

**NOMINATIONS TO THE FEDERAL TRADE
COMMISSION, DEPARTMENT OF
TRANSPORTATION, AND DEPARTMENT
OF COMMERCE**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

MAY 16, 2001

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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**NOMINATIONS TO THE FEDERAL TRADE
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TRANSPORTATION, AND DEPARTMENT
OF COMMERCE**

WEDNESDAY, MAY 16, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The Committee met, pursuant to notice, at 9:33 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

The CHAIRMAN. Good morning. The Commerce Committee meets today to examine the qualifications of six individuals who have been nominated by the President to serve the nation in important posts in the government. The Committee takes its advice and consent role very seriously, and I will note that each of the nominees has responded in detail to the Committee's request for biographical and financial data. I have had the opportunity to review your responses to the Committee's questionnaire, as well as pre-hearing questions, and I look forward to moving these nominations quickly.

We will begin today by hearing from Professor Timothy Muris, who has been nominated to serve as chairman of the Federal Trade Commission. Next, we will proceed to hear from three nominees who are being considered for positions with the Department of Commerce. They are, Ms. Maria Cino, nominated to be Assistant Secretary and Director General of the United States and Foreign Commercial Service, Dr. Kathleen Cooper to be Under Secretary for Economic Affairs, and Mr. Bruce Mehlman to be Assistant Secretary for Technology Policy.

Our third panel will be nominees for positions with the Department of Transportation. They are, Mr. Sean O'Hollaren to be Assistant Secretary for Governmental Affairs, and Ms. Donna McLean to be Assistant Secretary for Budget and Programs and Chief Financial Officer. I would like to take this opportunity to thank the nominees for being here today. I know these nominations are a great honor, and that your families are very proud. We would like to begin with Mr. Muris. Would you come forward please?

Senator SMITH. Mr. Chairman.

The CHAIRMAN. Yes. Could I just have him come forward?

Mr. Muris, please take a seat. Mr. Muris, do you have any family members that you would like to introduce today?

Mr. MURIS. Yes, Senator. I would like to introduce my wife, Pam.

The CHAIRMAN. Welcome, and we are glad to have you, and congratulations. I know you are very proud of your husband today, as we all are, and welcome to the Committee.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Good Morning. The Commerce Committee meets today to examine the qualifications of six individuals who have been nominated by the President to serve the nation in important posts in the government. This Committee takes its advice and consent role very seriously, and I will note that each of the nominees has responded in detail to the Committee's requests for biographical and financial data. I have had the opportunity to review your responses to the Committee questionnaire as well as pre-hearing questions, and I look forward to moving your nomination quickly.

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Our third panel will be nominees for positions with the Department of Transportation. They are Mr. Sean O'Hollaren, to be Assistant Secretary for Governmental Affairs, and Ms. Donna McLean, to be Assistant Secretary for Budget and Programs, and Chief Financial Officer.

I would like to take this opportunity to thank the nominees for being here today. I know your nomination is a great honor, and that your families are very proud. Please feel free to introduce any family members who are present here today before you begin your remarks.

The CHAIRMAN. Senator Hollings.

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. I welcome Chairman Muris, and I will file my statement for the record. Thank you.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Let me thank Mr. Muris for his appearance today. I congratulate him on his nomination. Let me also take this time to thank my good friend Robert Pitofsky for the excellent job he has done over the past 6 years as FTC Chairman. The FTC has now become one of the more popular Federal agencies, as it has sought in recent years to protect the public from harmful behavior in the traditional markets, as well as in the new emerging markets, such as the Internet's E-commerce. A lot is owed to the leadership of Robert Pitofsky in this regard.

I say this to note that Mr. Muris is coming behind a very good leader and public servant. However, Mr. Muris is no stranger to the FTC. He served there previously under President Reagan—heading up both the Competition and Consumer Protection Bureaus. He recognizes, therefore, the importance of the Chairmanship of the FTC. He will be the leader of the agency that is responsible for guarding against deceptive, unfair, and fraudulent conduct that harms consumers, and preserving competition in the marketplace through antitrust enforcement.

