Boeing Merger,” *CNBC/Dow Jones Business Video*, July 1, 1997. Copy Supplied.

“The Nightly Business Report,” *Community Television Foundation of South Florida, Inc., The Nightly Business Report*, July 1, 1997. Copy Supplied.

“Federal Trade Commission Holds News Conference on McDonnell Douglas-Boeing Merger,” *FDCHMedia, FDCH Political Transcripts*, July 1, 1997. Copy Supplied.

“FTC Applauds Court Opinion in Staples/ODP Case,” *Federal Filings Business News*, June 30, 1997. Copy Supplied.

Anne Marie Squeo, “Assets,” *The Record*, June 19, 1997, at B01. Copy Supplied.

Edward R. Silverman, “Regulators Trash ADP’s Junkyard Deal,” *The Star-Ledger (Newark, New Jersey)*, June 19, 1997, at 39. Copy Supplied.

“ADP Agrees to Divest Assets Bought in ‘95 from Rival AutoInfo,” *The Wall Street Journal*, June 19, 1997, at B12. Copy Supplied.

Jill Dutt, "Risk Arbs Worried by Staples Case; Unexpected FTC Steps Called Threat to Profits," *The Washington Post*, June 05, 1997, at D02. Copy Supplied.

Joseph Pereira & John R. Wilke, "Staples Faces FTC in Antitrust Showdown on Merger -- Despite Outcome, Office Depot Has Suffered From the Lengthy Battle," *The Wall Street Journal*, May 19, 1997, at B4. Copy Supplied.

David Lawsky, "Merger Plan Goes to Court: Office Supply Giants Fight U.S. Government Bid to Stop Marriage," *Calgary Herald (Alberta, Canada)*, May 17, 1997, at D4. Copy Supplied.

Anne Marriott, "Staples Deal on Back Order; FTC Blocks Merger with Office Depot Superstore," *The Washington Times*, May 17, 1997, at C7. Copy Supplied.

"Office Depot, Staples Fuel a Super Fuss; Challenge to Merger May End Up Breaking New Legal Ground; Loss of Competition Feared; FTC Says Huge Stores Charge More When Alone in a Market," *The Baltimore Sun*, Apr. 14, 1997, at 11C. Copy Supplied.

Bob Drummond, "Superstore Merger Could Change Rules," *The Stuart News/Port St. Lucie News (Stuart, FL)*, Apr. 10, 1997, at B10. Copy Supplied.

Chris Reidy, "Staples Fights FTC's Attempt to Block Deal; Will Seek Ruling Before May 31 Deadline in Office Depot Merger," *The Boston Globe*, Apr. 8, 1997, at D1; also printed at "Office-Supply Merger Heading To Court," *The Philadelphia Inquirer*, Apr. 8, 1997, at C08. Copies Supplied.

"Let Your Fingers Do The Walking Through The Dex Pages?" *The Columbian (Vancouver, WA.)*, Apr. 07, 1997, at 1. Copy Supplied.

"Staples, Office Depot Told to Try Again," *HFN*, Apr. 7, 1997, at 6. Copy Supplied.

Bob Drummond, "FTC's Rejection of Office Depot-Staples Deal Could Have Implications for All Superstores," *Buffalo News (New York)*, Apr. 6, 1997, at 19B. Copy Supplied.

Liz Bowie, "No Merger for Staples, Office Depot; FTC Rejects Plan by Nation's Largest Office Superstores; Second Denial in a Month; Lack of Competition Equals Higher Prices, Commission Says," *The Baltimore Sun*, Apr. 5, 1997, at 11C. Copy Supplied.

Steff Gelston, "Staples Merger Rejected Antitrust Fears Behind FTC Vote," *Bangor Daily News (Maine)*, Apr. 5, 1997; also printed at "Staples Merger Dealt Major Blow: Staples Deal Blocked Again," *The Boston Herald*, Apr. 5, 1997, at 14; "FTC Votes to Reject Staples' Purchase of Office Depot, Panel Says Compromise Pact Wouldn't Resolve Antitrust Issues, Firms' Executives Express Shock," *Los Angeles Times*, Apr. 5, 1997, at 1; Dale K. DuPont, "FTC Rejects Office Depot, Staples Merger," *The Miami Herald*, Apr. 5, 1997, at 1C; "Federal Trade Commission Nixes Staples and Office Depot Merger," *The Oregonian (Portland, Oregon)*, Apr. 5, 1997, at C07; "FTC Rejects Staples - Office Depot Merger," *Tampa Tribune (Florida)*, Apr. 5, 1997, at 1; "FTC Says No to Staples,

Office Depot, Court Fight “Highly Likely,” *Telegram & Gazette (Massachusetts)*, Apr. 5, 1997, at A1. Copies Supplied.

Aaron Zitner & Chris Reidy, “Staples’ \$4 Billion Merger Rejected, Deal with Office Depot Would Mean Higher Prices, FTC Says,” *The Boston Globe*, Apr. 5, 1997, at A1; also printed at “FTC Aims to Block Merger,” *Milwaukee Journal Sentinel (Wisconsin)*, Apr. 5, 1997, at 1; Terrence L. Johnson, “FTC Blocks Office Depot, Staples Deal, Agency Worried About Higher Retail Prices,” *Plain Dealer (Cleveland, Ohio)*, Apr. 5, 1997, at 1C; Alice Ann Love, “FTC Will Sue to Stop Staples-Office Depot Merger,” *Associated Press*, Apr. 4, 1997. Copies Supplied.

“Staples, Office Depot Merger Rejected,” *Calgary Herald (Alberta, Canada)*, Apr. 5, 1997, at B13; also printed at “Office Supply Merger Rejected,” *Knoxville News-Sentinel (Tennessee)*, Apr. 05, 1997, at C8; “Scaled-Down Merger Proposal for Staples, Office Depot Rejected,” *The Record (Kitchener-Waterloo, Ontario)*, Apr. 5, 1997, E8; “Office Depot Merger Vetoed,” *The Toronto Star*, Apr. 5, 1997, at C7; “Office Depot Merger Vetoed,” *The Toronto Star*, Apr. 5, 1997, at C7; “Feds Reject Staples, Office Depot Merger Plan,” *Chicago Sun-Times*, Apr. 4, 1997, at 4; Alice Ann Love, “Government Rejects Restructured Staples Merger,” *Associated Press*, Apr. 4, 1997. Copies Supplied.

David Pauly, “Axe-Wielder Al Dunlap Keeps Analysts Guessing,” *The Gazette (Montreal, Quebec)*, Apr. 5, 1997, at D2. Copy Supplied.

“FTC Rejects Merger of Office Depot and Staples; Antitrust Concerns Cited in \$4 Billion Acquisition,” *Morning Call (Allentown, PA)*, Apr. 5, 1997, B24. Copy Supplied.

“Pilots Union Leaders OK American Contract,” *News and Observer (Raleigh, NC)*, Apr. 5, 1997, at D1. Copy Supplied.

Anne Marie Squeo, “Office-Supply Merger Rejected,” *The Patriot Ledger (Quincy, MA)*, Apr. 5, 1997, at 21. Copy Supplied.

“Washington - The Government Will Go To Court Next Week,” *San Antonio Express-News*, Apr. 5, 1997, at 1. Copy Supplied.

“FTC Opposition to Office Depot Deal Shows Change in Antitrust Approach,” *The Seattle Times*, Apr. 05, 1997, at C1. Copy Supplied.

David Altaner, “FTC Ruling Rips Staples Out of Deal; Rejection Could Slow Mergers of Superstores,” *Sun-Sentinel (Fort Lauderdale, FL)*, Apr. 5, 1997, 1A. Copy Supplied.

David Segal, “FTC Rejects Staples-Office Depot Merger; Proposed Sale of 63 Stores to Rival Fails to End Antitrust Concern,” *The Washington Post*, Apr. 05, 1997, at H01. Copy Supplied.

“FTC Says No to Staples, Office Depot; Court Fight ‘Highly Likely,’” *Worcester Telegram & Gazette*, Apr. 5, 1997, at A1. Copy Supplied.

Alice Ann Love, "Staples, Office Depot Mulling Whether to Defend Merger in Court," *Associated Press*, Apr. 5, 1997. Copy Supplied.

David Young, "FTC Again Rejects Plan for Office-Supply Chain Merger," *Chicago Tribune*, Apr. 5, 1997, at 1. Copy Supplied.

"The Nightly Business Report," *Community Television Foundation of South Florida, Inc.*, Apr. 4, 1997. Copy Supplied.

"Federal Trade Commission holds a New Conference to Announce it Rejected A Proposed Settlement in the Merger between Staples and Office Depot," *FDCHMedia, Inc., FDCH Political Transcripts*, Apr. 4, 1997. Copy Supplied.

"FTC, Staples/Office Depot: Seen Filing In Court Next Week," *Dow Jones News Service*, Apr. 4, 1997. Copy Supplied.

"FTC Again Rejects \$4.3 Billion Staples-Office Depot Merger," *Dow Jones Online News*, Apr. 4, 1997. Copy Supplied.

"FTC's Baer: Sees No Settlement to Staples/ODP Deal," *Select Federal Filings Newswires; Dow Jones Newswire*, Apr. 4, 1997. Copy Supplied.

"Sell 63 Stores," *The Union Leader (Manchester, NH)*, Mar. 14, 1997. Copy Supplied.

Anne Marie Squeo, "Staples Heads Off Court Action by Reaching Deal with Officemax," *South Bend Tribune (Indiana)*, Mar. 13, 1997, at B8. Copy Supplied.

"Staples Agrees to Sell 63 Stores to Officemax; 4 in Baltimore Involved in Antitrust Deal," *The Baltimore Sun*, Mar. 13, 1997, at 2C. Copy Supplied.

James F. Peltz, "Office Depot, Staples to Sell 63 Stores to Resolve Antitrust Issues; Agreement with Rival Officemax Follows the Decision by Regulators to Challenge the \$4-Billion Deal," *Los Angeles Times*, Mar. 13, 1997, at 1. Copy Supplied.

Anne Marie Squeo, "Staples Lines Up Store Sales to Save Office Depot Deal," *The Oregonian (Portland, Oregon)*, Mar. 13, 1997, at F02; also printed at "Staples Selling 63 Stores in Bid to Win Merger Nod," *The Star-Ledger (Newark, New Jersey)*, Mar. 13, 1997, at 42. Copies Supplied.

"Staples to Sell Officemax 63 Stores," *The Record*, Mar. 13, 1997, at B03. Copy Supplied.

Anne Marie Squeo, "Staples to Sell 63 Stores to Rival Officemax," *The Stuart News/Port St. Lucie News (Stuart, FL)*, Mar. 13, 1997, at B6. Copy Supplied.

"Deal Sets Up Office Depot, Staples Union," *Tampa Tribune (Florida)*, Mar. 13, 1997, at 1. Copy Supplied.

"Staples Has Hope of Deal; Sell 67 Stores to Get Office Depot," *Telegram & Gazette (Massachusetts)*, Mar. 13, 1997, at E1; also printed at "Staples Has Hope of Deal; Sell 67 Stores to Get Office Depot," *Worcester Telegram & Gazette*, Mar. 13, 1997, at E1. Copies Supplied.

"Staples Store to Open Here; FTC Blocks Merger Deal," *South Bend Tribune (Indiana)*, Mar. 11, 1997, at C6; also printed at Mickey H. Gramig, "FTC Moves to Block Office Retail Merger," *The Atlanta Journal-Constitution*, Mar. 11, 1997, at 1D; "Office Supply Deal Hits a Roadblock; FTC Wants Court Order Halting Merger of Office Depot, Staples Until Inquiry," *The Atlanta Journal-Constitution*, Mar. 11, 1997, at 1D; Alice Ann Love, "Hole Punched in Staples, Office Depot Deal," *Austin American-Statesman*, Mar. 11, 1997, at D1; "U.S. Blocking Staples-Office Depot Merger," *Calgary Herald (Alberta, Canada)*, Mar. 11, 1997, at C8; Alice Ann Love, "Staples Merger Comes Unglued," *Charleston Gazette (West Virginia)*, Mar. 11, 1997, at P5D; Alice Ann Love, "FTC Putting Office Depot Buy On Hold," *Chicago Sun-Times*, Mar. 11, 1997, at 47; Alice Ann Love, "Staples-Office Depot Merger Blocked Chain to Fight FTC's Moves to Scuttle \$4B Deal," *The Daily Record (Baltimore, MD.)*, Mar. 11, 1997, at 7; "FTC Stalls Office Depot Merger Plan," *The Dallas Morning News*, Mar. 11, 1997, at 1D. Copies Supplied.

John M. Broder, "Staples, Office Depot Merger Opposed; FTC Asks Federal Court to Block Acquisition Because of Antitrust Violations," *Intelligencer Journal (Lancaster, PA.)*, Mar. 11, 1997, at B-6. Copy Supplied.

Phyllis Plitch, "U.S. Regulator to Pursue Halt of Staples-Office Depot Merger," *The Asian Wall Street Journal*, Mar. 11, 1997, at 2. Copy Supplied.

Liz Bowie, "FTC to Fight 2 Superstores' Merger Bid; Higher Prices Feared; Staples, Office Depot to Contest U.S. Move; Stocks of Both Drop; Agency Says Buyers Gain from Competition Between 2 Companies," *The Baltimore Sun*, Mar. 11, 1997, at 1C. Copy Supplied.

"Staples' Purchase Blocked FTC Votes Down Plan to Buy Office Depot," *Bangor Daily News (Maine)*, Mar. 11, 1997. Copy Supplied.

Steff Gelston, "Staples to Fight FTC No Merger Decision," *The Boston Herald*, Mar. 11, 1997, at 18. Copy Supplied.

Steve Bailey & Steven Syre, "For FTC, A Question of Market Power; Agency Seen Becoming More Assertive in Examining Mergers," *The Boston Globe*, Mar. 11, 1997, at D1. Copy Supplied.

Anne Marie Squeo, "Staples Vows Legal Battle Against FTC," *The Chattanooga Times (Tennessee)*, Mar. 11, 1997, at A12. Copy Supplied.

Anne Marie Squeo, "Merger - FTC Says No to Staples, Office Depot," *The Commercial Appeal (Memphis, TN)*, Mar. 11, 1997, at B4. Copy Supplied.

Peter Morton, "FTC blocks US\$ 4B Staples, Office Depot merger," *The Financial Post (Toronto, Canada)*, Mar. 11, 1997, at 4; also printed at Peter Morton, "FTC blocks \$4B USD Staples, Office Depot merger," *Financial Post Daily*, Mar. 11, 1997, at 4; James T. Madore, "Feds Seek to Bar Superstore Merger / Staples-Office Depot Marriage Would Stifle Competition, FTC Says," *Newsday (New York)*, Mar. 11, 1997, at A39; Alice Ann Love, "Largest Office Supply Retailers Won't Merge if FTC Can Help it," *The Oregonian (Portland, Oregon)*, Mar. 11, 1997, at B01; "Staples Merger Hits Unexpected Bump; The Federal Trade Commission Says Consumer Prices Would Rise if Staples Merges with Office

Depot," *Orlando Sentinel (Florida)*, Mar. 11, 1997, at B1; "Office-Supply Firm Merger On Hold Pending Investigation," *The Ottawa Citizen*, Mar. 11, 1997, at C4; "Office Supply Deal Opposed," *The Pantograph (Bloomington, IL)*, Mar. 11, 1997, at C1; "FTC Will Ask Court to Delay Staples Merger," *The Patriot Ledger (Quincy, MA)*, Mar. 11, 1997, at 10; "Trade Commission Blocks Merger of Office Supply Giants," *The Record (Kitchener-Waterloo, Ontario)*, Mar. 11, 1997, at C6; "Washington - The Government Moved to Block a Merger Between," *San Antonio Express-News*, Mar. 11, 1997, at 11; "FTC Might Shred Merger of Office Depot and Staples," *Times-Picayune (New Orleans, LA)*, Mar. 11, 1997, at C3; Anne Marriott, "Superstore Merger Stalled; FTC to Seek Court Injunction Against Staples, Office Depot," *The Washington Times*, Mar. 11, 1997, at B7. Copies Supplied.

Anne Marie Squeo, "FTC Blocks Acquisition Of Office Depot; The Agency Says The Purchase By Staples Would Violate Antitrust Laws," *Fort Worth Star-Telegram (Texas)*, Mar. 11, 1997, at 1; also printed at James McNair & Alina Matas, "FTC Vetoes Office Depot, Staples Merger Agency Says Union Of Superstores Would Raise Prices," *The Miami Herald*, Mar. 11, 1997, at 7B; "FTC Nixes Staples, Office Depot Deal," *Telegram & Gazette (Massachusetts)*, Mar. 11, 1997, at E1. Copies Supplied.

David Pauly, "Trust-Busters Block Staples-Office Depot Merger Plan," *The Gazette (Montreal, Quebec)*, Mar. 11, 1997, at E4. Copy Supplied.

"US FTC Will Seek to Block Staples/Office Depot Merger," *M2 Presswire*, Mar. 11, 1997. Copy Supplied.

John M. Broder, "F.T.C. Against Staples Deal to Buy Rival," *The New York Times*, Mar. 11, 1997, at 1. Copy Supplied.

"FTC Rejects Staples/Office Depot Merger," *Newsbytes*, Mar. 11, 1997. Copy Supplied.

David Lawsky, "FTC Opposes Merger of Office-Supply Giants, It Will Seek an Injunction; Staples and Office Depot Deny That the Deal Would Result in Higher Prices," *The Philadelphia Inquirer*, Mar. 11, 1997, at C01; also printed at "U.S. Rejects Staples, Office Depot Merger Trade Agency Says Deal Would Boost Prices," *The Toronto Star*, Mar. 11, 1997, at B8. Copies Supplied.

David Altaner, "FTC Rejects Office Depot Merger Regulators Say Staples Match Would Hurt Consumers; Stores Vow To Fight," *Sun-Sentinel (Fort Lauderdale, FL)*, Mar. 11, 1997, at 1D. Copy Supplied.

John R. Wilke & Joseph Pereira, "FTC Votes to Bar Staples' Bid for Rival -- Office Depot Deal to Lift Prices, Agency Claims; Court Fight is Expected," *The Wall Street Journal*, Mar. 11, 1997, at A3. Copy Supplied.

John R. Wilke & Joseph Pereira, "U.S. Regulator Seeks to Block Staples-Office Depot Merger," *The Wall Street Journal Europe*, Mar. 11, 1997, at 3. Copy Supplied.

Margaret Webb Pressler, "Office Depot, Staples Blocked in Merger Bid; Antitrust Showdown on 'Superstores' Looms," *The Washington Post*, Mar. 11, 1997, at A01. Copy Supplied.