With the tremendous changes that have occurred in the marketplace over the past decade, this challenge is not easy. New technologies, such as the Internet, provide services and benefits to consumers and the marketplace never before experienced. At the same time, however, they also are accompanied by new risks and harms. As evidenced by recent polls, an issue which consumers are strongly concerned about, and one in which I have a great interest, is the loss of privacy on the Internet. As it stands today, every move an individual makes, including every site that is visited,

on the Internet, can be tracked by companies. This tracking is used to form profiles, which are then sold for commercial profit and use. All this is done, often without the user's knowledge and consent. Clearly this practice cannot stand. Both the Congress and the FTC will be called to act on this matter. I will be reintroducing legislation on this issue soon, and am looking forward to the Committee's review of the subject later this year. The FTC already has established a record on this issue and will be called upon to work with the Committee on national legislation. I welcome Mr. Muris' views on this topic and look forward as well to working with him on the issue following his confirmation.

On the matter of antitrust enforcement, if ever we needed vigorous enforcement, it is needed now. In almost every major market involving the nation's key industries, mergers and concentration are abound. This Committee currently is reviewing legislation to stimulate more competition in the airline industry and telecommunications industry, in addition to having opened an investigation of the oil and gas industries.

I am aware of some of Mr. Muris' views on antitrust enforcement. He has questioned the recent aggressive enforcement by the agency, based on different theoretical approaches he would apply. I have some questions about his positions on some of these issues. For example he seems to suggest that monopolies produce efficiencies, thus they serve a public good; additionally, monopolies can do bad things, even behave anti-competitively, but as long as there is still competition, their conduct is okay. These positions raise some serious questions about how he will approach enforcement. Mr. Muris will have an opportunity to respond today and later on the record. He has assured me, however, that though he may be a little different than Mr. Pitofsky on these issues, he's the best Republican we're going to get at this point. On that matter, I yield to the Chairman.

The CHAIRMAN. Senator Stevens.

**STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA**

Senator STEVENS. I have no statement. Welcome.

The CHAIRMAN. Senator Smith.

**STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Mr. Chairman, I welcome this first witness. I wonder if I might ask the Chairman's indulgence.

I have to chair a Committee in Foreign Relations to get some nominations to diplomatic posts up for President Bush. I am here because I am a member of the Committee, but also to give a special welcome to Sean O'Hollaren, who is an Oregonian, has been an intern for Senator Packwood, Senator Hatfield, for a long time for Senator Hatfield, a distinguished representative of the Union-Pacific Railroad—I could go on. I have got a wonderful statement. I wonder if I could include it in the record for him——

[Laughter.]

The CHAIRMAN. Without objection.

Senator SMITH [continuing]. And ask his indulgence if I am not here, but he has mine and Senator Wyden's full support, and I thank you, Mr. Chairman.

[The prepared statement of Senator Smith follows:]

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Mr. Chairman and fellow colleagues on the Senate Commerce, Science and Transportation Committee, it brings me great pleasure to introduce to you my good friend and fellow Oregonian—Sean O'Hollaren to be Assistant Secretary of Transportation for Governmental Affairs. Today, Sean is joined by his beautiful wife Hilary and their 10-month-old daughter Rory.

As you can see from his extensive resume, Sean started his career as an intern for this committee and then served in various positions for Senator Mark Hatfield.

He most recently served as the Director of Washington Affairs for Tax and Environment for Union Pacific.

As the Assistant Secretary for Governmental Affairs, Sean will supervise and coordinate the Department of Transportation's legislative and non-legislative agenda. I can think of no other person more qualified than Sean O'Hollaren and would like to echo President Bush and Secretary Mineta's unconditional support for Sean's nomination.

With his long service to Oregon and his experience in Washington, D.C., Sean is the ideal candidate for this position. Sean's background in transportation policy, coupled with his private sector experience, will be useful to our country as we face problems related to traffic congestion, transportation safety, and infrastructure.

My fellow colleagues, as the Chairman of the Subcommittee on Surface Transportation and Merchant Marine, I wholeheartedly support the nomination of Sean O'Hollaren to be Assistant Secretary of Transportation for Governmental Affairs and ask that you join me and my colleague Senator Ron Wyden in supporting his nomination.

The CHAIRMAN. Thank you very much, Senator Smith. Your statement will be made a part of the record, and we appreciate your strong endorsement of Mr. O'Hollaren.

Mr. Muris, welcome. Please proceed with your opening statement.