"FTC Nixes Staples, Office Depot Deal," *Worcester Telegram & Gazette*, Mar. 11, 1997, at E1. Copy Supplied.

Alice Ann Love, "Move to Block Staples-Office Depot Merger Seen as Bellwether," *Associated Press*, Mar. 11, 1997; also printed at John Schmeltzer, "U.S. Clips Merger of Office Suppliers," *Chicago Tribune*, Mar. 11, 1997, at 1; Alice Ann Love, "FTC to Block Home Depot Buy," *Chicago Sun-Times*, Mar. 10, 1997, at 4; "FTC Votes To Prevent Merger of 2 Largest U.S. Office Supply Retailers," *Chicago Tribune*, Mar. 10, 1997, at 3C. Copies Supplied.

"The Nightly Business Report," *Community Television Foundation of South Florida, Inc.*, Mar. 10, 1997. Copy Supplied.

"US Regulatory Agency Opposes Staples-Office Depot Merger," *Agence France Presse -- English*, Mar. 10, 1997. Copy Supplied.

"Staples/Office Depot: FTC Says Buy Violates Antitrust Laws," *Dow Jones News Service*, Mar. 10, 1997. Copy Supplied.

"US FTC Moves to Block Staples-Office Depot Merger," *Xinhua News Agency*, Mar. 10, 1997. Copy Supplied.

"FTC: German, Brazilian Piston Mfgs Settle Antitrust Charges," *Dow Jones News Service*, Feb. 27, 1997. Copy Supplied.

"Company Town: Turner-Time Warner Merger a Done Deal (Unless It's Not); Media: Federal Trade Commission is Checking to See if There is Any Reason to Vacate Its Preliminary Approval," *Los Angeles Times*, Feb. 5, 1997, at 4. Copy Supplied.

"Federal Trade Commission: FTC Settles Charges with American Cyanamid," *M2 Presswire*, Jan. 31, 1997. Copy Supplied.

Jerri Stroud, "Cyanamid To Pay For Fixing Prices; States Due \$7.3 Million From Chemical Firm," *St. Louis Post-Dispatch*, Jan. 31, 1997, at 1C. Copy Supplied.

"Amer Home Pdts Unit, FTC OKs Settlement In 4-1 Vote," *Dow Jones News Service*, Jan. 30, 1997. Copy Supplied.

"Federal Trade Commission: FTC Obtains Relief for Health Care Consumers in California County," *M2 Presswire*, Jan. 30, 1997. Copy Supplied.

Joann Muller & Aaron Zitner, "Daunting Task: Bringing TI and Hughes Into Fold," *The Boston Globe*, Jan. 21, 1997, at C1. Copy Supplied.

John R. Wilke, "Novartis Must Share Genetic Research -- in Sandoz, Ciba-Geigy Pact, U.S. Blocks a Monopoly That Doesn't Exist," *The Asian Wall Street Journal*, Dec. 19, 1996, at 11; also printed at John R. Wilke, "WSJ: Switzerland Novartis Forced to Share Gene Technology," *Dow Jones International News*, Dec. 18, 1996; "U.S. Forces New Drug Giant to Share Genetic Research -- In

Sandoz, Ciba-Geigy Pact, FTC Blocks a Monopoly That Doesn't Yet Exist," *The Wall Street Journal*, Dec. 18, 1996, at B4. Copies Supplied.

"F.T.C., Gaining Concessions, Approves Swiss Drug Merger," *The New York Times*, Dec. 18, 1996, at 7; also printed at Edward R. Silverman, "FTC Approves Ciba-Sandoz Merger," *The Star-Ledger (Newark, New Jersey)*, Dec. 18, 1996, at 51. Copies Supplied.

Marcy Gordon, "FTC Clears Way for Merger of Swiss Giants Ciba-Geigy and Sandoz," *The Associated Press*, Dec. 17, 1996; Marcy Gordon, "FTC Clears Way for Merger of Swiss Giants Ciba-Geigy and Sandoz," *The Associated Press*, Dec. 17, 1996; Marcy Gordon, "Precede Basel, Switzerland U.S. Clears Way for Merger of Swiss Giants Ciba," *Associated Press Worldstream*, Dec. 17, 1996; Marcy Gordon, "Precede Basel, Switzerland U.S. Clears Way for Merger of Swiss Giants Ciba," *Associated Press Worldstream*, Dec. 17, 1996. Copies Supplied.

Kevin G. DeMarrais, "ADP Hit With Trade Complaint; May Have To Shed Fair Lawn Firm," *The Record*, Nov. 15, 1996, at B01. Copy Supplied.

John R. Wilke, "FTC Charges ADP Formed a Monopoly in the Junk Business -- Agency Says AutoInfo Deal Forms Computer Network That Dominates Market," *The Wall Street Journal*, Nov. 15, 1996, at A4. Copy Supplied.

"FTC Challenges Automatic Data Processing's AutoInfo Deal," *Dow Jones News Service*, Nov. 14, 1996. Copy Supplied.

"(WSJ): U.S. FTC Seen Trying to Speed Challenges to Mergers," *Capital Markets Report*, Sept. 18, 1996. Copy Supplied.

Bryan Gruley, "FTC, Heeding Companies' Complaints, Moves to Speed Its Challenges to Mergers," *The Wall Street Journal*, Sept. 18, 1996, at A3. Copy Supplied.

"Baer In Mind," *Corporate Control Alert*, July 1996. Copy Supplied.

"Week In Review; The Nation; Turner, Time Warner Deal Gets Go Ahead," *Richmond Times Dispatch (Virginia)*, July 21, 1996, at F-2. Copy Supplied.

Jeannine Aversa, "Turner, Time Warner Clear Federal Hurdle; Regulators, Companies Agree on Merger Plan with Some Concessions," *Austin American-Statesman (Texas)*, July 18, 1996, at D1; also printed at *The Bismarck Tribune*, July 18, 1996; "Strings Attached to \$7.5 Billion Deal with Turner," *Charleston Gazette (West Virginia)* July 18, 1996, at P7B; "FTC Backs Deal," *The Chattanooga Times (Tennessee)*, July 18, 1996 at E8; Jeannine Aversa, "Regulators Clear Time Warner-Turner Deal," *The Associated Press*, July 17, 1996. Copies Supplied.

Jeannine Aversa, "Feds Tentatively OK Time Warner Merger," *The Commercial Appeal (Memphis)*, July 18, 1996, at 7B. Copy Supplied.

"FTC Staff Approves Merger; Time Warner-Turner Deal Nears Completion," *Fort Worth Star-Telegram (Texas)*, July 18, 1996, at 1. Copy Supplied.

Mark Landler, "An Accord That Could Help Murdoch," *The New York Times*, July 18, 1996, at 7. Copy Supplied.

Joseph Pereira & Bryan Gruley, "Clout of Toys 'R' Us is Key to U.S. Suit," *The Asian Wall Street Journal*, May 27, 1996, at 11. Copy Supplied.

"Toy Giant Accused of Unfair Trade," *The Advertiser*, May 24, 1996. Copy Supplied.

Joseph Pereira & Bryan Gruley, "Toys: Relative Power of Toys 'R' Us is Central to Suit," *The Wall Street Journal*, May 24, 1996, at B1. Copy Supplied.

Bryan Gruley & Joseph Pereira, "U.S. to Investigate Toys 'R' Us for Allegedly Inflating Prices," *The Wall Street Journal Europe*, May 24, 1996, at 5. Copy Supplied.

"Toys 'R' Us Charged with Price Fixing," *Calgary Herald (Alberta, Canada)*, May 23, 1996, at D12. Copy Supplied.

Darlene Superville, "Antitrust Charges Hit Toys 'R' Us," *Chicago Sun-Times*, May 23, 1996, at 49. Copy Supplied.

"FTC Says Toy Seller Pressured Suppliers; Toys 'R' Us Says it Will Contest Charges," *Chicago Tribune*, May 23, 1996, at 1. Copy Supplied.

Remarks on FTC action against Toys 'R' Us, *Burden of Proof, CNN*, May 23, 1996. Copy Supplied.

Bob Drummond, "FTC Says Toys 'R' Us Not Playing Fair on Price," *The Commercial Appeal (Memphis)*, May 23, 1996, at A1. Copy Supplied.

"Toys 'R' Us Violated Fair Play, ' FTC Says," *The Dallas Morning News*, May 23, 1996, at 1D. Copy Supplied.

Janet L. Fix, "No Toying Matter FTC Says Retailer Conspires to Control Supply, Fix Prices," *Detroit Free Press*, May 23, 1996, at 1E. Copy Supplied.

Peter Morton, "Toys 'R' Us Charged with Using Clout to Fix Prices," *The Financial Post (Toronto, Canada)*, May 23, 1996, at 3. Copy Supplied.

"Toys 'R' Us Charged with Using Clout to Fix Prices," *Financial Post Daily*, May 23, 1996, at 3. Copy Supplied.

"Toys 'R' Us Faces U.S. Anti-Trust Inquiry: Firm Accused of Inflating Toy Prices," *The Gazette (Montreal, Quebec)*, May 23, 1996, at E1. Copy Supplied.

Darlene Superville, "FTC: Toys 'R' Us Not Playing Fair if Competition Cut Out of Market," *The Herald-Sun (Durham, NC)*, May 23, 1996, at A1. Copy Supplied.

George White, "Not Playing Fair?; Toys 'R' Us to 'Vigorously Contest' Antitrust Allegations," *Los Angeles Times*, May 23, 1996, at 1. Copy Supplied.

Glenn Collins, "Few Price Changes Seen for Buyers," *The New York Times*, May 23, 1996, at 7. Copy Supplied.

Christopher Drew, "Toys 'R' Us Charged with Blocking Sales to Discounters," *The New York Times*, May 23, 1996, at 1. Copy Supplied.

James Bernstein, "War In Toyland / Toys 'R' Us Unfairly Keeps Prices High, Feds Charge," *Newsday (New York)*, May 23, 1996, at A03. Copy Supplied.

"FTC Says Toys 'R' Us Does Not Play Fair," *The Oregonian (Portland, Oregon)*, May 23, 1996, at E01. Copy Supplied.

"FTC: Toys 'R' Us Not Playing Fairly; Charge Claims Company Stymied Competition," *Orlando Sentinel (Florida)*, May 23, 1996, at B1. Copy Supplied.

Sharon Walsh, "Toys 'R' Us Accused of Hogging Hottest Toys," *Palm Beach Post (Florida)*, May 23, 1996, at A1. Copy Supplied.

Janet L. Fix, "Toys 'R' Us Bullies Rival Stores, FTC Says It Uses Its Power to Keep Prices High and the Most Popular Toys for Itself, the Agency Contends," *The Philadelphia Inquirer*, May 23, 1996, at A01. Copy Supplied.

"FTC Charges Toy Seller; the Federal Regulatory Agency Says Toys 'R' Us, the Nation's Largest Toy Retailer, Has Artificially Kept Toy Prices High and Reduced Toy Outlet Choices for Consumers," *Providence Journal*, May 23, 1996, at 1G. Copy Supplied.

Adam Geller, "Antitrust Suit Filed; FTC Gets Tough with Toys 'R' Us Chain is Accused of Coercion," *The Record*, May 23, 1996, at B01. Copy Supplied.

Janet L. Fix, "FTC: Toys 'R' Us Plays Monopoly," *The Roanoke Times (Virginia)*, May 23, 1996, at B8. Copy Supplied.

"FTC: Toys 'R' Us Plays Monopoly," *The Roanoke Times (VA)*, May 23, 1996, at B-8. Copy Supplied.

"Toys 'R' Us Unfairly Used its Size...," *San Antonio Express-News*, May 23, 1996, at 1. Copy Supplied.

"Toys 'R' Us Accused of Price Scheme; Antitrust Charges Say Unfair Practices Were Meant to Stifle Discount Stores," *St. Louis Post-Dispatch*, May 23, 1996, at 1A. Copy Supplied.

Ellen Simon, "FTC Charges Toys 'R' Us Pitches for a Shutout," *The Star-Ledger (Newark, New Jersey)*, May 23, 1996. Copy Supplied.

"Toys 'R' Us Accused of Price-Fixing; Regulators Say Retailer Bullied Manufacturers to Keep Prices High," *Sun-Sentinel (Fort Lauderdale, FL)*, May 23, 1996, at 3D. Copy Supplied.

"FTC Charges Toys 'R' Us with Antitrust," *Tampa Tribune*, May 23, 1996, at 1. Copy Supplied.

Ellen Neuborne, "U.S. Accuses Toys 'R' Us of Unfair Trade," *USA Today*, May 23, 1996, at 1A. Copy Supplied.

"Retailer Toyed with Makers to Stifle Discounts, Watchdog Says," *The Vancouver Sun (British Columbia)*, May 23, 1996, at D8. Copy Supplied.

Bryan Gruley & Joseph Pereira, "FTC Says Toys 'R' Us Competes Unfairly -- Antitrust Complaint Alleges Toy Makers Were Told to Shun Discount Stores," *The Wall Street Journal*, May 23, 1996, at A3. Copy Supplied.

Sharon Walsh, "Toys Are Others' Too, Says FTC; Agency Hits Retailer's Tactics with Suppliers," *The Washington Post*, May 23, 1996, at B10. Copy Supplied.

"Bullying R Them, U.S. Agency Alleges Canadian Press," *Winnipeg Free Press*, May 23, 1996, at b9. Copy Supplied.

Remarks on FTC action against Toys 'R' Us, *NBC Today Show, NBC Universal Inc.*, May 23, 1996. Copy Supplied.

Darlene Superville, Article on FTC action against Toys 'R' Us, *Associated Press Worldstream*, May 22, 1996. Copy Supplied.

"The Nightly Business Report," *Community Television Foundation of South Florida, Inc.*, May 22, 1996. Copy Supplied.

"Toys R Us Hit with Price-Fixing Charge," *The Canadian Press*, May 22, 1996. Copy Supplied.

"Feds Go After Toys 'R' Us; FTC Charges the Company with Price Fixing Among Antitrust Violations," *Chicago Tribune*, May 22, 1996, at 1. Copy Supplied.

"FTC Says Toys 'R' Us Forced Consumers to Pay More," *Dow Jones News Service*, May 22, 1996. Copy Supplied.

Bob Dummond & Paul J. Lim, "Toys 'R' Us Hit With FTC Charges -- Pricecostco Complained of Problems Obtaining Toys," *The Seattle Times*, May 22, 1996, at D1. Copy Supplied.

"Toys 'R' Us Charged in Price Scheme," *United Press International*, May 22, 1996. Copy Supplied.

Darlene Superville, "FTC Accuses Nation's Largest Toy Retailer of Unfair Play," *The Associated Press*, May 22, 1996. Copy Supplied.

Darlene Superville, "FTC Takes Antitrust Action Against Toys 'R' Us," *The Associated Press*, May 22, 1996. Copy Supplied.

"Titan Wheel, FTC: Acquired Plant From Pirelli," *Dow Jones News Service*, May 7, 1996. Copy Supplied.

"US Authorities Approve Lockheed/Loral Merger," *Agence France Presse -- English*, Apr. 19, 1996. Copy Supplied.

Martha M. Hamilton, "FTC Gives Lockheed a Go-Ahead; Agreement Resolves Agency Worries About Loral Defense Purchase," *The Washington Post*, Apr. 19, 1996, at D03. Copy Supplied.

John Diamond, "Lockheed-Loral Merger Gets OK," *The Associated Press*, Apr. 19, 1996. Copy Supplied.

"FTC Rejects Tobacco Firm Sale of 6 Brands; Cigarettes: Agency Says Purchase by Lorillard Inc. from Brown & Williamson Would Not Improve Competition," *Los Angeles Times*, Apr. 11, 1996, at 2. Copy Supplied.

Scott Solomon & Jane Reynold, "Blocked Sale Renews Hopes at Tobacco Plant," *News & Record (Greensboro, NC)*, Apr. 11, 1996, at A1. Copy Supplied.

Bryan Gruley, "FTC Rejects B.A.T.'s Proposal to Sell Discount Cigarette Brands to Lorillard," *The Wall Street Journal*, Apr. 11, 1996, at A20. Copy Supplied.

Sharon Walsh, "FTC Rejects Cigarette Brands' Sale; Agency Cites Threat to Price Competition," *The Washington Post*, Apr. 11, 1996, at D11. Copy Supplied.

Meera Somasundaram, "FTC Weighs Job-Loss Issue in Rejecting Lorillard Bid," *Dow Jones News Service*, Apr. 10, 1996. Copy Supplied.

Donna Lawrence, "ADP Fined \$2.97 Million in Autoinfo Acquisition," *Automotive News*, April 01, 1996, at 6. Copy Supplied.

"New FTC Rules Drop Antitrust Reviews of Small Transactions," *The Wall Street Journal*, Mar. 26, 1996, at B14. Copy Supplied.

David Robinson, "FTC Clears Sale of Carborundum to St. Gobain," *Buffalo News (New York)*, Feb. 27, 1996, at 11A. Copy Supplied.

"Litton Completes Buy of PRC; Agrees to Divest Aegis Contract," *Defense Daily*, Feb. 20, 1996, at 33. Copy Supplied.

John Mintz, "Litton Giving Up Navy Contract to Salvage Purchase; Move to Win FTC Approval of Defense Contractor's \$425 Million Acquisition of McLean's PRC," *The Washington Post*, Feb. 16, 1996, at B03. Copy Supplied.

Tom Dochat, "Trustees Appointed to Sell Drugstores," *Evening News-Harrisburg PA*, Feb. 9, 1996, at B7. Copy Supplied.

"Assets To be Sold," *The Union Leader (Manchester, NH)*, Feb. 9, 1996. Copy Supplied.

"Sara Lee to Pay Record Fine; Settles Shoe Deal Antitrust Charge," *Chicago Sun-Times*, Feb. 7, 1996, at 59. Copy Supplied.

Michael J. Sniffen, "Sara Lee to Pay \$3.1 Million Fine Over Acquisition," *The Commercial Appeal (Memphis)*, Feb. 7, 1996, at 7B. Copy Supplied.

"Sara Lee Settles U.S. Charges," *The New York Times*, Feb. 7, 1996, at 4. Copy Supplied.

Richard Gibson & Albert R. Karr, "Sara Lee to Pay \$3.1 Million Fine For Trying to Hide an Acquisition," *The Wall Street Journal*, Feb. 7, 1996, at B7. Copy Supplied.

Sharon Walsh, "Sara Lee to Pay \$3.1 Million to Settle Antitrust Complaint," *The Washington Post*, Feb. 07, 1996, at F01. Copy Supplied.

Michael J. Sniffen, Article on Sara Lee settlement, *Associated Press Worldstream*, Feb. 06, 1996. Copy Supplied.

Michael J. Sniffen, "Sara Lee to Pay Record Fine," *Chicago Sun-Times*, Feb. 6, 1996, at 4. Copy Supplied.

Michael J. Sniffen, "Sara Lee to Pay Record \$3.1 Million Fine Over Shoe Polish Merger," *The Associated Press*, Feb. 6, 1996. Copy Supplied.

Tom Humphrey, "FTC Investigation Ends as RXCare Changes Policy," *Knoxville News-Sentinel (Tennessee)*, Jan. 21, 1996, at A2. Copy Supplied.

Paula Wade, "RxCare Drops Prescription Rule After Probe," *The Commercial Appeal (Memphis)*, Jan. 20, 1996, at 1A. Copy Supplied.

"Williams Replaces Questar as Buyer of Tenneco Energy's Kern River Share," *Inside F.E.R.C.'s Gas Market Report*, Jan. 12, 1996, at 13. Copy Supplied.

"Williams Steps in as Full Kern River Owner After FTC Knocks Questar Out," *Inside F.E.R.C.*, January 8, 1996, at 3. Copy Supplied.

"Citing Concern About Market Power, FTC Blocks Questar/Kern River Deal," *Gas Utility Report*, Jan. 5, 1996, at 2. Copy Supplied.

"Johnson & Johnson Agrees on Cordis Unit," *The New York Times*, Dec. 21, 1995, at 17. Copy Supplied.

"Money Talks - Grocery Industry Manufacturers' Fees," *American Broadcasting Companies, Inc., ABC News*, Nov. 10, 1995. Copy Supplied.

Darlene Superville, "Dell to Drop Patent Claim to PC Design Feature," *Austin American-Statesman*, Nov. 03, 1995, at C2. Copy Supplied.

"FTC Requiring Wire Transfer Service Divestiture," *The Associated Press*, Sept. 21, 1995. Copy Supplied.

Elyse Tanouye, "Hoechst Agrees to FTC Demand, Ending Marketing Barrier to Competitor's Drug," *The Wall Street Journal*, Sept. 19, 1995, at B7. Copy Supplied.

"FTC Seeks Easing HSR Requirements on Some Mergers," *Select Federal Filings Newswires*, July 21, 1995. Copy Supplied.

"Hoechst Gets FTC Nod to Buy Marion Merrell Dow," *Agence France Presse -- English*, June 28, 1995. Copy Supplied.

Randolph Heaster, "Marion Deal Can Proceed; The FTC Will Allow Acquisition by Hoechst AG, Even as Review Continues," *Kansas City Star*, June 28, 1995, at B1. Copy Supplied.

Dana Calvo, "FTC Allows Hoechst Corp. Purchase of Marion Merrell Dow," *The Associated Press*, June 27, 1995. Copy Supplied.

Nancy Rivera Brooks, "Reebok Agrees to Pay \$9.5 Million to Settle Charges Of Price Fixing; FTC Trumpets Proposed Settlement as Example Of Newly Aggressive Antitrust Stance; Funds Would Go to States," *Los Angeles Times*, May 5, 1995, at 1. Copy Supplied.

"Reebok Settles Pricing Claims Antitrust: Shoe Firm to Pay \$9.5 Million to End Legal Battle," *San Jose Mercury News*, May 5, 1995, at 1C. Copy Supplied.

Sharon Walsh, "Reebok Settles Complaints That it Fixed Shoe Prices," *The Washington Post*, May 05, 1995, at A06. Copy Supplied.

William W. Horne, "GE Crushes the Trustbusters," *The American Lawyer*, Jan./Feb. 1995. Copy Supplied.

"FTC Expands Microsoft Probe; Rivals Accuse Firm of Monopolizing Operating Systems Business," *The Washington Post*, Apr. 13, 1991, at C1. Copy Supplied.

"William Baer," Antitrust and Trade Regulations, Undated. Copy Supplied.

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

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

Federal Trade Commission
09/1975 to 10/1980
Assistant General Counsel and Director of Congressional Relations
Attorney Advisor to Chairman, Assistant to Director, Bureau of Consumer Protection, Trial Attorney, Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-2222.

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

I have not had a formal role in a political campaign but have been involved in fundraising and event organizing for a number of candidates over the years including:

- o Obama/Biden (2008)
- o Hillary Clinton (2007-08)
- o John Kerry (2004)
- o Al Gore (2000)

- o Bill Clinton/Al Gore (1992 and 1996)
- o Peter Franchot (Maryland House of Delegates and Maryland Comptroller)
- o Terry McAuliffe Virginia Gubernatorial Campaign (2009)

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
I did not clerk.
 - ii. whether you practiced alone, and if so, the addresses and dates;
I have not practiced alone.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
 - Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580
 - o Trial Attorney, 1975-76
 - o Assistant to Director, Bureau of Consumer Protection, 1976-77
 - o Attorney Advisor to the Chairman 1977-79
 - o Assistant General Counsel and Director of Congressional Relations, 1979-80
 - o Director, Bureau of Competition, 1995-99
 - Arnold & Porter LLP, 555 12th Street NW, Washington, D.C. 20004
 - o Associate, 1980-83
 - o Partner, 1984-95 and 2000-present
 - iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.
I have never served as a mediator or arbitrator.

b. Describe:

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

During my first stint at the Federal Trade Commission, between 1975 and 1980, I was involved in a wide variety of consumer protection matters and certain antitrust matters. I also represented the FTC in its dealings with Congress in 1979 and 1980.

During my second tour with the Federal Trade Commission, between 1995 and 1999, I served as Director of the Bureau of Competition and oversaw competition enforcement matters for the FTC.

During the periods I have worked at Arnold & Porter LLP (from 1980-1995 and from 2000-the present), my practice has largely involved antitrust, trade regulation, consumer protection and white collar criminal defense. During the period from 1980 until roughly 1992, I also occasionally assisted my firm in representing clients with matters involving the U.S. Congress, including Congressional investigations and certain legislative matters.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My clients were typically corporations in need of antitrust assistance in connection with: compliance with merger laws in the US and, to a lesser extent, with merger laws in other countries; government civil investigations, typically involving the Federal Trade Commission or the Department of Justice Antitrust Division, regarding compliance with the Sherman Act or the Federal Trade Commission Act; criminal grand jury investigations by the Department of Justice Antitrust Division, into allegations of price fixing and/or bid rigging; criminal litigation, mostly relating to antitrust matters; and civil antitrust litigation.

I also occasionally have represented individual employees and corporate executives involved in antitrust grand jury investigations.

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

Roughly 80% of my practice while at Arnold & Porter LLP has involved litigation or government investigations that could lead to litigation.

During the period 1995-99 at the Federal Trade Commission, roughly 80% of my time involved matters in litigation or FTC investigations that could lead to litigation

During the period 1975-80 at the Federal Trade Commission, roughly 50% of my time involved litigation or investigations that could lead to litigation.

i. Indicate the percentage of your practice in:

1. federal courts; 20%
2. state courts of record; less than 5%
3. other courts; 0%
4. administrative agencies: 75 to 80%, principally the Federal Trade Commission and the Antitrust Division of the Justice Department.

ii. Indicate the percentage of your practice in:

1. civil proceedings: 50%
2. criminal proceedings: 50%

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

Four cases, one as chief counsel and three as associate counsel.

i. What percentage of these trials were:

1. jury: 75%
2. non-jury.: 25%

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

I have not practiced before the Supreme Court.

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

I first describe significant matters in which I was involved while serving at the Federal Trade Commission. I then describe significant matters from my time at Arnold & Porter LLP.

1. *FTC v. Staples, Inc.*, 970 F.Supp. 1066 (D.D.C. 1997)

This involved a challenge in 1997 to the proposed merger of Staples and Office Depot. I was involved in representing the FTC -- supervising the

investigation and litigation and assisting with litigation strategy and briefing. The district court granted the FTC's request for a preliminary injunction.

- a. The matter was active in 1997-98 and was decided on June 30, 1997
- b. USDC, District of Columbia, Civil No. 97-701 (TFH), Thomas F. Hogan, District Judge
- c. John M. Gidley, White & Case, 701 Thirteenth Street, N.W., # 600, Washington, DC 20005, (202) 626-3600 for Staples, Inc.; Donald Kempf, Mark L. Kovner, Kirkland & Ellis, 655 Fifteenth Street, N.W., Washington, DC 20005, (202) 879-5000 for Office Depot.

2. *FTC vs Toys R Us*, 221 F.3d 928 (7th Cir.2000)

This case involved the FTC's challenge in 1997 to efforts by Toys R Us to prevent toy manufacturers from supplying its competitors. I supervised the investigation and administrative trial. After the FTC found Toys R Us in violation of the FTC Act, I defended the FTC on appeal before the 7th Circuit Court of Appeals, which ultimately upheld the FTC's decision.

- a. The matter began in 1996 and concluded in 2000. I argued the appeal on May 18, 1999; the matter was decided August 1, 2000
- b. US Court of Appeals, Seventh Circuit, No. 98-4107, Coffey, Kanne, and Diane P. Wood, Circuit Judges.
- c. Michael S. Feldberg (Argued), Schulte, Roth & Zabel, New York, NY; Mr. Feldberg is now a partner at Allen and Ovary, 1221 Avenue of the Americas, New York, NY 10020, (212) 610-6300; Irving Scher, Weil, Gotshall & Manges, 767 5th Avenue, New York, NY 10153, (212) 310-8000 for Petitioner.

3. *FTC vs Drug Wholesalers*, 12 F.Supp.2d 34 (D.D.C. 1998)

The FTC filed simultaneous challenges in 1998 to two separate proposed mergers involving the four leading U.S. drug wholesalers. I supervised the investigation and subsequent preliminary injunction litigation. The district court granted the FTC's request for a preliminary injunction.

- a. The matter was active in 1997 and 1998. Preliminary injunction issued on July 31, 1998
- b. USDC, District of Columbia, Nos. CIV. A. 98-595. CIV. A 98-596, Sporkin, District Judge.
- c. Phillip Aaron Proger, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, N.W., Washington, DC, 20001, (202) 879-3939 for Cardinal Health, Inc.; Steven A. Newborn, Rogers & Wells, Washington, DC for Bergen Brunswick Corp.; Mr. Newborn is now a partner at Weil, Gotschal & Manages, 1300 Eye Street, N.W., #900, Washington, DC 20005, (202) 682-7000; William Bradford Reynolds, Collier, Shannon, Rill & Scott, P.L.L.C., 3050 K Street, N.W., #300, Washington, DC 20007, (202) 342-8400 for McKession Corp.; Mr. Reynolds is now senior counsel at Baker Botts LLP, The Warner, 1299 Pennsylvania Avenue, N.W.,

Washington, D.C. 20004, (202) 639-7801; Joseph Tate, Dechert, Price & Rhoads, 4000 Bell Atlantic Tower, 1717 Arch Street, Philadelphia, PA. 19103, (215) 994-4000, for Amerisource Health Corp.

4. *FTC vs. Intel*, FTC Docket No. 9288

In 1998 the Federal Trade Commission filed an administrative challenge to certain licensing practices of Intel Corporation. I supervised the investigation and the litigation and lead a team that negotiated a settlement of the action in 1999.

- a. The matter was active from 1997-99. The FTC Complaint was filed on June 8, 1998; the proposed settlement was announced on March 8, 1999
- b. FTC Administrative Hearing
- c. Robert E. Cooper, Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, CA 90071, (213) 229-7000 for Intel.

5. *FTC vs. Mylan*

In 1998, the FTC filed a district court action alleging that Mylan and others had conspired to deny competitors ingredients necessary to manufacture two widely-prescribed sedatives and seeking disgorgement of certain ill-gotten gain. The district court upheld the FTC's authority to seek disgorgement in those circumstances and Mylan ultimately settled with the FTC in late 2000. I supervised the investigation and initial stages of the litigation until my departure from the FTC in late 1999.

- a. The matter was active from 1997-2000. The FTC Complaint was filed on December 22, 1998; The proposed settlement was announced on November 29, 2000
- b. USDC, District of Columbia, Nos. 98-3114 (TFH), 98-311 (TFH), Thomas F. Hogan, Judge
- c. Steven A. Newborn and Joseph J. Simons of Clifford, Chance, Rogers & Wells, LLP, 2001 K Street, N.W., Washington, DC 20006, (202) 912-5000, for Mylan. Mr Newborn is now a partner at Weil, Gotschal & Manages, 1300 Eye Street, #900, Washington, DC 20005, (202) 682-7000. Mr. Simons is now a partner at Paul, Weiss, Rifkind, Wharton & Garrison, 2001 K Street, N.W., Washington, DC 20006, (202) 223-7370.

6. *US vs General Electric Company*, 869 F.Supp. 1285 (S.D Ohio 1994)

In 1994 I was co-counsel with Dan K. Webb and Jeff Kindler on behalf of General Electric Company in a jury trial involving allegations of fixing the prices of industrial diamonds. After a six week trial, the federal district court judge directed a verdict of acquittal in favor of GE.

- a. The matter was active from early 1991 until the verdict was entered on December 8, 1994

- b. USDC, S.D. Ohio, Eastern Division, No. CR-2-04-019, George C. Smith, District Judge
- c. David A. Blotner, Melanie J. Sabo, Attys. U.S. Dept. of Justice, Antitrust Div., Washington, DC, for the U.S. Ms. Sabo is current with the Federal Trade Commission serving as Assistant Director for Anticompetitive Practices, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-2955.

7. *U.S. vs. Baker Hughes*, 908 F.2d 981, 285 U.S. App.D.C. 222 (1990)

In 1990-90 I represented Baker Hughes in connection with a Department of Justice challenge to the sale of its oil and equipment business to Oy Tampella. The federal district court judge denied DOJ's effort to enjoin the transaction and the U.S. Court of Appeals sustained the lower court decision. I was associate counsel in the matter. Lead counsel was David Marx on behalf of Tampella.

- a. The matter was active in 1989-90. The case was argued on May 16, 1990 (by David Marx) and decided on July 6, 1990
- b. US Court of Appeals, District of Columbia Circuit, No. 90-5060, Ruth B. Ginsburg, Sentelle, and Thomas, Circuit Judges
- c. David Seidman, Atty., Dept. of Justice, Washington, D.C., for the appellant; David Marx, Jr., and Amy E. Hancock, McDermott Will and Emory, 600 Thirteenth Street, N.W., Washington, D.C. 20005, (202) 756-8000, for Oy Tampella AB. Ms. Hancock is currently Deputy General Counsel of the American Beverage Association, 1101 Sixteenth Street, N.W., Washington, D.C. 20036, (202) 463-6732.

8. *In re Tricor Antitrust Litigation*

In 2007-08 I represented Solvay Pharmaceuticals and its subsidiary, Laboratories Fournier, in Sherman Act monopolization cases brought by a variety of competitors, direct and indirect purchasers and state attorneys general pending in the federal district court in Delaware. The cases ultimately settled. I was associate counsel with principal responsibility for the settlements.

- a. I was involved in these matters in 2007 and 2008. Solvay settled most of the cases in November 2008 (and various later dates as to certain other plaintiffs)
- b. District Court, Delaware, Civ. Nos. 02-1512, 03-120 and 05-340, Susan L. Robinson, District Judge
- c. [CO-DEFENDANTS] William F. Cavanaugh, Jr., Patterson, Belknap, Webb & Tyler LLP, 1133 Avenue of the Americas, New York, NY 10036, (212) 336-2000, for Abbott Laboratories;

[GENERIC DRUG MAKERS] David H. Hashmall, Goodwin Proctor LLP, Exchange Place, 53 State Street, Boston, MA. 02109, (617) 570-1000, for Teva Pharmaceuticals USA, Inc., Teva Pharmaceuticals Industries Ltd., and Novopharm Ltd.; Robert Van

Nest, Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA. 94111, (415) 391-5400, for Impax Laboratories Inc.;

[*DIRECT PURCHASER PLAINTIFFS*] Eric Cramer, Berger & Montague, P.C., 1622 Locust Street, Philadelphia, PA. 19103, (800) 424-6690, for Direct Purchaser Class Plaintiffs; Richard Arnold, Kenny Nachwalter PA, 1100 Miami Center, 201 South Biscayne Boulevard, Miami, FL. 33131, (305) 373-1000, for Ahold aka American Sales Corp., Albertson's, Inc., Eckerd Corporation, Brooks Pharmacy aka Maxi Drug, Inc., Hy-Vee, Inc., Kroger Co., Safeway, Inc., and Walgreen Co.; Steve D. Shadowen, Hangley Aronchick Segal Pudlin & Schiller, 301 North 3rd Street, Suite 700, Harrisburg, PA. 17101, (717) 364-1030, for CVS Corporation, CVS Pharmacy, Inc., Rite Aid Corporation and Rite Aid Headquarters Corp.

[*INDIRECT PURCHASERS*] Thomas M. Sobol, Hagens Berman Sobol Shapiro LLP, Cambridge, MA, 1918 Eighth Avenue, Suite 3300, Seattle, WA. 98101, (206) 623-7292, for Indirect Purchaser Class Plaintiffs; William Christopher Carmody, Susman Godfrey L.L.P., 901 Main Street, Suite 5100, Dallas, TX. 75202, (214) 754-1900, for PacifiCare;

[*STATE AGs*] Patricia A. Conners, Associate Deputy Attorney General, Antitrust Division, Office of the Attorney General, State of Florida, PL-01, The Capitol, Tallahassee, FL, 32399, (850) 414-3856, for the State of Florida, lead counsel for the State Attorneys General.

9. Glynn-Brunswick Memorial Hospital Authority v. General Electric Co.

In 2000 I was co-lead counsel, along with Dan K. Webb, in an antitrust class action brought by certain hospitals against General Electric Company. After hearings on class certification and summary judgment, the case was settled in late 2000.

- a. The matter was active in 2000 and was settled with final judgment entered on November 7, 2000.
- b. No. CV 299-381 (S.D. Ga.), Judge Anthony A. Alaimo, District Judge.
- c. R. Stephen Berry, Berry Law PLLC, 1717 Pennsylvania Avenue, N.W., Suite 450, Washington, D.C., 20006, (202) 296-3020, attorney for Plaintiffs.

10. Eileen Townsend v. R.S. Mahajan, et al.

Between 1988 and 1991, I was lead counsel in pro bono litigation brought on behalf of a former Arnold & Porter employee who had been assaulted in her apartment in Washington, D.C. The matter was tried before a jury in the District of Columbia Superior Court in 1990.