**STATEMENT OF PROFESSOR TIMOTHY J. MURIS,
CHAIRMAN-DESIGNATE, FEDERAL TRADE COMMISSION**

Mr. MURIS. Thank you. Mr. Chairman and members of the Committee, it is a great honor to have been nominated by the President to serve as chair of the Federal Trade Commission. I thank you for the opportunity to appear before this Committee, and I appreciate the expeditious scheduling of this hearing.

As members of the Committee already know, I have held three staff positions at the FTC, as an Assistant to the Director of the Planning Office, as Director of the Bureau of Consumer Protection, and as Director of the Bureau of Competition. I am fully committed to the mission of the Federal Trade Commission. There has been an evolutionary policy for enforcing the consumer protection and antitrust laws within the commission's jurisdiction. If confirmed, I desire to continue this trend.

Regarding consumer protection, 20 years ago we shifted the FTC's emphasis away from cumbersome rulemakings designed to transform entire industries toward aggressive law enforcement of the basic rules that we already have—rules against fraud, against deception, against breach of contract. Our vision was that the FTC would forge a bipartisan consensus on how to protect consumers, and would work with other federal and state agencies to provide maximum benefits for consumers from the FTC's limited resources.

Today, through the hard work of hundreds of people over the past 20 years, superb leadership at the commission, most recently by Bob Pitofsky and his fellow Commissioners, and by Jody Bernstein, that dream has become reality.

Regarding antitrust, bipartisan consensus also exists. Although there is disagreement about cases at the margin, there is widespread agreement that the purpose of antitrust is to protect consumers, that economic analysis should guide case selection, and that horizontal cases, both mergers and agreements among competitors, are the mainstays of antitrust.

Moreover, today there is bipartisan recognition that antitrust is a way of organizing our economy. A freely functioning market sub-

ject to the rules of antitrust provides maximum benefits to consumers.

Finally, a program that Chairman Pitofsky reinstituted at the FTC should be continued. That program studies various aspects of the economy, and issues reports to Congress and to the public. Through public hearings and use of the FTC's investigative powers, the agency has increased public knowledge about important issues.

Thank you. I would be glad to answer any questions.

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

PREPARED STATEMENT OF PROFESSOR TIMOTHY J. MURIS, CHAIRMAN-DESIGNATE,
FEDERAL TRADE COMMISSION

Mr. Chairman and Members of the Committee:

It is a great honor to have been nominated by the President to serve as Chair of the Federal Trade Commission. I thank you for the opportunity to appear before this Committee, and I appreciate the expeditious scheduling of this hearing.

As members of the Committee already know, I have held three staff positions at the Federal Trade Commission: as an assistant to the Director of the Planning Office (1974–1976), as Director of the Bureau of Consumer Protection (1981–1983), and as Director of the Bureau of Competition (1983–1985).

I am fully committed to the mission of the Federal Trade Commission. There has been a beneficial evolution in policy for enforcing the consumer protection and antitrust laws within the Commission's jurisdiction. If confirmed, I desire to continue this trend.

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Regarding antitrust, bipartisan consensus also exists. Although there is disagreement about cases at the margin, there is widespread agreement that the purpose of antitrust is to protect consumers, that economic analysis should guide case selection, and that horizontal cases, both mergers and agreements among competitors, are the mainstays of antitrust. Moreover, today there is bipartisan recognition that antitrust is a way of organizing our economy. A freely functioning market, subject to the rules of antitrust, provides maximum benefit to consumers.

Finally, a program that Chairman Pitofsky reinstituted at the Federal Trade Commission should be continued. That program studies various aspects of the economy and issues reports to Congress and to the public. Through public hearings and use of the FTC's investigative powers, the agency has increased public knowledge of important issues.

I would be glad to respond to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name: Timothy Joseph Muris ("Tim").
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of nomination: April 23, 2001.
4. Address: Information unavailable to the public. Office: George Mason University, School of Law, 3301 North Fairfax Drive, Room 415, Arlington, Virginia 22201–4498.
5. Date and place of birth: November 18, 1949, Massillon, Ohio.
6. Marital status: Married to Pamela Rodney Harmon.
7. Names and ages of children: Matthew A. Muris, 22; Paul A. Muris, 16; Catherine H. Harmon, 11 (step-daughter).
8. Education: San Diego State University—1967–1971, A. B.; UCLA School of Law, 1971–74, J.D.

9. Employment record: Federal Trade Commission, Washington, D.C., Assistant to the Director, Office of Policy Planning and Evaluation (1974–76); University of Miami, School of Law and Law & Economics Center, Coral Gables, Florida, Assistant Professor (1976–1979); University of Chicago School of Law, Chicago, Illinois, Law and Economics Fellow (1979–1980); University of Miami, School of Law and Law & Economics Center, Coral Gables, Florida, Associate Professor (1979–1981), Professor (1981); Office of the Vice President, Deputy Counsel, Presidential Task Force on Regulatory Relief (1981); Federal Trade Commission, Washington, D.C., Director, Bureau of Consumer Protection (1981–1983); Federal Trade Commission, Washington, D.C., Director, Bureau of Competition (1983–1985); Executive Office of The President—Office of Management and Budget, Washington, D.C., Executive Associate Director (1985–1988); George Mason University, School of Law, Arlington, Virginia, George Mason University Foundation Professor (1988–Present), Interim Dean (1996–1997).

10. Government experience: Consultant—Federal Trade Commission, Washington, D.C. (1977); Consultant—Council on Wage and Price Stability, Washington, D.C. (1981); Consultant—Department of Justice, Washington, D.C. (1991–1992); Consultant—Congressional Budget Office, Washington, D.C. (1999–2000); Consultant—Office of Management and Budget, Washington, D.C. (1988–1989, 2001).

11. Business relationships: Timothy J. Muris, Inc.—President; George Mason University School of Law; Law & Economics Advisor, Board—Chairman; Progress & Freedom Foundation—Adjunct Scholar; Antitrust & Trade Regulation Report—Advisory Board; Coordinator, Regulatory Law Track, George Mason University School of Law; Acting Associate Dean, George Mason University School of Law; Coordinator, International Track, George Mason University School of Law; Member, ABA Section of Antitrust Law Special Committee To Study International Antitrust; Member, ABA Section of Antitrust Law Special Committee To Study the Role of the Federal Trade Commission; Advisory Committee—American Enterprise Institute Project on Regulation and Federalism; Brookings Institution National Issues Forum Advisory Committee; Affiliated Scholar, American Bar Foundation; Bush-Cheney Transition Team, “Policy Coordinator”; Bush-Quayle Transition Team, Senior Advisor; Reagan-Bush Transition Team for the Federal Trade Commission; Collier, Shannon, Rill & Scott—Of Counsel; Howrey, Simon, Arnold & White—Of Counsel; Northern Virginia Baseball Academy—Officer & Minority Owner.

As Counsel to the two law firms and through my corporation, Timothy J. Muris, Inc., of which I was president and sole employee, I consulted with numerous clients. My major clients included: Association of National Advertisers (ANA), ConAgra, Federated Dept. Stores, General Mills, H. J. Heinz, Intel, Lithotripsy, Inc., Miller Brewing, North Shore University Hospital, Publishers Clearinghouse, Rockwell Int'l., Trans Union, Walt Disney, Chick-Fil-A, Cytodyne, Ford Motor Company, Grocery Manufacturers of America, Hoechst Marion Roussel, J.C. Penney, May Co., Mundy & Adkins, PepsiCo, R. J. Reynolds, Toys 'R' Us, United Cable Television.

12. Memberships: Member, Advisory Board, Antitrust & Trade Regulation Report; International Town & Country Club; American Bar Association—Antitrust Section; Southwest Youth Association Baseball Board; Greater Fairfax Babe Ruth Baseball Board; Brookings Institution National Issues Forum Advisory Committee; Advisory Committee, American Enterprise Institute Project on Regulation and Federalism; Adjunct Scholar, The Progress & Freedom Foundation.

13. Political affiliations and activities: (a) None. (b) Economic Advisor, George W. Bush for President; Policy Coordinator, Bush-Cheney Transition Team. (c) Senatorial Campaigns of Pete Dawkins and Phil Gramm, Presidential Campaigns of George W. Bush and Phil Gramm, and the Congressional Campaign of Jim Kolbe.

14. Honors and awards: Phi Kappa Phi, Order of the Coif.

15. Published writings: Books and Monographs: *The People's Budget: A Common Sense Plan for Shrinking The Government in Washington*, Regnery Publishing (1995) (with Edwin L. Dale, Jr., Jeffrey A. Eisenach, Frank I. Luntz, and William Schneider, Jr.); *The Budget Puzzle: Understanding Federal Spending*, Stanford University Press (1994) (with John Cogan and Alan Shick); *Strategy, Structure and Antitrust in the Soft Drink Industry*, Quorum Books (1993) (with David Scheffman and Pablo Spiller). *State and Federal Regulation of National Advertising*, American Enterprise Institute (1993) (with J. Howard Beales).