- a. The matter was active between 1988 and 1991. It was settled as to

- one defendant in 1990; settled as to second defendant in 1991 (while on appeal);
- b. D.C. Superior Court, Civ. No. 88ca05526;
Judge Curtis E. von Kann;
 - c. Paul H. Ethridge, Esq.
100 S. Washington Street
Rockville, MD 20850
Bar No. 200543

Edwin A. Sheridan, Esq.
8404 Arlington Boulevard, Suite 200
Fairfax, VA 22031
Bar # 048025

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

Significant Legal Activities (2000-2011)

- a. I assisted General Electric Company in securing DOJ approval (pursuant to consent decree) of the sale of NBC/Universal to Comcast (2011).
- b. I assisted Talecris Inc in securing FTC approval (pursuant to consent agreement) of its purchase by Grifols (2011).
- c. I assisted Intel in securing approval by the FTC and by the European Commission (pursuant to consent agreement) of its purchase of McAfee (2010-11).
- d. I represented General Electric Company in connection with resolving investigations by the Department of Justice, the Securities and Exchange Commission, the Internal Revenue Service and twenty-six State Attorneys General into the sale of municipal guaranteed investment contracts (2006-11).
- e. I assisted Pfizer in connection with securing FTC approval (pursuant to consent agreement) of its purchase of Pharmacia (2002-03).
- f. I represented Micron in connection with a grand jury antitrust investigation and related civil litigation (2002-08).
- g. In addition, during these periods, I also represented various companies and individuals in connection with antitrust grand jury investigations in the auto parts, airline, cement, scrap metal and financial services industries.

Significant Legal Activities (1995-1999)

As Director of the Bureau of Competition at the Federal Trade Commission, I supervised antitrust investigations and subsequent litigation by lawyers, economists and other

professionals in the Washington, D.C. offices and ten regional offices of the FTC. I also represented the FTC in certain matters pending before Congress, in certain dealings with antitrust enforcement officials in other countries and in appearances before various groups with an interest in FTC antitrust enforcement.

Significant Legal Activities (1980-1995)

- a. I represented various companies and individuals in connection with antitrust grand jury investigations involving the dairy, cellular phone, fencing and industrial diamonds industries.
- b. I also represented various companies, including Occidental Chemicals, Baker Hughes Inc., General Electric Company and Hoffmann La-Roche Inc. in antitrust reviews of proposed mergers.
- c. In connection with lobbying activities, my firm registered with the House of Representatives on behalf of certain clients for whom I did some modest lobbying work between 1981 and approximately 1992. My law firm records are incomplete, but the clients for who I recall working include: Sacramento Municipal Utility District (1984-90)(est); Hoffmann-La Roche Inc. (1984)(est.); Lone Star Industries, Inc. (1981-82)(est.); Asea AB (1986-87)(est).

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

I have been an occasional guest lecturer at various academic institutions, including Georgetown University Law Center, George Washington University Law School, American University Law School, Stanford Law School and Lawrence University. I did not use a syllabus during these guest lectures.

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

I have made the following arrangements in connection with my departure from the Arnold & Porter LLP partnership.

1. Prior to my starting work at the Department of Justice the firm has agreed to pay me any amounts owed for 2011 and to pay me a pro rata share of amounts owed me for 2012.
2. I have a primary capital account of \$458,531 that will be refunded to me in two equal annual installments to be paid on the first and second anniversary of my departure from the firm.

3. I have a secondary capital account of \$30,330 that will be refunded to me on 12/2013.

4. For the first 11 years following my departure from the firm I will receive an annual retirement payment of \$ 75,448 subject to an annual COLA.

5. After 11 years, I will receive a retirement payment of \$100 per month for the rest of my life.

6. Pursuant to standing practice of the firm, I will maintain funds previously committed to the firm's profit sharing and 401(k) plans. No further contributions will be made to these plans, either by me or by the firm.

7. I will receive a payment of my interest in the firm's Pension Plan following my withdrawal from the firm, to be rolled over into a separate retirement account. The value of that interest was \$ 641,748 on 12/31/2011.

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

I have no such plans.

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

See attached SF 278.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

My most significant charitable and volunteer work in recent years has been on behalf of my undergraduate college, Lawrence University, in Appleton Wisconsin. Since 2001 I have been on the Board of Trustees. I currently am Vice-Chair of the Board.

In addition I have contributed time and energy on behalf of Stanford Law School, where my spouse and I received J.D.'s in 1975. This has included service on the Law School's Board of Visitors for two terms, establishment of and fundraising for a fund to support youth-directed clinical programs -- The Mark Eastwood Fund for Youth and the Law, and other fundraising activities for the Law School.

In 2010 I headed a team providing pro bono legal advice to the Institute of Medicine of the National Academies concerning a report on the future of nursing.

In prior years, I have provided modest pro bono support to various groups involved in areas such as child nutrition and campaign finance reform and have led fundraising efforts on behalf of Washington Legal Clinic for the Homeless and the National Children's Law Center.

In the late 1980's, prior to my most recent stint at the Federal Trade Commission, I led a team that provided pro bono litigation services, including a jury trial in D.C. Superior Court, on behalf of a former Arnold & Porter secretary who had been assaulted in her apartment.

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	384	064	Notes payable to banks-secured		0
U.S. Government securities-add schedule		0	Notes payable to banks-unsecured		0
Listed securities-add schedule	9	251 450	Notes payable to relatives		0
Unlisted securities--add schedule	1	029 041	Notes payable to others		0
Accounts and notes receivable:			Accounts and bills due		0
Due from relatives and friends		0	Unpaid income tax		
Due from others		0	Other unpaid income and interest		0
Doubtful		0	Real estate mortgages payable-add schedule	445	625
Real estate owned-add schedule	1	950 000	Chattel mortgages and other liens payable		0
Real estate mortgages receivable		0	Other debts-itemize: none		0
Autos and other personal property		172 000	Charitable contribution pledges	210	000
Cash value-life insurance		150 802			
Other assets itemize:					
Law Firm Capital		488 861			
			Total liabilities	655	625
			Net Worth	12	770 594
Total Assets	15	426 219	Total liabilities and net worth	13	426 219
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor		0	Are any assets pledged? (Add schedule) No		0
On leases or contracts		0	Are you defendant in any suits or legal actions? No.		0
Legal Claims		0	Have you ever taken bankruptcy? No.		0
Provision for Federal Income Tax		0			
Other special debt		0			

William Baer
Attachment for Net Worth statement
covering assets in investment accounts
As of December 29, 2011

Real estate owned

Residence (Bethesda MD)	\$1,500,000
Residence (Big Sky, MT)	\$450,000
TOTAL	\$1,950,000
Residence (Bethesda MD) ING Bank	\$445,625

US Government Securities

none

Listed Securities

Franklin-Temp Hard Currency Fund	\$316,788
Tax-Exempt Fund of Maryland	\$97,032
Dreyfus US Govt Intermediate	\$93,760 *
PIMCO Real Return Bond Fund	\$409,011
PIMCO Total Return Bond Fund	\$193,730
Thornburg Ltd-Term Muni Fund	\$692,402
Short-term Bond Fund of Am	\$9,676
Templeton Global Bond Fund	\$499,370
American Balanced Fund	\$81,550
Capital Income Builder Fund	\$123,534
Income Fund of America	\$117,779
Fidelity Asset Manager - Moderate	\$372,459 *
PIMCO All Asset All Authority Fund	\$307,917
PIMCO Global MultiAsset Fund	\$315,269
First Eagle Global Fund	\$660,359
Washington Mutual Investors Fund	\$378,599
Davis NY Venture Fund	\$211,931
Growth Fund of America	\$151,422
Capital World Growth and Income	\$161,407
New Perspective Fund	\$162,900
Smallcap World Fund	\$142,097
Europacific Growth Fund	\$315,135
Thornburg International Value Fund	\$450,056
New World Fund	\$387,189
Templeton Developing Markets Fd	\$31,066
Calvert Global Water Fund	\$171,845
RS Global Natural Resources Fund	\$336,907
PIMCO Commodity Real Return Fund	\$221,166
Oppenheimer Gold and Sp Minerals	\$411,565

Prudential Jennison Natural Resources	\$426,050
DB Oil Fund	\$122,018
DB Agriculture Fund	\$41,716
Powershares Progressive Energy	\$162,288
MarketVectors Agribusiness Fund	\$82,145
Suffolk Bancorp stock	\$27,525
American Electric Power stock	\$6,231
AT&T stock	\$7,542
Consolidated Edison stock	\$6,259
Emerson Electric stock	\$4,663
PIMCO Emerging Local Bond (added November 2011)	\$17,583
CNI Charger Prime Money Market	\$1,447
Prudential Jennison Nat Res (added April 2011)	\$11,908
Neuberger Berman L/C Disciplined Ins. (added May 2011)	\$23,636
Fairholme Fund	\$15,615
First Eagle Overseas	\$7,215
Artio International Equity	\$6,087
Artisan International Small Cap	\$5,024
Laudus Mondrian Emerging Markets	\$17,285
Loomis Sayles Bond Fund Inst'l	\$12,189
PIMCO Emerging Markets Currency	\$11,878
T. Rowe Price Inst'l Intl Bond	\$0
DoubleLine Total Return Bond Fund	\$18,716
Metropolitan West Total Return Bond Fund	\$146,377
PIMCO Low Duration Instl	\$182,383
PIMCO Commodity Real Return Fund Return Strategy	\$25,488
iShares GS Natural Resources	\$0
iShares S&P 500	\$0
SPDR Gold Trust ETF (added November 2011)	\$13,140
MSCI EAFE	\$0
Schafer Cullen High Dividend Value Equity	\$25,120
Neuberger Berman Lg Cp Discp Gr Instl	<u>\$0</u>
TOTAL	\$9,251,450

Unlisted Securities & Alternative Investments (including retirement accounts)

TSP C Fund	\$85,000 *
TIAA annuity account	\$249,206 *
CREF money market acct	\$37,884 *

CREF Inflation-linked bond acct	\$219,812 *
CREF Bond account	\$99,662 *
CREF US stock account	\$201,601 *
Ridgewood Energy funds M,N,P,R	\$35,000 *
The Weatherflow Offshore Fund I (added April 2011)	\$33,196
Pine Grove Offshore LTD (added April 2011)	<u>\$67,680</u>
TOTAL	\$1,029,041
Cash Value Life Insurance	
Transamerica Life	\$86,843
Reassure American Life	\$32,428
Pacific Life	<u>\$31,531</u>
TOTAL	\$150,802

* Note: items with asterisk have estimated valuations

AFFIDAVIT

I, William J. Baer, do swear
that the information provided in this statement is, to the
best of my knowledge, true and accurate.

2/24/12
(DATE)

William J. Baer
(NAME)

Stephanie Chandler
(NOTARY)

District of Columbia-SS

Subscribed and sworn to before me, in my presence.

this 24th day of February, 2012

by Stephanie Chandler

Stephanie Chandler, Notary Public

My Commission expires: December 14, 2016

Senator KOHL. Thank you very much, Mr. Baer.

Mr. Baer, the Justice Department is in the process of closing four of its seven regional offices: the offices in Atlanta, Cleveland, Dallas, and Philadelphia. Many antitrust experts, including the senior leadership of these offices, are very concerned about the impact of these office closures on the detection and prosecution of local antitrust conspiracies. I myself, I must say, share these concerns.

While we hear about the big national and international investigations brought by the Justice Department here in Washington, these local conspiracies involving such things as gas price fixing, construction bid rigging, and rigged school milk bids, for example, often affect local consumers most directly.

So, Mr. Baer, does closure of these offices worry you for its impact on antitrust enforcement? What will you do as head of the Antitrust Division to ensure that there is no lessening of effects to detect and prosecute local antitrust conspiracies in the regions now covered by the offices to be closed.

Mr. BAER. Mr. Chairman, I appreciate the importance of having a plan in place to ensure effective local and regional enforcement. The press tends to focus on international and national antitrust issues, but there are serious local and regional problems that need to be addressed. A top priority for me, if confirmed by the Senate, would be to make sure those plans are in place.

I should add, Mr. Chairman, when I was at the Federal Trade Commission, we went through a similar experience of reducing the number of, they are called, regional offices, and it was my job as Director of the Bureau of Competition to make sure we continued to have effective local and regional enforcement. And I think we were able to do that. There are a couple of FTC Chairs, current and former, behind me who can indicate whether that is correct or not. But I appreciate that that is important and will be a top priority for me, if and when confirmed.

Senator KOHL. All right. Mr. Baer, while you served as Director of the Bureau of Competition at the FTC for 4 years in the 1990s, during most of your legal career you have worked in private practice. For the past decade, you have served as head of the antitrust group at a major Washington law firm. In this capacity, you have been very skilled at representing your private clients in antitrust matters and defending against allegations that your clients have violated antitrust law.

The position of Assistant Attorney General for Antitrust is very different, as you well know. You will be the Government's chief antitrust prosecutor on behalf of consumers, bringing antitrust cases against parties that are alleged to have engaged in anti-competitive practices. How can you assure us that you will be an aggressive antitrust enforcer in your new role and will prosecute antitrust cases with all the vigor that you have brought to defending your private clients?

Mr. BAER. Mr. Chairman, I hope past is prologue in that I made that transition from private practice, as you noted, in the 1990s and I believe came to be appreciated for understanding very quickly that I had a different client and it was the American public. And that is the attitude I would bring.

Over the years, in dealing with senior officials and staff of both the FTC and the Antitrust Division, I think they see me as a fair-minded and dedicated lawyer, and I have heard many encouraging words from staff at the Antitrust Division looking forward to my arrival. And I hope I live up to those expectations.

Senator KOHL. All right. Mr. Baer, you have been interested in and worked in the field of antitrust for nearly your entire professional career going back to your graduation from law school in 1975, when you went to work at the FTC. And so I would like to ask you why are you interested in antitrust. Why do you want the job of Assistant Attorney General for the Antitrust Division at the Justice Department, understanding, among other things, that you will suffer a great reduction in your remuneration?

Mr. BAER. Senator, I come from a proud family tradition of public service, and I came to Washington hoping I would have multiple opportunities to pursue public service, and so this is a great opportunity for me.

Why antitrust? I think over the years I have come to appreciate—Senator Lee referred to this in his opening remarks—that removing both governmental and private restraints on free market competition actually pays off. It makes a difference in human lives. And to be able to do something in public service that you can point to, you can sit down with a consumer and say here are the ten things that the Antitrust Division did that maybe just on the margins but made a difference in your life. It is a privilege to be in that position. It is a huge responsibility to make the judgments so you can actually confidently say that at the end of the day. But I love the challenge. I welcome the challenge.

Senator KOHL. Good. Mr. Baer, based on your years of experience as an antitrust lawyer with cases before the Justice Department, as well as your time as Director of the Bureau of Competition at the FTC in the 1990s, are there any specific policies or procedures of the Antitrust Division that you will change if you become confirmed at the Assistant Attorney General?

Mr. BAER. Mr. Chairman, I would take this job, if confirmed, with a little bit of humility about what might need to be changed. I think the Antitrust Division has been well run in recent years. Christine Varney is the Assistant Attorney General, and then two Acting Assistant Attorneys General, Sharis Posen and now Joe Wayland, those are people I admire and respect and think they have done a very good job.

And so the first task for me, I think, would be to go in with ears open and talk about where we are at, understand whether there are challenges that require some changes, but I do not go down with a preset agenda.

Senator KOHL. Before I turn it over to Mr. Lee, I would like to ask you your opinion over the past decade or two. Do you feel that we have had too much consolidation in this country, that there has been a reduction in competition, that we need more vigorous competition, and in order to do that, your Division will be required to be even stronger than it has been in seeing to it that mergers are examined very carefully and competition is maintained to its fullest?

Mr. BAER. I agree, Senator, that a key part of this job is to be vigilant in investigating consolidation, not just in high-tech or evolving markets but in established markets as well.

I have also learned, though, that merger decisionmaking is tremendously fact specific, that understanding and making an accurate prediction about what might happen in the future if consolidation is allowed is a challenging job. I have been impressed with the work the Justice Department has done these last few years, and I welcome the opportunity to be part of that.

Senator KOHL. Good. Mr. Lee.

Senator LEE. Thank you very much, Mr. Chairman, and thanks again for being here, Mr. Baer.

During much of the 20th century, a lot of our antitrust analysis in this country tended to focus much more on protecting competitors and on equalizing the market, paying relatively little regard to economic consequences of having Government intervention. But due in large part to the Chicago School of Economics and Robert Bork and others like him, during the last few decades antitrust law has undergone something of a shift and has tended to focus more on maximizing consumer welfare and achieving optimal economic outcomes.

But in recent years, some have started calling for an abandonment of what might be described as the Chicago School approach. For instance, in 2010, President Obama's first Assistant Attorney General over the Antitrust Division, Christine Varney, stated that the Chicago School should be "retired."

So, first, I would like to know whether you agree with that assessment? And, second, I would like to know whether you intend to rely on sort of the Chicago School approach more or less than this office has tended to rely on it over the last few years?

Mr. BAER. Senator, I think sound economic analysis is fundamental to good antitrust enforcement. That means being able to articulate a theory of harm that has occurred from past behavior or is likely to occur from future behavior. That for me has been the core discipline or learning from what is called Chicago School economic thinking.

I confess to being a little confused about Chicago School and post Chicago School because, in fact, post Chicago School also demands—talks about that same discipline. And I think we may be talking about differences on the margin and judgment calls about when to enforce and not to enforce. But my sense is that—and I think it is why one can have some bipartisan folks in the background here today—antitrust enforcers do see, whether Republican or Democrat, Chicago School or post Chicago School, do tend to see the target area of enforcement in very similar terms, and I would go down to the Justice Department, if confirmed, with that attitude in mind.

Senator LEE. OK. So to the extent that Ms. Varney was saying that the approach that needed to be retired was one that took into account and focused heavily on consumer welfare and on the economic consequences of Government intervention, the need to shoot for optimal economic outcomes, you would not agree with that. You would not agree that we need to retreat from that kind of analysis.

Mr. BAER. I agree that we do need to continue to have sound analytical analysis. I worked, Senator, with Assistant Attorney General Varney, as did a number of other private practitioners, on revisions to the merger guidelines, updating the merger guidelines, and the Antitrust Division and the Federal Trade Commission were both in agreement that that notion of making sure we had a story of real economic harm is fundamental to sound antitrust enforcement.

Senator LEE. OK. And that inquiry, then, the resulting inquiry from that starting point, leads you to the consumer welfare analysis. Inevitably there is—

Mr. BAER. At the end of the day, it is all about consumers. It is not about competitors.