Articles: *The Limits of Unfairness Under the Federal Trade Commission Act*, Association of National Advertisers (1991) (with J. Howard Beales); *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior*, Cambridge University Press (1981) (written and edited with Kenneth W. Clarkson); *GTE Sylvania and the Empirical Foundations of Antitrust*, 68 Antitrust Law Journal 799 (2001); *The Rule of Reason After California Dental*, 68 Antitrust Law Journal 527 (2000); *Anticompetitive Effects in Monopolization Cases: Reply*, 68 Antitrust Law

Journal 325 (2000); *California Dental Association v. Federal Trade Commission: The Revenge of Footnote 17*, 8 Supreme Court Economic Review 265 (2000); *The FTC and the Law of Monopolization*, 67 Antitrust Law Journal 693 (2000); *Ronald Reagan and The Rise of Laissez-Faire: What Really Happened in 1981*, 4 The Independent Review 365 (2000); "In Defense of the Old Order," in *The Fall and Rise of Freedom of Contract*, (F.M. Buckley, ed.) (Duke University Press 1999); *The Government and Merger Efficiencies: Still Hostile After All These Years*, 7 George Mason Law Review 729 (1999); "Is Heightened Antitrust Scrutiny Appropriate for Software Markets?" in *Competition, Innovation, and the Microsoft Monopoly: Antitrust in the Digital Marketplace*, (J. Eisenach & T. Leonard, eds.) (Kluwer Academic Publishers 1999); *The Federal Trade Commission and the Rule of Reason: in Defense of Massachusetts Board*, 66 Antitrust Law Journal 773 (1998); *Economics and Antitrust*, 5 George Mason Law Review 303 (1997); *Legislative Organization of Fiscal Policy* (with W. Mark Crain), 38 Journal of Law & Economics 311 (1995); *The Foundations of Franchise Regulation: Issues and Evidence* (with J. Howard Beales), Journal of Corporate Finance 157 (1995); *Budget Manipulations*, 4 The American Enterprise 24 (May/June 1993); "Information, Competition, and Health: Regulatory Standards For Health Messages," in *America's Foods: Health Messages and Claims* (J. Tillotson, ed.) CRC Press (1993) (with J. Howard Beales); *Strategy and Transactions Costs: The Organization of Distribution in the Soft Drink Industry*, 1 Journal of Economics & Management Strategy 83 (1992) (with David Scheffman and Pablo Spiller); *Economics and Consumer Protection*, 60 Antitrust Law Journal 103 (1991); *The Great Budget Shell Game*, 2 The American Enterprise 34 (November 1990) (with John Cogan); *The New Rule of Reason*, 57 Antitrust Law Journal 859 (1989); *Regulatory Policymaking, at the Federal Trade Commission The Extent of Congressional Control*, 94 Journal of Political Economy 884 (1986); *Cost of Completion or Diminution in Market Value: The Relevance of Subjective Value*, 12 Journal of Legal Studies 379 (1983); *Rules Without Reason—The Case of the FTC*, 6 Regulation 20 (September/October 1982); *The Costs of Freely Granting Specific Performance*, 1982 Duke Law Journal 1053; "Letting Competition Serve Consumers" in *Instead of Regulation* (with Kenneth W. Clarkson) (Lexington Books 1982); *Defining Deception*, 42 Antitrust and Trade Regulation Reporter 699 (1982) reprinted in 19 Journal of Reprints For Antitrust Law and Economics 335 (1989); *Opportunistic Behavior and the Law of Contracts*, 65 Minnesota Law Review 521 (1981); *Constraining the Federal Trade Commission: The Case of Occupational Regulation*, 35 Miami Law Review 77 (1980) (with Kenneth W. Clarkson); *The Efficiency Defense Under Section 7 of the Clayton Act*, 30 Case Western Reserve Law Review 381 (1980); "The Federal Trade Commission and Occupational Regulation" in *Occupational Licensure and Regulation* (S. Rottenberg, ed., American Enterprise Institute 1980) (with Kenneth W. Clarkson); *Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics*, 1977 American Bar Foundation Research Journal 179; *Foreword—Civil Liability of Government Officials*, 42 Law and Contemporary Problems 1 (1978) (Special Editor of Symposium with Kenneth W. Clarkson); *Liquidated Damages v. Penalties: Sense or Nonsense?*, 1978 Wisconsin Law Review 351 (1978) (with Kenneth W. Clarkson and Roger LeRoy Miller); *Scaling the Welfare Bureaucracy: Expanding Concepts of Governmental Employee Liability*, 21 U.C.L.A. Law Review 624 (1973).