Senator LEE. OK. Great.

Now, on the subject of Ms. Varney, she stated separately that in antitrust enforcement, “there is no such thing as a false positive.” In other words, I think what she was suggesting was that there are never instances in which overzealous antitrust enforcement mistakenly condemns efficient, procompetitive behavior of the sort that ought to be, you know, allowed to exist in the marketplace.

Ms. Varney went on to say, “I think that this ruse that we have to be restrained in our enforcement because false positives will chill innovation take an economic toll on society and overall result in negative economic consequences, slowing output, increasing cost. I just think it is false. I think the more people start rejecting this idea of false positives, the better off we are going to be.”

Do you tend to agree or disagree with Ms. Varney’s statements regarding false positives and overdeterrence?

Mr. BAER. I do not recall reading that before, but let me say while I think there is a risk of being too cautious about taking action where you see a problem, there is a risk from being overly aggressive. And that really, as you said in your opening remarks, Senator, is how antitrust has gotten better, more disciplined over the years to take into account the possibility that an action could have adverse consequences, that an action being pushed by some people actually is an action that will not necessarily improve market conditions but may help a competitor.

So bearing those considerations in mind it seems to me is critical to being successful in these law enforcement jobs.

Senator LEE. OK. So you would agree, then, that overzealous enforcement of antitrust laws could cause harm.

Mr. BAER. Yes. In short, yes.

Senator LEE. Are there steps you can describe that you would take as the head of this office, if confirmed, that would help protect against such overzealous enforcement?

Mr. BAER. I think a lot of those safeguards are in place right now, which is the discipline of making sure the lawyers and the economists, who are very helpful in making sure that the target zone is actually the right target zone, trying to work through the theory of how are consumers going to be better off if we act, worse off if we do not, that having that discipline in each and every matter—and I frankly think the professional staff down there is good at it. That is the approach one needs to take.

Senator LEE. OK. I am pleased to hear that. I am pleased to hear that you acknowledge there is some limit to that and that there are some risks associated with overzealous enforcement. There is, in my opinion, definitely such a thing as a false positive.

I see my time has expired, Mr. Chairman.

Senator KOHL. Mr. Baer, recent years have seen an increased consolidation among providers of telecommunications services, including cell phone companies, cable providers, and phone companies. Many consumers complain of rising bills for cable and Internet service. Many have little or no choice of cable companies or high-speed Internet providers. This consolidation trend includes last year's attempt by AT&T and T-Mobile to merge, which I was pleased to see the Justice Department and the FCC successfully took action to block, and the currently pending transactions between Verizon Wireless and four of the Nation's leading cable companies.

Given the importance for millions of consumers of connecting to the Internet, I believe that ensuring competition in telecom should be of the highest priority. Do you agree with me regarding the importance of competition in these markets?

Mr. BAER. I absolutely agree with you, Senator.

Senator KOHL. Without asking for your views on any specific transaction, how will you evaluate transactions among telecom companies that do not involve mergers or acquisitions? For example, what will be your approach to evaluating marketing agreements among competitors?

Mr. BAER. I think evaluating marketing agreements in any sector, there are two sides to the coin. One is, What are the procompetitive, efficiency-oriented justifications and do those really stand up to scrutiny?

On the other hand, what is the risk there will be less competition, more coordination, and a less competitive, less effective marketplace for consumers going forward?

When I was at the FTC in the 1990s, very often we had to make those sorts of assessments, evaluations of company justifications for a transaction, and to make sure that those were properly vetted and that they held up and that the risks to consumers were properly taken into account.

It is a detailed, fact-specific inquiry, but it is one that needs to be done.

Senator KOHL. All right. Mr. Baer, one of the very industries to enjoy wide-ranging exemptions from antitrust law is the freight railroad industry. Because of these exemptions, rail shippers have been victimized by the conduct of dominant railroads and have no antitrust remedies. Higher rail shipping costs are passed along to consumers, resulting in higher electricity bills, higher food prices, and higher prices for manufactured goods as well.

So for years I sponsored legislation to abolish these obsolete antitrust exemptions for railroads. Our Judiciary Committee has approved this bill in each of the last three Congresses with only a single dissenting voice.

Mr. Baer, do you agree with me that these antitrust exemptions should be repealed so that the railroads are subject to the same antitrust laws as virtually every other industry in our economy?

Mr. BAER. Mr. Chairman, I am very sympathetic to the goals of that legislation. I do understand that the administration has not taken a position on the legislation, and I am not privy to exactly why that is. And I would hope that that is one area I could get up to speed on very, very quickly, if confirmed by the Senate.

I will say generally, philosophically I am very much an advocate for deregulation, and I view part of the role as being a senior antitrust official in the administration would be to be a forceful advocate for deregulation.

Senator KOHL. So I take it that your position will be that you generally support the legislation that we are trying to get passed. You cannot act entirely in a unilateral fashion, but your own sense is that we should move in that direction of removing that exemption.

Mr. BAER. I think where deregulation can be accomplished effectively, it is a very good thing. And I am a little cautious on this one, Senator, simply because I do not know the ins and outs of the administration's thinking on it.

Senator KOHL. All right. Recently, the Justice Department and the FTC have expressed concerns about how patent holders for high-tech products, especially those with so-called standard-essential patents, can act anticompetitively, for example, by going to the International Trade Commission seeking orders to exclude competitors' products from being imported. The antitrust agencies have also expressed concern about other forms of so-called patent holdup and its impact on competition.

In March, Chairman Leahy and I wrote to the Attorney General urging the Justice Department to consult with the ITC to ensure that exclusion actions brought before the ITC not be misused for anticompetitive purposes.

So what is your view regarding exclusion orders and injunctions sought with respect to standard-essential patents and the potential for the misuse of the ITC process in these situations?

Mr. BAER. Mr. Chairman, I was privileged to watch online the hearing the Judiciary Committee recently held on these very issues, and I agree with the very thoughtful testimony of Acting Assistant Attorney General Wayland and FTC Commissioner Ramirez that exclusion orders out of 337 proceedings at the ITC can be a problem, can be a back-door way of avoiding the RAND commitments that patent holders often make in order to get a standard adopted. So it is a real concern.

I thought the approach that Commissioner Ramirez and Acting Assistant Attorney General advanced, that is, consultation, working closely with the ITC to make sure in applying its public interest standard it did not allow itself to be used as a back-door vehicle to exclude the exercise of patent rights, that it become part of the standard, is the right way to go. It is a key and a growingly important area of our economy, and being all over it I think is critical for antitrust enforcement.

Senator KOHL. Good. Senator Lee.

Senator LEE. I want to make sure I understand your answer, particularly the last part of your answer, regarding this issue pertaining to standard-essential patents. How was it that you said you think you could balance this or you could come up with a standard

that would prevent or at least discourage anticompetitive abuses of the standard-essential patent framework?

Mr. BAER. My impression of the potential problem or real problem is that some companies participate in a standard-setting organization, agree to donate their intellectual property and have that incorporated in the standard, and commit to licensing those patents subject to a reasonable and nondiscriminatory royalty; but that there have been occasions—I actually learned from testimony before this Committee—where some of those people who made the RAND commitment over here might have then sought an exclusionary order over at the ITC in an effort to basically prevent people who had invested in developing products pursuant to a standard from actually coming to market. And to the extent that occurs, that can be seriously problematic.

As I understand the ITC's mandate, in deciding whether an exclusionary order is appropriate, it has the ability to take in the public interest factors. My point was—and, again, I am really agreeing with what has been stated before this Committee by the current antitrust officials down the street—that applying the public interest standard to deny an exclusionary order where somebody is trying to back-door is the right way to go.

Senator LEE. OK. And you think that would be sufficient, in other words, that the public interest consideration could be sufficient to give them authority to do that, to deny the exclusionary order on that basis under that circumstance you described?

Mr. BAER. Senator, candidly this is an area I need to know and learn more about. Right now my sense is that that is the right way to go. If it turns out that is not working, then letting this Committee know and considering the possibility of some legislative tweaking to make sure that power is there at the IT is something I think ought to be considered.

Senator LEE. OK. Yes, that makes sense. That is helpful. Thank you.

You have noted in the past that there is a debate inside and outside of Government about the extent to which agencies should work with merging parties to address concerns as opposed to blocking a transaction. Can you expand on your view of the proper circumstances in which conditions maybe should be imposed in lieu of blocking a particular transaction from being consummated?

Mr. BAER. As a general proposition, it is always dangerous to be simplistic, but where there is a horizontal merger that is seriously flawed, I think the right way to go is to block or to seek a divestiture of the unacceptably concentrated parts of that acquisition. But when dealing with a vertical merger or a conglomerate merger, where there is the potential for some real efficiencies to flow to consumers, that may be a situation where some conduct, remedies, or restrictions on behavior is an appropriate way of allowing consumers to benefit from the cost reductions, the efficiencies or economies, at the same time make sure there is not an anticompetitive consequence.

So, again, simplistically, that is how I see the world.

Senator LEE. Right. There certainly are plenty of cases then in which conditions are going to be preferable to a block. Somewhere it may not be, but certainly plenty where it could be.

Mr. BAER. Yes, sir.

Senator LEE. A 2008 American Bar Association report to which you contributed noted that antitrust regulators currently do not have any mandated timelines that determine their conduct of non-merger investigations. As investigations have become drawn out, the cost for private industry has tended to increase, and lawful activity has a tendency, or at least a potential to be chilled. I think that is quite a fair assumption. The ABA report thus recommended that the antitrust agencies impose some kind of timelines for their investigations.

Based on your experience as an antitrust official as well as in private practice, what are the problems and costs associated with the lack of reliable timelines for agency action or for non-merger investigations? And then going along with that, would you implement any timelines for such investigations at the Antitrust Division if you were confirmed?

Mr. BAER. Senator, delay helps no one, right? If there is consumer harm occurring in the marketplace, a 3-year investigation to decide whether to go after or not does not help consumers. And if it turns out the harms are not there or are not provable, it is not fair to the companies to be under the spotlight for an indefinite period of time.

A good manager works the caseload aggressively to make sure we are coming to outcomes as quickly as we can. There is—I have seen it in Government—a cost to putting the pen down and turning to a project over here and then coming back over here. There is a learning curve you have to go back up.

So finding effective ways to make sure matters are disposed of quickly is good for everybody and it is good for the Government because people can move on to the next thing.

The problem with too strict a time deadline scheme is that events happen. You know, a merger wave occurs, and because of the number of Hart-Scott-Rodino filings, resources need to be devoted to that time-sensitive and statutorily constrained time period. And so there may be periods where resources need to be redeployed. But the bottom line is it is a management obligation, and a manager ought to be held to a high standard of making sure things are investigated, decisions are made, and people get on to the next thing.

Senator LEE. Right, right. That makes sense. And in the absence of a statutory time deadline, sometimes a good manager, sometimes the head of the office could impose that so that individuals are not running that on their own and it becomes a standardless exercise—subject, of course, to a waiver approved by the boss where circumstances necessitate that in order to accommodate the other caseload that is subject to a statutory time deadline.

Thank you.

Senator KOHL. Thank you, Senator Lee.

Mr. Baer, over the last 5 years our Antitrust Subcommittee held three hearings on Google and competition in the Internet search and Internet advertising sectors. Last year, we examined allegations that Google was biasing its search results to favor its own products and services. Google has grown to become a dominant player in Internet search, a sector of vital importance to our econ-

omy as a whole. Many industry observers compare Google Now to the dominance possessed by Microsoft a decade ago.

I recognize the FTC is currently investigating the search bias issue, but the Justice Department has and will likely continue to scrutinize many issues affecting Google.

With this in mind, how will you scrutinize allegations of anti-competitive behavior by Google and the Internet sector in the future? And do you believe it has the capability to gain a stranglehold over this market?

Mr. BAER. Mr. Chairman, first of all, I do understand that there is some division of responsibility for certain Internet-related subject matters between the FTC and the Antitrust Division. I do not understand exactly how that is allocated. I am sure Chairman Leibowitz will educate me at the first opportunity.

But anytime a dominant firm is in a position to hit a tipping point and abuse its position of dominance, Antitrust ought to be looking. It does not mean that they ought to be acting. It really depends on what the behavior is. And so being vigilant, whether it be a Microsoft or an Alcoa Aluminum, about firms that are successful—and we do not want to penalize success, but to make sure that success is not improperly translated into an unfair advantage in other markets is really a key part of what antitrust is all about.

Senator KOHL. From time to time we hear calls that the old rules of antitrust do not apply to the so-called new economy. Others argue that antitrust principles remain sound and are flexible enough to take into account conditions in new industries. We are interested in your view. Do new high-tech industries such as this one require a different framework of antitrust enforcement? And what do you think that might look like?

Mr. BAER. Senator, I actually think antitrust laws, as currently written and as interpreted by the courts, do give the flexibility to antitrust law enforcers to act effectively in a new economy. And the challenge simply is understanding what is going on, being able to ask the right questions, and, as Senator Lee and I were talking earlier, to be able to tell oneself a convincing and evidentially sound theory of consumer harm. And that is the challenge. But that is the challenge in a smokestack industry as well. And I think as I have watched Chairman Leibowitz and the Antitrust Division of the Justice Department over the years, I think they have done a pretty good job of meeting those standards; that is, understanding what is going on, asking the right questions, and intervening where it is appropriate.

Senator KOHL. Good. Mr. Baer, for nearly a century it was a basic rule of antitrust law that a manufacturer could not set a minimum price for a retailer to sell its product. This rule allowed discounting to flourish and greatly enhanced competition for dozens of consumer products, everything from electronics to clothes. However, in 2007, in a 5–4 decision of the Supreme Court in the *Leegin* case, this was overturned, this rule was overturned, and it was held that vertical price fixing was no longer banned in every case.

I believe this decision is very dangerous to consumers' ability to purchase products at discount prices and harmful to retail competition. I have introduced legislation to overturn the *Leegin* decision

and restore the ban on vertical price fixing. So tell us, Mr. Baer, where do you stand on the issue?

Mr. BAER. I would support legislative repeal of the *Leegin* decision, and I would support it for a couple of reasons.

First, I thought Justice Breyer in his dissent in that 5–4 decision had it pretty right. It was well-settled law, there was widespread industry understanding of where the lines were, and there was serious risk of antitrust harm to consumers from vertical price fixing.

A second concern I had is that, however well intentioned the majority was in the Supreme Court, it created a major dichotomy between Federal law, which now is—vertical price fixing is subject to a rule of reason—and State law, which in most cases still considers it per se unlawful. And that creates enormous confusion and misunderstanding in the business community. And for antitrust-compliant companies—and there are a lot of them out there who really just want to know what the rules are—to create that kind of dichotomy on a rule of law per se unlawful resale price maintenance did not seem to be creating confusion I think was unfortunate.

Senator KOHL. Good. Senator Lee.

Senator LEE. So you would have kept Dr. Miles?

Mr. BAER. I would have kept Dr. Miles, Senator.

Senator LEE. Some have argued that this move away from the Dr. Miles per se rule might not have that much of an effect, anyway, you know, that the rule-of-reason analysis is usually, perhaps almost always going to yield the same result. So is your affinity for the per se rule just because it is easier to manage, if you are going to achieve that outcome anyway, you might as well state it in a per se rule that is easier to apply?

Mr. BAER. I think there is enough risk of harm and enough familiarity with the rule that a change actually does create more confusion than it does provide more certainty. I frankly think it is much harder in a rule-of-reason case—the standards, the proof of anticompetitive harm is—it is higher and it is more difficult for the Government to intervene. And given what seemed to me to be a well-understood and highly complied with rule, I thought we were better off keeping it.

Senator LEE. I understand. I think there are those who would argue that, consistent with the consumer welfare analysis, it might make sense to leave open the possibility that consumer welfare might in some instances be enhanced or not diminished as a result of a rule like this. Interesting fodder for discussion. We are probably not going to get there. But your affinity for Dr. Miles does not necessarily signal a disagreement with the Robert Bork approach of consumer welfare?

Mr. BAER. It does not. I think one of the benefits of more hard-edged economic analysis in antitrust has been not to be automatically hostile, for example, to non-price vertical restraints. We have gone from a presumptively unlawful approach in the 1950s, 1960s, and early 1970s to a willingness to consider those as reasonable measures. And I think that is part of the contribution Judge Bork and others have made to antitrust analysis.

Senator LEE. But it sounds like part of your analysis is based on the judicial manageability of the standard. It is a more traditionally manageable standard perhaps to stick to a per se rule, and I

think that point is irrefutable, so I will not go down that. I appreciate your insight on that.

Under the Obama administration, antitrust regulators have increasingly relied on behavioral law and economics, that school of thought that attempts to account for irrational behavior within economic models. One commentator referred to the Obama administration as the “behavioral economics dream team.” But some observers note that this approach fails to produce a consistent or a coherent model for antitrust enforcement and that it may, in fact, lead to excessive Government interference and intervention.

For example, the recent commentary noted that behaviorists have no way to identify irrational decisions, cannot reliably discern an individual’s true preferences, and fail to account adequately for the social costs of a proposed intervention.

Do you agree or disagree? Do you sympathize in any respect with that commentary?

Mr. BAER. One of the things I told myself is I would be very candid in this hearing, and I candidly am not sufficiently familiar with that debate to be able to offer much insights.

Senator LEE. OK. That is good to know. So that probably answers my next question, which is: If confirmed, would you come into this job with an intention of relying on behavioral law and economics to a greater or a lesser degree than those currently in the Government have been relying on it?

Mr. BAER. I think the right answer is, if confirmed, I would have to get a lot smarter on that issue a lot faster.

Senator LEE. OK. It sounds, in any event, like you are not a behavioral law and economics fanatic.

Mr. BAER. I think that is fair.

Senator LEE. This is not something that defines you.

Mr. BAER. I am a fanatic Green Bay Packer fan.

[Laughter.]

Senator LEE. OK. Thank you.

Thank you, Chairman.

Senator KOHL. Mr. Baer, gas prices are at historically very high levels with the national average of around \$3.50 a gallon. The main cause of high gas prices is, of course, the price of crude oil, and the price of crude oil is in large part under the control of OPEC’s production decisions.

In the last few years, the Justice Department has spent an enormous amount of time and effort prosecuting price-fixing cartels. Yet the worst and biggest cartel in the world is the OPEC oil cartel, and we have not taken any action against them.

So I sponsored a NOPEC bill which would permit antitrust actions by the Justice Department against any member nations of the OPEC cartel. This bill, NOPEC, has passed the Judiciary Committee five times in the last decade, and it passed the full Senate with 70 votes in 2007.

So, Mr. Baer, do you agree that the actions of OPEC would be illegal if it was a group of private companies? Would you support the Justice Department in having the authority to bring antitrust lawsuits against OPEC member nations?

Mr. BAER. Senator, I understand there are some significant international diplomatic issues embedded in that question, and I know

this administration and prior administrations have had some concerns about the legislation. Everybody, I think, who understands this area knows that the American consumer does not benefit from a cartel, whether domestic or foreign, government sponsored or privately managed. And one of the challenges, I think, of being in this job, if confirmed, is to try and help the administration effectively deal with issues of government-sponsored cartel behavior.

Senator KOHL. Can I hear your answer?

Mr. BAER. My answer is I think it is a serious issue, but what the right solution is is something I need to work closely with the administration on before expressing a view.

Senator KOHL. Well, I appreciate that. I guess what I am asking is whether or not you see somewhat clearly or very clearly or not at all clearly that the fact that this operating cartel is occurring at the government level instead of at the private sector level and international, it does not make any difference. Now, how we deal with it, as you said, is another issue, but that it is serious and potentially is illegal as if it were a bunch of private companies.

Mr. BAER. Mr. Chairman, I think you—I agree with what you said. There is no doubt that cartel behavior designed to raise prices, whether it be private or government sponsored, can have an adverse effect on the American consumer and ought to be a key focus of this administration as it has been in prior administrations. And my challenge is in knowing sitting here today what the right solution is. That I do not claim to know.

Senator KOHL. All right. Mr. Baer, we have occasionally heard concerns from United States companies with global operations that they are being treated unfairly by other nations' antitrust enforcement agencies. These companies assert that complying with multiple antitrust review processes is very expensive, burdensome, and time-consuming. They are also concerned with conflicting results among international antitrust authorities, particularly between the European Commission and the United States.

On the other hand, other commentators point out that many American companies seek the assistance of international antitrust authorities to remedy anticompetitive problems in foreign countries.

Do you believe that this is an important issue for you to address? What will you do to achieve greater coordination and harmonization between the United States and foreign antitrust agencies?

Mr. BAER. Mr. Chairman, I think it is a top priority for antitrust enforcers to engage internationally with competition agencies around the world. We actually—I have seen in the last 20 or 25 years an enormous improvement in the communication, the coordination, and, indeed, some degree of convergence on standards, whether it be cartel behaviors, some to a lesser extent, but some convergence on how best to approach mergers. Progress is being made, but it takes a lot of time and energy. Both the Justice Department and the FTC have been committed to that in Republican and Democratic administrations. I applaud it and see that externally as one of the key issues for the Assistant Attorney General for Antitrust helping communicate that our transparency, our due process, our predictability of outcomes has value around the world.

Senator KOHL. Good. Senator Lee.

Senator LEE. A few years ago, you published an article in the Harvard Journal of Law and Public Policy. I think it was co-authored with David Balto. In that you argued that politics will not appropriately factor into antitrust enforcement. For example, you wrote that, "Agency enforcement decisions and judicial outcomes are consistently and transparently made on the basis of the law, the facts, and sound economics."

I certainly hope this is true. I tend to want it to be true. And yet, you know, we see from one Presidential administration to another that the style of enforcement, the instances in which enforcement actions are brought might change. And so one does wonder whether and to what extent that does actually happen.

You have also stated that, as a general matter, people have applied antitrust laws in a neutral fashion. If someone wants to impose a higher tax or discourage consumption, it is a separate public policy question than allowing a cartel or allowing a monopoly. Here again I agree with your statement. I think that is absolutely the right aspiration to have with regard to antitrust law and its enforcement.

What assurances can you give this Committee that under your leadership, if you are confirmed, the Antitrust Division will not be seeking to achieve any particular social outcome, any particular policy or political outcome, separate and apart from those policies that are embedded without our antitrust body of laws?

Mr. BAER. Again, I think, Senator, hopefully past is prologue in that the record in 4½ years of directing antitrust enforcement at the FTC demonstrated a certain level of objectivity and straightforwardness. I have seen that work with some of my colleagues behind me who have been in positions of public responsibility in the antitrust arena.

Antitrust enforcement, law enforcement, loses credibility if it becomes seen as a political tool. These jobs are not totally without a partisan element to them in that there are different philosophies that people bring to bear that may affect on the margins decisions. Antitrust is best in the last 20 or so years. It has been at its best when it is nonpartisan and focused on economically rigorous thought with consumer interests the bottom line.

Senator LEE. That is great. That is great. And now that I think about it, your Dr. Miles analysis actually dovetails nicely with that. One of the more riveting discussions I have had about per se rules in a number of years, so I thank you for that.

Mr. BAER. Thank you, Senator.

Senator LEE. Thank you very much, Mr. Baer.

Thank you, Chairman.

Senator KOHL. Thank you, Senator Lee.

We have no further questions of you, Mr. Baer. We are going to keep the record open for a week for followup questions from members of the Committee. We thank you for being here. Speaking just for myself, I think you have done a great job. You have got a great history and past, and I have very high hopes for your ability to perform at the highest level as head of the antitrust Division.

Mr. BAER. Thank you, Mr. Chairman. Thank you, Senator.

Senator KOHL. Thank you all for being here.

[Whereupon, at 2:08 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Senator Christopher A. Coons

William J. Baer

Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice
Questions for the Record

1. The U.S. brewing industry is undergoing a period of consolidation. At the same time, large brewers have implemented a number of business strategies designed to increase their leverage in the marketplace (such as by acquiring its own distribution network), and apply that leverage to gain market share (such as by rewarding distributors not to carry competitor products by means of so-called "loyalty" agreements).

- a. What pro-competitive purposes do three-tiered distribution models serve?

Response: I have limited experience with antitrust issues involving distribution in the beer industry. I do appreciate that, under the Twenty-First Amendment to the Constitution, the regulation of alcohol is largely a matter of state authority. See, e.g., Granholm v. Heald, 544 U.S. 460, 493 (2005). This includes whether and how to implement a three-tiered distribution system. See id. at 466. If confirmed, I will make it a priority to better understand the brewing sector in order to make sure the Division is positioned appropriately to address any antitrust concerns raised by current or potential future conduct.

- b. How well is the three-tiered system at use in the beer industry serving those purposes?

Response: Please see my answer above to Question 1.a.

- c. If confirmed, what will be your approach to ensuring market access for small brewers?

Response: Please see my answer above to Question 1.a.

2. In 2010, the DOJ and USDA held a series of joint workshops on agriculture and antitrust enforcement issues. One of those workshops was focused on competitive dynamics in the seed industry. If confirmed, what will be your plan for addressing the concerns raised in this workshop as well as the other issues that were considered during the course of the workshops?

Response: I applaud the joint workshops conducted by the Justice Department and the Department of Agriculture. I have read the Justice Department report on those workshops, as well as public remarks by DOJ officials. See, e.g., Sharis A. Pozen, Agriculture and Antitrust: Dispatches and Learning from the Workshops on Competition in Agriculture, ANTITRUST, Spring 2012 at 8 ("A clear message from the workshops is that antitrust enforcement has a crucial role to play in fostering such a healthy and competitive agriculture sector."). I support the Division's "commitment to vigorous antitrust enforcement in the agricultural sector", id., and will continue that commitment if confirmed, subject, of course, to the appropriate recusal requirements.

Senator Richard J. Durbin

William J. Baer

**Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice
Questions for the Record**

1. Please discuss the recusal policy you will follow if confirmed.

Response: I will abide by all existing laws and regulations and by the ethics pledge President Obama requires of his nominees. In short that means that, if I am confirmed, for a two year period, I will not be involved in matters in which clients for whom I have personally worked in the two years prior to my confirmation are parties. It also means that for the same two year period I will not be involved in matters where my current law firm -- Arnold & Porter LLP -- is representing a party. I will consult with and be guided by the Justice Department's ethics officer in complying with these limitations on my participation in Justice Department matters.

2. I believe it is imperative that we have a Justice Department Antitrust Division that will investigate and halt anti-competitive behavior in the payment card industry- an industry that plays an enormous role in our economy and has a troubling history of anti-competitive practices.

You have represented VISA, the largest payment card network, on antitrust matters. VISA has been the subject of a number of investigations by the Antitrust Division, including a recently-disclosed investigation into VISA's new merchant fee called the Fixed Acquirer Network Fee.

If confirmed, will you recuse yourself from Antitrust Division investigations and actions involving VISA?

Response: Yes. Visa is one such current client of mine, and therefore I would be subject to and adhere to the recusal rules set forth in my response to Question 1.

3. Under your leadership, can you commit that the Antitrust Division will carefully scrutinize the payment card industry and take appropriate investigative and enforcement actions when anti-competitive behavior is alleged?

Response: The Antitrust Division has a long record of vigorous enforcement in this area. To the extent I am able to participate in matters consistent with my ethics obligations, I will ensure that tradition is maintained. To the extent that I am recused from matters, I am confident that the leadership of the Department and of the Antitrust Division will make sure that all appropriate investigations and enforcement actions are pursued vigorously by the Justice Department.

4. In your confirmation hearing, you discussed your views on the issuance of exclusion orders by the International Trade Commission ("ITC") in cases where standard essential patents ("SEPs") have been found to be infringed. If confirmed, you may be asked to

express the Antitrust Division's views on proposals to limit the ITC's jurisdiction or limit its issuance of exclusion orders in cases involving SEPs.

Our current system of patent protection, with ITC playing its key enforcement role, has a long history of working well to encourage innovation and stimulate competition. When complaints of unfair practices arise, case-by-case adjudication of such complaints, including adjudication by the ITC, has been largely effective in striking a fair balance between the interests of patent holders, alleged infringers and the public. I believe that any significant changes to the current system should be cautiously considered in order to ensure that this balance is not unsettled.

Do you agree that any proposals to limit the availability of ITC exclusion orders in cases involving SEPs or to limit the use of the ITC as a forum for disputes involving imported products that allegedly infringe on SEPs should be made based on concrete data that demonstrates that our current system has a quantifiable problem with "patent hold-up," and not on the mere possibility of a "patent hold-up" problem?

Response: At my hearing, I endorsed the thoughtful and cautious approach to this issue recently expressed by Acting Assistant Attorney General Wayland and FTC Commissioner Ramirez. Both recognized the potential for antitrust harms that could arise from ITC exclusion orders involving SEPs and indicated that the ITC's existing "public interest" authority could be sufficient to address those situations. I agree that any suggestion to change current law ought to be based on real world experience demonstrating that the current framework is inadequate to protect consumers from antitrust harms.

5. If you are confirmed, will you solicit the views of the ITC, the Patent and Trademark Office, the U.S. Trade Representative, industry stakeholders, standard-setting organizations and consumer groups before expressing views on behalf of the Antitrust Division regarding the issue of ITC exclusion orders in SEP cases and the extent of any "patent hold-up" problem that may exist?

Response: I agree that consultation with the institutions and groups listed above is an appropriate process to follow before the Administration makes proposals to change existing law.

Senator Charles E. Grassley**William J. Baer****Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice
Questions for the Record**

1. Please give me a summary statement regarding your view on the purpose of antitrust law and the mission of the Antitrust Division of the Department of Justice?

Response: The core purpose of the antitrust laws is to provide consumers and business with the benefits of a vigorously competitive free market system by taking action against anticompetitive conduct, whether unilateral or concerted, and anticompetitive mergers that threaten to deny consumers those benefits. Appropriate enforcement of the antitrust laws is vital to maintaining a healthy economy because competitive markets lead not only to lower prices for consumers, but also to an environment that encourages businesses to innovate. The Antitrust Division has the responsibility to ensure that the various laws Congress has enacted -- The Sherman and Clayton Acts, to cite but two examples -- are enforced in a vigorous, effective and fair manner to realize these goals.

2. What areas are you going to focus on if you are confirmed to lead the DOJ Antitrust Division? What goals do you have for the DOJ Antitrust Division?

Response: As I noted in my testimony, I believe that the Antitrust Division has performed well in recent years. Its focus has been, and in my view, should continue to be, on cartel behavior that raises prices or otherwise adversely affects the welfare of consumers; mergers and other forms of consolidation that risk a substantial lessening of competition; and single firm or collusive conduct that suppresses the free market competition to which consumers are entitled. Part of that law enforcement responsibility entails providing as much guidance as possible to the business community and consumers. In recent years it has involved, and in my view should continue to involve, close consultation with competition enforcement officials from other jurisdictions in an effort to promote fair, transparent and consistent application of competition principles around the world. I would also work to continue to ensure close cooperation between the Antitrust Division and state antitrust enforcers, which serve an important role in effective antitrust enforcement.

3. How would you describe your approach to antitrust enforcement? How different would your approach be to antitrust enforcement than the Bush Administration's? How do you think your antitrust enforcement analysis and priorities will be similar to or differ from those of your predecessors?

Response: I think my track record in and out of government demonstrates that I approach antitrust enforcement sensibly. Enforcers need to be vigorous, effective and fair. The goal is to provide consumers with the benefits of unfettered competition. In that regard, I do not expect my approach to enforcement to differ significantly from the approach taken by my predecessors at the Antitrust Division in recent Administrations. I was honored that prior Assistant Attorneys General going back to the early 1970s -- both Republicans

and Democrats -- support my nomination. See Letter from Thomas E. Kauper, former Assistant Attorney General for the Antitrust Division, et al. to The Honorable Patrick J. Leahy, Chairman and The Honorable Chuck Grassley, Ranking Member, United States Senate Committee on the Judiciary (Feb. 28, 2012) (“[Mr. Baer] possesses the intelligence, judgment, and leadership skills essential to serve effectively as Assistant Attorney General. We are confident he will continue the strong, rational, and nonpartisan antitrust enforcement tradition of the United States Department of Justice.”). Part of the recent success of antitrust enforcement is that enforcers, whether Republican or Democratic, agree on the core areas of enforcement, agree on the analytical framework that should be applied to evaluating whether certain behavior is likely to cause consumer harm and agree as well on the importance of providing guidance to the business community on the kinds of behavior that law abiding businesses should seek to avoid.

4. I’m concerned about this Administration’s apparent anti-business approach, including the massive tax increase proposed on business and the President’s recent statement that “If you’ve got a business, you didn’t build that.” If confirmed, should we be concerned that the DOJ Antitrust Division will be another anti-business tool of this Administration?

Response: As noted above, I see the key role of the Antitrust Division as that of a nonpartisan law enforcer. Antitrust enforcement is most effective when it is analytically grounded and consumer-oriented. Moreover, I recognize from my years in private practice that the business community generally wants to know what the antitrust rules are so that businesses are able to comply with them. I applaud and would hope to continue the efforts of the Justice Department and the Federal Trade Commission to provide meaningful guidance to the business community on important issues, such as mergers, health care, competitor collaborations, and intellectual property.

5. The 2008 Transition Report, that you participated in, states that antitrust “[e]nforcement that is too aggressive can deter potentially efficient business relationships, while too little enforcement will have an insufficient deterrent effect and could lead to business arrangements that reduce competition in ways not outweighed by efficiencies. There is some difference of opinion, of course, regarding what constitutes too much or too little enforcement; each administration – and each senior enforcement official – grapples with finding the sweet spot in-between the two.” What do you think constitutes too much or too little enforcement?

Response: It is hard to generalize because determinations as to whether specific conduct may violate the antitrust laws are intensely fact specific. That said, I am convinced that effective civil enforcement requires antitrust enforcers to be able to articulate and support factually a credible theory of economic harm to consumers before bringing an action. If enforcers hold themselves to that demanding standard, I think they can avoid both over-enforcement that chills legitimate and pro-consumer behavior and under-enforcement that puts American consumers at risk.

6. Do you believe that there are areas of under-enforcement and over-enforcement at the DOJ Antitrust Division? If so, what are those areas? What should be the right balance?

Are you concerned about over-enforcement of the antitrust laws that in effect is government regulation? If you are confirmed to lead the DOJ Antitrust Division, how do you intend to ensure that there is an appropriate level of enforcement?

Response: As noted in my response to Question 5, I believe that both over and under-enforcement are significant concerns, and, if confirmed, would be cognizant of guarding against both. Moreover, I believe antitrust enforcement in recent years -- under both Republican and Democratic leadership -- has been moving in the right direction. I view antitrust as a "law enforcement" responsibility and not a "regulatory" mission. If confirmed, I would approach the job with that distinction in mind: antitrust is most effective when it focuses on removing illegitimate barriers to free market competition -- not when it imposes such barriers itself.

7. One concern that I've heard expressed is a perceived divergence between the DOJ Antitrust Division and the Federal Trade Commission relative to their enforcement standards, which leads to different outcomes depending upon which agency is investigating a particular matter. Is this perception accurate? Do you agree that different approaches to antitrust enforcement can lead to arbitrary results and, if so, is that a good or bad thing?

Response: As a general proposition I think the Federal Trade Commission and the Antitrust Division approach enforcement in a similar manner. This is best evidenced by the joint guidelines the two agencies have issued with respect to mergers, healthcare, competitor collaborations, and intellectual property, and by the joint hearings and workshops the two agencies have held in recent years to study new developments in areas such as patent and competition policy; international technical assistance; and single-firm conduct. There are certain inherent differences in the statutes each agency enforces and some differences in process -- for example the Antitrust Division pursues its cases in the federal courts while the FTC has the option of pursuing a violation of the FTC Act through the administrative process with a subsequent right of appeal to the federal courts of appeal. While these differences do create at least the potential for different outcomes, in my experience the agencies are at their best when they work hard to harmonize their approaches on substantive matters. If confirmed, my intent would be to continue that close coordination.

8. On a number of occasions, you've encouraged more cooperation between the DOJ Antitrust Division and the Federal Trade Commission relative to the existing antitrust clearance process, reducing the burdensomeness of second requests, and increasing productivity and efficiencies at the agencies. If confirmed, what do you intend to do to improve the merger review process to make it more accurate, transparent and efficient?

Response: Promoting accurate, transparent and efficient merger review was a key goal of mine during my service as Director of the Bureau of Competition at the FTC during the late 1990s. If confirmed, I would bring that same priority to the Antitrust Division. To promote efficient merger review, the two agencies need to have effective processes in place that allocate promptly merger review responsibility on specific matters. In

addition, both DOJ and the FTC need to issue Second Requests mindful of the costs and burdens those demands place on merging parties. At the same time, the parties to a merger need to understand that the Hart Scott Rodino process imposes tight deadlines and a real burden on antitrust enforcers to make an informed decision as to whether a merger risks reducing competition. The challenge is to balance those somewhat competing goals so as to make sound law enforcement decisions without imposing undue burdens. It is an ongoing challenge that I look forward to confronting, if confirmed.

9. In general, what is your view of the use of consent decrees as opposed to court action to accomplish the goals of the DOJ Antitrust Division? Please explain your philosophy on the use of consent decrees.

Response: In many cases, consent decrees are preferable to protracted and expensive litigation--both from the perspective of the merging parties and that of the Antitrust Division. Often a consensual settlement can address and resolve the competitive concerns the Antitrust Division has with a transaction -- sometimes involving divestiture of assets, sometimes imposing conduct restrictions and sometimes requiring both.

Consent decrees, in appropriate circumstances, have the benefit of allowing the non-problematic and potentially efficiency-enhancing aspects of a merger to go forward while addressing any areas of competitive concern. In some cases, however, the competitive problems with a deal are sufficiently pervasive that a settlement -- even one including significant concessions on the part of the merging parties -- is not a viable option; in others, the antitrust enforcers and the merging parties may not be able to agree on terms.

In those situations, the Antitrust Division needs to be prepared to seek an injunction prohibiting the transaction or ending the anticompetitive conduct.

10. What do you see as the biggest challenges to international antitrust enforcement? Do you believe that there has been enough harmonization and cooperation between the different antitrust authorities? Do you believe that American businesses and their transactions are being treated fairly in the international antitrust arena? What steps will the DOJ Antitrust Division take under your direction to better harmonize its antitrust reviews and investigations with other antitrust authorities?

Response: In my most recent time at the FTC I saw, and in the intervening 12 years I have continued to see, significant improvement in international cooperation and coordination among competition enforcers. I applaud those developments. Close coordination and frequent communication helps promote better and more consistent outcomes. That is good for the American consumer and it is good for American businesses. I would continue those efforts if confirmed. My focus would include both promoting coordinated outcomes and consistent enforcement in multi-jurisdictional antitrust reviews and urging commitment by enforcers worldwide to common principles of due process and transparency.

11. In a June 2008 speech at the American Antitrust Institute, Ms. Varney, who went on to become AAG for Antitrust, described how the case against Microsoft began long before any judicial hearings took place. "Part of what you have to do when you're going to try to

bring a [Sherman Antitrust] Section Two case is you have to create the political climate," she said. Do you agree with this strategy, and if so, what 'political climate' will you be attempting to create?

Response: I see antitrust enforcement in largely non-partisan terms. Where there is behavior or potential future behavior that poses the threat of competitive injury, the Antitrust Division needs to investigate. Where the facts and the law confirm that risk, the Antitrust Division needs to act vigorously and in a timely fashion to enforce. There will often be critical scrutiny of those law enforcement decisions. But that comes with the job. And the job is to make sound decisions that are well-grounded factually and legally. Antitrust enforcement, like other law enforcement, should be non-political.

12. As you know, I've been extremely concerned about increased agribusiness concentration, reduced market opportunities and fewer competitors in the agriculture sector, and the inability of family farmers and producers to obtain fair prices for their products. I've also been concerned about the potential for increased anti-competitive business practices in agriculture. I believe that the DOJ Antitrust Division needs to dedicate more time and resources to agriculture competition issues. I'd like to get a commitment from you that, if confirmed, the DOJ Antitrust Division under your watch will pay heightened attention to competition issues in agriculture. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the DOJ Antitrust Division?

Response: I appreciate the importance to the American economy of competitive markets in the agricultural sector. You have my assurance that it will be an enforcement priority for me if confirmed.

13. You're probably aware that the Justice Department and the Department of Agriculture recently participated in a series of workshops on agriculture competition issues. Are you confident that the DOJ Antitrust Division is scrutinizing these issues as closely as it can under the law? What more can it do?

Response: I applaud the joint workshops conducted by the Justice Department and the Department of Agriculture. I have read the Justice Department report on those workshops, as well as public remarks by DOJ officials. See, e.g., Sharis A. Pozen, Agriculture and Antitrust: Dispatches and Learning from the Workshops on Competition in Agriculture, ANTITRUST, Spring 2012 at 8 ("A clear message from the workshops is that antitrust enforcement has a crucial role to play in fostering such a healthy and competitive agriculture sector."). I support the Division's "commitment to vigorous antitrust enforcement in the agricultural sector", id., and will continue that commitment if confirmed, subject, of course, to the appropriate recusal requirements. Given the areas where DOA regulatory responsibility and DOJ antitrust enforcement duties potentially overlap, American consumers and the agricultural sector are well-served by close coordination between the two agencies. I would plan to continue that effort. Moreover, I believe close scrutiny of anticompetitive conduct in the agricultural sector should be a top priority for the Antitrust Division. Because I am not privy to the full range of non-public law enforcement efforts already underway at the Antitrust Division, I am not in a position

to present an informed view on what more needs to be done. If confirmed, I can and do commit to getting up to speed on those matters very quickly to determine whether -- and what -- additional avenues of investigation by the Antitrust Division are warranted.

14. The Justice Department and Department of Agriculture workshops demonstrated the unique nature of the agriculture sector and the unique challenges that sector faces. I have a bill that would require the DOJ Antitrust Division to issue agriculture guidelines. Do you have an opinion on my bill?

Response: If confirmed, I will consult with others in the Administration regarding your legislation. Generally, I support transparency in antitrust enforcement and, providing guidance to the business community on what behavior poses antitrust risk. Gaining an understanding of the competitive effects of prior transactions and enforcement decisions, and communicating the lessons learned to the business community provides helpful visibility into what types of transactions the federal enforcers may view as problematic in the future.

15. I believe that the Justice Department and the Department of Agriculture, which enforces the Packers and Stockyard Act, should collaborate and work together to monitor anti-competitive activity in the agriculture industry. If you are confirmed, will you commit to foster a closer and more productive relationship with the Department of Agriculture?

Response: As noted above, I believe the joint hearings recently conducted by the two agencies represented a positive step in that direction, and I am committed to building on that progress.

16. Do you think that there is a role for antitrust law in protecting the family farmer? If so, how would you use the antitrust laws to do this? In that regard, is there anything on the horizon that we should be looking at or that you consider a challenge in this area or agriculture generally?

Response: The family farmer must be protected by the antitrust laws both in its role as a consumer of agricultural inputs and as a supplier of agricultural commodities, just as the antitrust laws are intended to promote effective competition that protects all consumers and suppliers. If confirmed, I commit to getting up to speed on the Antitrust Division's enforcement efforts in this area as soon as possible. To the extent that there is behavior in the agricultural sector that poses a threat of competitive injury -- whether it be through concerted action, consolidation, or the exercise of monopsony power by buyers that deny suppliers competitive prices -- I would pursue appropriate law enforcement actions.

17. Could you discuss your general philosophy with respect to the intersection of intellectual property and antitrust? What challenges do you see for the DOJ Antitrust Division in this area?

Response: I wrote and spoke about this issue at some length when I was Director of the Bureau of Competition in the late 1990s. Intellectual property rights are a form of

property. As such, the owner's rights need to be respected and protected. At the same time, antitrust enforcers have a legitimate role in ensuring that IP rights are not abused to facilitate anticompetitive conduct. As this Committee's recent hearing on standard essential patents made clear, antitrust enforcers need to play close attention to the standard setting process and to be prepared to act in circumstances where antitrust laws are violated.

18. In your opinion, what is the proper role of the antitrust and consumer protection laws in a high tech, e-commerce economy?

Response: Antitrust and consumer protection laws serve similar ends in a technology-driven economy -- in short, to ensure that consumers are not victims of "bad" behavior. The means to that end are often similar -- ensuring that consumers benefit from a competitive market place, and that innovation flourishes and that consumers benefit from innovation. However, there are some areas, such as in the privacy context, where a competitive marketplace alone may not adequately protect consumers from harmful conduct. In those situations, effective consumer protection laws and targeted enforcement are another key tool in the government's efforts to protect consumers. The antitrust and consumer protection laws therefore present both overlapping and, at times, complementary frameworks to ensure that consumers continue to be protected as economic paradigms shift and evolve.

19. In a 1999 *San Jose Mercury News & Business* article entitled "U.S. Antitrust Litigation Gets a Baer Hug," you were criticized for stepping into uncharted territory with regard to some of your legal arguments during your time at the Federal Trade Commission, including halting a Staples/Office Depot merger by narrowly defining the market involved, despite the two companies only controlling 5% of office supply sales. Similarly, you filed charges against Toys R Us based on their "significant market power" for allegedly pressing toy makers not to sell to discount stores, despite that Toys R Us was only responsible for 30% of sales by top toy makers -- smaller than anything typically deemed to be a monopoly. One of your former law firm colleagues as well as a former FTC employee, William Sohn, described these actions as having "gone farther than I would have in his position."

- a. Are these tactics and understandings of market size and dominance ones which you plan to employ while at the DOJ?

Response: The article cited correctly notes that the Federal Trade Commission's decisions to challenge the Staples/Office Depot merger and certain exclusionary activities of Toys "R" Us generated some critical scrutiny at the time the cases were initiated. But it is important to note that the federal courts ultimately agreed with the Commission's view of the facts and the law in both matters and ordered the relief the FTC had requested. In the *Staples* matter, a federal district court judge issued a preliminary injunction against the deal -- agreeing with the Commission that the evidence showed that the market at issue was for office supplies bought through the large superstore chains and that the proposed merger

put consumers at risk of paying substantially higher prices than they would have paid without the merger. F.T.C. v. Staples, Inc., 970 F. Supp. 1066, 1074 (D.D.C. 1997) (“[T]he Court finds that the appropriate relevant product market definition in this case is, as the Commission has argued, the sale of consumable office supplies through office supply superstores.”). A few years later the widely respected jurist from the United States Court of Appeals for the Seventh Circuit, the Honorable Richard A. Posner, devoted a chapter to the Staples case in his book on antitrust law. He praised the Commission’s approach to that merger, both in terms of the analytics and the evidence and concluded with the statement that “[e]conomic analysis of mergers had come of age.” Richard A. Posner, Antitrust Law 158 (2d ed. 2001).

In the Toys “R” Us matter, the Federal Trade Commission issued a decision finding that the company had abused its position as the leading toy retailer by forcing manufacturers to agree collectively to deny competing discount retailers access to certain popular toys. The Commission’s decision was unanimously upheld by the Seventh Circuit Court of Appeals, which concluded that “the Commission’s decision is supported by substantial evidence on the record” Toys “R” Us, Inc. v. F.T.C., 221 F.3d 928, 940 (7th Cir. 2000).

If confirmed, I would hope to bring analytically sound and factually supported antitrust challenges where there exists real potential for antitrust harm to consumers. In both of the cases cited above, the federal courts agreed that the Federal Trade Commission challenges had met those standards.

- b. What is the line point in defining what constitutes a monopoly, or when a company has “significant market power”?

Response: It is important to note that the Toys “R” Us case involved allegations that the retailer had acted to orchestrate a horizontal conspiracy among manufacturers, which would be viewed as an antitrust violation regardless of what market share was held by Toys “R” Us. Moreover, I do not believe it is possible to draw a bright line in terms of what level of market share constitutes monopoly power. The key determination is not what specific market share percentage is held by a competitor, but rather what ability that competitor has to restrain competition. Toys “R” Us, Inc. v. F.T.C., 221 F.3d 928, 937 (7th Cir. 2000) (citation omitted) (“[T]he share a firm has in a properly defined relevant market is only a way of estimating market power, which is the ultimate consideration.”). Ultimately, questions of antitrust are fact-specific and a determination of what constitutes market power depends on the circumstances of that individual market.

- c. Staples and Office Depot together would only have controlled 5% of office supply sales. When a proposed merger would result in the merged company’s control of only 1% of a market, can the DOJ intervene?

Response: In my years in public service and in private practice, I have not seen a horizontal merger involving such small market shares that warranted government intervention. That said, the proposed merger of Staples and Office Depot involved two firms whose respective market shares in the relevant antitrust market were quite large. The federal court firmly rejected the contention of the parties that the market was vast and that their respective market shares were low. Instead, the court found that the merger would have created monopolies in many local markets and duopolies in many others. In Staples/Office Depot, as in all antitrust cases, a careful and reasoned analysis of what constitutes the relevant market -- the market affected by the conduct in question -- is key to determining whether a proposed merger will cause economic harm to consumers and was key to the court's decision to issue a preliminary injunction in Staples/Office Depot.

20. A 1998 *Legal Times* article entitled "The Other Antitrust Chief," characterized your work at the FTC Competition Bureau as "activist approach to nonmerger conduct."

- a. Would you consider your general approach to non-merger conduct "activist"? Why or why not?

Response: The activist label is not one I would have applied to myself during my time leading the FTC's Competition Bureau. As an antitrust enforcer I have always tried to focus on behavior that caused or created a real risk of causing consumer harm. Where that determination could be confidently made, I recommended that the Commission pursue vigorously its law enforcement options. To me that is not "activist"; that is doing the job Congress directed the Federal Trade Commission to do. I would bring that same attitude to the Antitrust Division if confirmed by the Senate.

- b. How would you define an "activist" approach to addressing non-merger conduct?

Response: I think the term "activist" is inapt in this context. Whether the Antitrust Division is dealing with mergers, cartels or other conduct, my job, if confirmed, would be the same. I would be charged with investigating situations where the conduct in question creates a risk of significant consumer harm and pursuing vigorously those situations where careful consideration of the evidence and the law confirm the existence or potential for a violation of the antitrust laws.

21. In 1999, an *Investor's Business Daily* article entitled "Antitrust Targets Vertical Deals" noted that the Federal Trade Commission under the Clinton Administration challenged nearly two dozen vertical agreements, whereas the Reagan and Bush Administrations combined had challenged only two. The article contended that this increase in vertical merger challenges made for an uncertain business environment, and you were quoted as saying, "Because we've got a pretty good track record of deliberating carefully and quietly, it is hard to predict (what deals might be reviewed)," and that such unpredictability "might be cause for a little caution in investment strategies."

- a. Where do you draw the line in terms of deciding what type of vertical mergers warrant closer scrutiny?

Response: Most vertical mergers, in my experience, do not raise competition concerns. Indeed, there are instances where a vertical merger may have significant procompetitive aspects that outweigh any risks to competition that might also flow from the transaction. As with any potential enforcement action, it is therefore important to carefully and closely assess the facts to determine whether there is, on balance, a harm to consumers flowing from the proposed transaction. The vertical mergers most likely to require a close look by government enforcers are those where there is risk that competition may be foreclosed by the transaction or other anticompetitive effects. Even where there is a risk of anticompetitive harm, it is often possible for the Antitrust Division to obtain remedies that prevent that harm (such as requiring firewalls that prevent the flow of competitively sensitive information from customers of the acquired firm that compete with the acquirer) while allowing the transaction to proceed and the efficiencies of a vertical merger to be recognized.

- b. Are you concerned with the effect that unpredictability of antitrust oversight could have on the business environment?

Response: I applaud efforts to provide as much predictability as possible in antitrust oversight, and therefore I believe it to be fundamentally important to provide the business community appropriate guidance on merger enforcement. That is why I, as a private practitioner, was an active supporter of the 2010 effort by DOJ and the FTC to update and clarify the Merger Guidelines. The point is to provide the business community the tools necessary to assess in advance the likelihood that the proposed course of conduct poses a serious antitrust risk and potential for an enforcement action.

- c. How do you plan to strike a clear balance between valid oversight and the potential for chilling positive business development?

Response: I think it is important for enforcement officials to be as transparent as possible in explaining what causes them to act, or not act, in a particular matter. As a private practitioner for many years, I found that kind of transparency helped me counsel clients on what mergers posed serious antitrust risk and what mergers did not. Upfront guidance is the most efficient deterrence for problematic transactions because it enables the business community to decide in advance whether a proposed transaction poses serious antitrust risk. I see it as an important part of the job of the Assistant Attorney General for Antitrust.

- d. Would you expect vertical merger challenges to constitute a significant portion of the DOJ Antitrust Division's workload?

Response: It is hard to answer that question in the abstract. As I noted, many vertical mergers pose little or no antitrust risk and accordingly require little or no scrutiny. In my experience a higher percentage of horizontal mergers in concentrated markets are likely to require closer investigation, but ultimately the answer will depend necessarily on what transactions the business community chooses to pursue and the specific facts of individual transactions.

22. In 1998, during your time at the Federal Trade Commission, the Federal Trade Commission brought a case against Intel based on its business relationship with three customer companies and Intel's refusal to give up some of its technology to these companies unless they licensed their own technology to Intel. What was considered unusual about this case was that these companies were *customers* of Intel's, a relationship that is not typically regulated by antitrust law.

- a. Are relationships with customers such as these companies an appropriate area of regulation for the DOJ's antitrust division?

Response: The Commission's complaint in the 1998 Intel case focused on concerns that certain customers were also potential or actual competitors of Intel and that Intel's actions were inappropriately restraining horizontal competition in the market for general purpose microprocessors. Specifically, the complaint charged that Intel suspended its traditional information sharing practices with certain customers in order to compel those companies to end intellectual property disputes with Intel and to grant Intel licenses to patented technology developed and owned by those companies. The FTC's complaint focused primarily on restraint of horizontal competition. The consent agreement that was ultimately reached between the FTC and Intel focused on resolving those concerns to the satisfaction of both parties.

- b. How do you distinguish between Intel's conduct and the type of conduct engaged in by nearly all businesses in negotiations between suppliers and business customers?

Response: The Commission's concern in that case was whether a critical supplier was unfairly disadvantaging potential rivals who were also customers.

- c. Where do you draw the line between valid business negotiations and antitrust violations?

Response: The line in my view needs to be drawn in a fashion that provides for antitrust enforcement where single firm conduct risks adversely affecting competition. Our competitive market system needs to leave plenty of room for aggressive competition. That rivalry benefits consumers through lower prices and through innovation. However, in those limited circumstances where behavior by a dominant firm forecloses competitors and thereby denies consumers the benefits of a competitive marketplace, antitrust enforcement has an important role to play.

Senator Amy Klobuchar

William J. Baer

**Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice
Questions for the Record**

1. Mr. Baer, you have considerable experience in antitrust law. Can you elaborate on how your experience has prepared you to be an Assistant Attorney General for the Antitrust Division?

Response: I have had the great privilege of working both as an antitrust enforcer (while at the Federal Trade Commission) and as an antitrust counselor (while in the private sector). I have learned a lot from those experiences. I think I appreciate the importance of vigorous, effective and fair enforcement. Consumers and the business community deserve all three. Vigorous enforcement does not do much good unless it is targeted at real problems and produces positive results. Antitrust enforcement risks losing credibility unless it is perceived as fair and effective.

2. How would you balance the need to prohibit anti-competitive practices while still allowing businesses innovate and maximize profits?

Response: I believe it is important for enforcement officials to be as transparent as possible in explaining what causes them to act, or not act, in a particular matter. Effective enforcement requires antitrust enforcers to be able to articulate and support factually a credible theory of economic harm to consumers before bringing an action. Such upfront guidance can efficiently deter problematic transactions, and help avoid both over-enforcement that chills legitimate and pro-consumer behavior and under-enforcement that puts American consumers at risk.

Senator Michael S. Lee

William J. Baer

**Nominee, Assistant Attorney General (Antitrust), U.S. Department of Justice
Questions for the Record**

1. When speaking before the Antitrust Modernization Commission in 2005, you noted several factors the FTC weighs when deciding to challenge a merger, including customer complaints, barriers to entry, and internal documents. With respect to the Herfindahl–Hirschman Index, you stated that “[T]he bottom line is that HHI numbers are not dispositive,” and that “enforcement decisions appropriately weight other factors.”
 - a. If confirmed, which factors would you direct the Antitrust Division to weigh when reviewing proposed mergers?

Response: If confirmed, I would direct the Antitrust Division to assess proposed mergers according to the analytical techniques set forth in the revised Horizontal Merger Guidelines. These Guidelines assist the enforcement agencies in “identify[ing] and challeng[ing] competitively harmful mergers while avoiding unnecessary interference with mergers that are either competitively beneficial or neutral,” and assist the business community “by increasing the transparency of the analytical process underlying the Agencies’ enforcement decisions.” U.S. Dep’t of Justice and Fed. Trade Comm’n, Horizontal Merger Guidelines 1 (2010). I believe these Guidelines accurately identify the appropriate factors to consider in reviewing proposed mergers, which include the presence or absence of barriers to entry, efficiencies, and whether the transaction involves failure and exiting assets.

2. Private parties rely heavily on the joint DOJ/FTC Horizontal Merger Guidelines. The agencies recently updated these Guidelines after not making significant revisions during the previous 18 years. You have noted that toward the end of this 18-year span, the Guidelines’ approach did not always accurately reflect the on-the-ground reality of how the DOJ investigates mergers.¹ This divergence between the Guidelines and DOJ practice increases uncertainty and costs for businesses as they contemplate mergers.
 - a. If confirmed, what steps would you take to educate industry about the Antitrust Division’s current analytical approach to mergers, particularly when it differs from the Guidelines?

Response: While at the Bureau of Competition at the Federal Trade Commission, I was privileged to be involved in the 1997 revisions to the Merger Guidelines. Those revisions, as well as subsequent joint efforts by DOJ and FTC, such as the 2006 Commentary on the Horizontal Merger Guidelines, reflect the Agencies’ ongoing efforts to make their decision-making process as transparent as possible to the business community. I believe that the 2010 Horizontal Merger Guidelines

¹ See, e.g., Bill Baer, Remarks at the Dep’t of Justice and Fed. Trade Comm. Merger Workshop 176–77 (Feb. 19, 2004).

further reflect a solid bipartisan effort to continue to provide a framework pursuant to which businesses can understand the reasoned approach behind merger enforcement, enabling them to evaluate proposed transactions and anticipate likely government response thereto. I would plan to continue this policy of transparency and communication so that the business community is informed of evolution in the analyses applied by the Agencies.

3. In 2008, the Antitrust Division completed a Report entitled *Competition and Monopoly: Single-Firm Conduct under Section 2 of the Sherman Act*. Among its key findings, the Report stated that market power alone does not prove the existence of monopoly power and that no single test for determining whether conduct is anti-competitive works well in all cases. The report also cautioned against vague and overly inclusive enforcement actions based on their potential to undermine economic growth and harm consumers. President Obama's first AAG in the Antitrust Division, Christine Varney, withdrew that Report, stating that it "goes too far in evaluating the importance of preserving possible efficiencies," and as a result "understates the importance of redressing exclusionary and predatory acts that result in harm to competition, distort markets, and increase barriers to entry."

- a. Do you agree with Ms. Varney's assessment of the Section 2 report and would you have withdrawn it?

Response: I believe that the Section 2 report generally contained sound analysis of the Supreme Court's Section 2 jurisprudence. However, I agree with former Assistant Attorney General Varney that the report's conclusions espoused a more hesitant approach toward enforcement than is warranted by the case law and did not focus sufficiently on the protection of consumer welfare. In addition, the Section 2 report was one of the few statements of antitrust enforcement policy in the last twenty-five years that was not issued jointly with the FTC. Indeed, a bipartisan majority of the FTC expressed concern that the approach articulated in the report's conclusions could "radically weaken[] enforcement of Section 2 of the Sherman Act." Statement of Commissioners Harbour, Leibowitz, and Rosch at 1 (Sept. 8, 2008). I believe that coordinated statements of policy engender confidence in the Agencies and provide clearer guidance for businesses and practitioners, and that is what I would strive for if confirmed.

- b. With which specific findings and recommendations in the report do you disagree?

Response: The Section 2 report, in my opinion, suggested approaches to enforcement in areas such as predatory pricing, bundled pricing, refusals to deal, and exclusive dealing, that were more restrictive than warranted by the case law. In particular, I agree with those who worried that the "disproportionality test" endorsed by the report, which would be employed where conduct-specific tests were not applicable and would prohibit conduct only where the anticompetitive harms substantially outweigh the likely procompetitive benefits, strayed from the established standard for proving harm to competition and could inhibit effective enforcement against anticompetitive conduct.

- c. Are there any findings or recommendations in the report with which you agree, and if so, which?

Response: As noted in my previous responses, although the Section 2 report contained a sound analysis of existing Supreme Court precedent, I believe that the resulting enforcement guidelines in the report were more constrained than would be supported by that precedent.

4. A 1998 *Business Week* article entitled “The FTC’s Eager Sheriff” described your approach to antitrust enforcement as very aggressive. The article argued that, under Chairman Pitofsky and with your leadership in the Bureau of Economics, the FTC had engaged in “easily the most aggressive antitrust activity in 25 years,” including opposing 20 mergers in the first 5 months of 1998.²
- a. What is your reaction to this analysis and how would you characterize your approach to antitrust enforcement, both while Director of the FTC’s Bureau of Competition and more generally?

Response: I believe that the purpose of antitrust enforcement is to provide consumers with the benefits of vigorously competitive markets by taking action against restraints that threaten to deny consumers those benefits. I believe that my track record reflects that I approach antitrust enforcement sensibly. Enforcers must be vigorous and effective, but fair. In my time at the FTC, I believe that I followed these basic tenets and, if confirmed, would expect to do the same at the Antitrust Division.

5. In your testimony you stated that you would support a legislative repeal of the Supreme Court’s decision in *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007). Doing so would restore a standard of *per se* illegality for resale price maintenance (“RPM”) agreements. The Supreme Court has held that *per se* illegality is only appropriate when the conduct is “manifestly anticompetitive”³ and “lack[s] . . . any redeeming virtue.”⁴
- a. Do you disagree with the Supreme Court’s standard for applying a *per se* standard only to conduct that is manifestly anticompetitive and lacks any redeeming virtue?

Response: I agree with the Supreme Court’s determination that manifestly anticompetitive conduct should be judged *per se* unlawful. In the RPM context, past precedent has given manufacturers the flexibility to impose legitimate vertical restraints while limiting *per se* condemnations to agreements between

² *Trustbuster William Baer: The FTC’s Eager Sheriff*, *Business week* (July 5, 1998), available at <http://www.businessweek.com/stories/1998-07-05/trustbuster-william-baer-the-ftcs-eager-sheriff>.

³ *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49-50 (1977).

⁴ *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 289 (1985)

manufacturers and dealers on resale prices.

- b. Many economists believe RPM can yield procompetitive results.⁵ Do you dispute that RPM can sometimes yield procompetitive benefits?

Response: I believe that the pre-Leegin framework provided opportunities for vertical restraints that allow manufacturers to achieve procompetitive objectives and prohibited likely anticompetitive conduct, while offering clarity and consistency to the business community. Essentially, the pre-Leegin framework continued to allow legitimate manufacturer-imposed vertical restraints, such as a manufacturer's ability to suggest resale prices to dealers. At the same time, it prohibited collusive conduct that had the purpose and effect of limiting discounting by competing retailers. See Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 910, 912 (2007) (Breyer, J., dissenting) (“[A]greements setting minimum resale prices may have serious anticompetitive consequences.” “Most economists today agree that . . . resale price maintenance tends to produce higher consumer prices than would otherwise be the case.”).

6. Many economists believe that exclusive dealing arrangements can yield procompetitive benefits, including the value that arises from manufacturers investing in promotional or other demand enhancing services without fear of discount retailers free-riding on that investment. At the same time, the risk of anticompetitive harm in exclusive dealing arrangements may be mitigated by the competition that a manufacturer and retailer continue to face with respect to their product.

- a. Do you agree with those economists that conclude that exclusive dealing arrangements may yield procompetitive benefits?

Response: I agree that exclusive dealing arrangements, which require the purchase of products or services exclusively from a single supplier, do have the potential to yield procompetitive benefits. For this reason, such arrangements are appropriately analyzed under a rule of reason standard to determine whether, on balance, any anticompetitive harms resulting from the restraint are outweighed by procompetitive benefits, such as distribution efficiencies.

- b. Do you agree that retailers participating in exclusive dealing arrangements face competition within the market for their product?

⁵ See, e.g., Benjamin Klein, *Competitive Resale Price Maintenance in the Absence of Free-Riding*, FTC Hearings on Resale Price Maintenance, (February 17, 2009), available at: <http://www.ftc.gov/opp/workshops/rpm/docs/bklein0217.pdf>; See Bureau of Economics Staff Report to the FTC, T. Overstreet, *Resale Price Maintenance: Economic Theories and Empirical Evidence* 170 (1983) (noting that “[e]fficient uses of [resale price maintenance] are evidently not unusual or rare”).

Response: While it is difficult to generalize, a rule of reason assessment of exclusive dealing would appropriately look at a number of factors, including the extent to which consumers benefit from robust interbrand competition.

- c. Are RPM agreements materially different from exclusive dealing arrangements with respect to their potential for procompetitive benefits and their mitigated risk of anticompetitive harm?

Response: As Justice Breyer notes in his dissent in Leegin, RPM agreements have historically been demonstrated to be sufficiently anticompetitive for Congress and the courts to conclude that per se treatment was warranted. Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S. 877, 908-09 (2007) (Breyer, J., dissenting) (“[In overturning Dr. Miles,] [t]he Court justifies its departure from ordinary considerations of stare decisis by pointing to a set of arguments well known in the antitrust literature for close to half a century. Congress has repeatedly found in these arguments insufficient grounds for overturning the per se rule. And, in my view, they do not warrant the Court’s now overturning so well-established a legal precedent.”). And courts had excepted from per se condemnation certain behaviors that allowed manufacturers to encourage the provision of services from their dealers and to minimize the risk of free riding by discounters. As a result, I think the pre-Leegin per se rule appropriately condemned agreements between manufacturers and dealers on minimum resale prices -- those vertical restraints unlikely to achieve the procompetitive benefits potentially found in exclusive dealing arrangements and therefore warranting rule of reason assessment.

SUBMISSIONS FOR THE RECORD

February 28, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: William J. Baer
Nominee
Assistant Attorney General in Charge of the Antitrust Division

Dear Chairman Leahy and Ranking Member Grassley:

The undersigned are former Chairs of the Section of Antitrust Law of the American Bar Association, the largest global organization of antitrust lawyers and economists and a leading proponent of the importance of competition to a free economy. We write today in support of the nomination of William Baer to be Assistant Attorney General in charge of the Antitrust Division of the United States Department of Justice. We support Mr. Baer because of his demonstrated ability as an antitrust lawyer and his outstanding record of public service. While the undersigned former Chairs of the Antitrust Section include Democrats, Republicans, and Independents, we are all united in our support for Bill Baer's nomination to head the Antitrust Division.

Bill Baer has demonstrated throughout his career that he is an excellent antitrust lawyer. He has handled with excellence a broad array of antitrust matters. From major mergers to cartel investigations, he has a lengthy resume of experience and success. His extensive antitrust background makes him well qualified to be the Antitrust Assistant Attorney General.

Bill Baer's excellence as an antitrust lawyer is well known and recognized by his peers, clients, and professional organizations. He has been recognized as follows:

The Best Lawyers in America 2012 for Antitrust Law
Washingtonian's "Best Lawyers" 2011 for Antitrust
Best Lawyers "Washington, DC Antitrust Lawyer of the Year" 2010 and 2012
The Legal 500 US 2011 "Leading Lawyer" for Antitrust
Chambers USA: America's Leading Lawyers for Business 2011 for Antitrust
Washington, DC Super Lawyers 2011: "Top 10 Lawyers in DC"
The International Who's Who of Competition Lawyers 2011
Chambers Global: The World's Leading Lawyers for Business 2011 for
Competition/Antitrust
PLC Which lawyer? Yearbook 2011: Endorsed for Competition/Antitrust
The National Law Journal list of "The Decade's Most Influential Lawyers" 2010
Chambers USA's Award for Excellence 2008 for Antitrust

The Honorable Patrick J. Leahy
 The Honorable Charles E. Grassley
 February 28, 2012
 Page 2

Bill Baer also has a distinguished record of public service. He twice has worked at the Federal Trade Commission. Upon graduation from law school in 1975 he joined the Commission as a Trial Attorney in the Bureau of Consumer Protection. Later he served as Assistant to the Director of the Bureau of Consumer Protection, Assistant to the Chairman of the FTC, and Assistant General Counsel in Legislation and Congressional Relations. In 1980 he left the Commission to enter private practice, but returned to the Commission in 1995 to serve for the next four years as the Director of the Bureau of Competition when Robert Pitofsky was Chairman of the FTC. While Director he led numerous enforcement efforts, including the Commission's challenge of Staples' acquisition of Office Depot, the Commission's challenge to mergers involving the four largest drug wholesalers and the Commission's challenges to exclusionary conduct by Toys R Us and Intel.

He has demonstrated leadership skills. During the period when he led the FTC's Bureau of Competition, it was widely regarded as an especially effective enforcement agency. As the head of the Arnold & Porter antitrust group, he has built it into one of the most well respected practices in the world. He has always enjoyed the loyalty of his team.

He has experience in international issues, which are increasingly important to antitrust enforcement and competition policy. Those issues became important during his tenure at the FTC, so Bill worked regularly with his international counterparts. He was responsible for opening Arnold & Porter's office in Brussels, and regularly commuted to Brussels for several years.

Bill Baer's experience and judgment have been recognized by his alma maters. He has served on the Board of Visitors of Stanford Law School and currently is Vice Chair of the Lawrence University Board of Trustees.

Based on his demonstrated abilities, his widely acknowledged expertise in antitrust, his broad experience, his outstanding record of public service, and his commitment to the importance of antitrust enforcement to maintaining a competitive economy, we all support the nomination of William J. Baer to be Assistant Attorney General in charge of the Antitrust Division. Because the current Acting Assistant Attorney General, Sharis Pozen, has announced that she will leave the Antitrust Division on April 30, we urge the Committee to conduct a hearing promptly so Bill Baer can be confirmed as soon as possible. Thank you for your consideration of this letter of support.

Sincerely,

1977 - 1978	Ira M. Millstein	1985 - 1986	James T. Halverson
1980 - 1981	Harvey M. Applebaum	1987 - 1988	James F. Rill
1981 - 1982	Edward William Barnett	1988 - 1989	Irving Scher
1983 - 1984	Richard W. Pogue	1989 - 1990	Harry M. Reasoner

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
February 28, 2012
Page 3

1990 - 1991	J. Thomas Rosch	2001 - 2002	Roxane C. Busey
1991 - 1992	Robert P. Taylor	2002 - 2003	Robert T. Joseph
1992 - 1993	Michael L. Denger	2003 - 2004	Kevin E. Grady
1993 - 1994	Alan H. Silberman	2004 - 2005	Richard J. Wallis
1994 - 1995	Caswell O. Hobbs	2005 - 2006	Donald C. Klawiter
1995 - 1996	John DeQ. Briggs	2006 - 2007	Joseph Angland
1996 - 1997	James R. Loftis, III	2007 - 2008	Kathryn M. Fenton
1997 - 1998	Robert C. Weinbaum	2008 - 2009	James A. Wilson
1998 - 1999	Phillip A. Proger	2009 - 2010	Ilene Knable Gotts
1999 - 2000	Janet L. McDavid	2010 - 2011	Allan Van Fleet
2000 - 2001	Ky P. Ewing, Jr.		

cc: Members of the Senate Committee on the Judiciary

WAI-3059522v1

February 16, 2012

VIA E-MAIL and FACSIMILE -202-224-9516

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: Nomination of William J. Baer as Assistant Attorney General
for the Antitrust Division of the United States Department of Justice**

Dear Chairman Leahy and Ranking Member Grassley:

Those of us identified below respectfully express our strong support for the confirmation of William J. Baer as Assistant Attorney General for the Antitrust Division in the United States Department of Justice. We have been privileged to serve in that position, respectively in every Presidential Administration since 1972, have known Mr. Baer very well, and have worked with him in both his government and private careers. Mr. Baer's tenure as Director of the Federal Trade Commission Bureau of Competition was marked by principled, effective enforcement of the antitrust laws and the initiation of procedures that balanced the needs of the Commission with the legitimate concerns of both businesses and consumers. Since returning to private practice, he has been actively involved in antitrust matters and policy issues, including as a nongovernmental advisor to the International Competition Network.

We can without hesitation testify that he possesses the intelligence, judgment, and leadership skills essential to serve effectively as Assistant Attorney General.

We are confident he will continue the strong, rational, and nonpartisan antitrust enforcement tradition of the United States Department of Justice.

We appreciate your consideration of these views.

Respectfully submitted,

Thomas E. Kauper
Assistant Attorney General, 1972-1976

Donald I. Baker
Assistant Attorney General, 1976-1977

John H. Shenefield
Assistant Attorney General, 1977-1979

Sanford ("Sandy") M. Litvack
Assistant Attorney General, 1979-1981

Charles F. ("Rick") Rule
Assistant Attorney General, 1986-1989

James F. Rill
Assistant Attorney General, 1989-1992

Anne K. Bingaman
Assistant Attorney General, 1993-1996

Joel I. Klein
Assistant Attorney General, 1996-2000

Charles A. James
Assistant Attorney General, 2001-2002

R. Hewitt Pate
Assistant Attorney General, 2003-2005

Thomas O. Barnett
Assistant Attorney General, 2005-2008

Christine A. Varney
Assistant Attorney General, 2009-2011