Other Publications: "Bigger Can Be Better" Washington Times, A19 (June 4, 1999); "Downplaying a Defense: Agencies Take Overly Narrow View of Efficiencies in Merger Cases", Legal Times (March 8, 1999); *Beyond Block Grants Eliminating Federal Funding for Welfare Programs*, 1 American Civilization 11 (Feb. 1995); *Overstating Savings/Underestimating Costs*, 32 Society 67 (1994); *Congressional Confusion on Labeling and Advertising Could Deny Consumer Information and Free Speech*, Legal Opinion Letter, Washington Legal Foundation, (Oct. 25, 1991) (with J. Howard Beales III); "The Myth of Domestic Spending Cuts" *Wall Street Journal* (September 6, 1990) (with John Cogan); "Comment: Antitrust and International Competitiveness in the 1990's" 58 Antitrust Law Journal 607 (1989); *The Kirkpatrick Commission: Antitrust Issues*, 58 Antitrust Law Journal 25 (1989); *Antitrust's Next Decade, in Is Antitrust Dead?*, 55-58, Betty Bock, ed., Conference Board 1989; *Interview: Antitrust in the Bush Administration*, 3 Antitrust 6 (Spring 1989); "Behind the Budget's Baseline Blues," *Wall Street Journal* (August 3, 1988); *The Consumer Protection Mission: Guiding Principles and Future Direction*, 51 Antitrust Law Journal 625 (1983); *Credit Markets and Market Forces*, 37 Business Lawyer 1373 (1982); *The Effect of Advertising on the Quality of Legal Services: A Case Study*, 65 American Bar Association Journal 1503 (1979) (with Fred S. McChesney); "Does Lack of Funds Hinder Antitrust Enforcement?" in *The Attack on Corporate America The Corporate Issues Sourcebook* 285-88 (McGraw Hill 1978); *The Rise of the No-Lose Ethic*, 2 Ripon Quarterly 19 (1975) (with Wesley J. Liebeler and Richard

W. Rahn); Book Note on J. Fried, *Housing Crisis USA* 20 U.C.L.A. Law Review 662 (1973).

16. Speeches: "Antitrust: 1980, 2000, and Beyond" (Copies are being retained in Committee files.)

17. Selection: (a) I believe that I was chosen because of my qualifications, as discussed below. (b) I have served as an outside evaluator of the performance of the Federal Trade Commission (member of the ABA Antitrust Section, Committee to Study the FTC), a member of its staff (Director of Bureaus of Competition and Consumer Protection, Assistant to the Director of Office of Policy Planning and Evaluation, and as a student intern). I have participated or followed its work since 1973. Moreover, as an academic, I have often written on issues of consumer protection and competition policy. Most important, I believe in the mission in the FTC. I believe the antitrust laws serve our country well and should be enforced with enthusiasm, and I believe that the Federal Government has an important role to play in protecting consumers against marketing fraud, deceptive practices, false advertising, and other practices that cause consumer harm.

B. FUTURE EMPLOYMENT RELATIONSHIP

1. Will you sever all connections with your present employers, business firms, business associations or business organizations, if you are confirmed by the Senate? I will sever all connections, except, if permitted, I will take a leave of absence from my university rather than resign my tenured position.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation; during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to service out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial agreements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Most of my investments and those of my family are widely diversified in mutual funds that should not present potential conflicts. We have stock interests in some corporations. Prior to participating in any particular matter that could affect any corporation or entity in which we have a financial interest, I will consult with the Agency Ethics Official and will either recuse myself divest the conflicting asset, or (for an insubstantial conflict) seek a waiver under 18 USC 208 (b). As to other "relationships," see my answer to question 3, next.

3. Describe any business relationship, dealing, or financial transactions which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as, an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? The following business relationships during the last 10 years conceivably could raise issues of possible conflict of interest: I have served as Counsel to the Washington, D.C. law firm of Collier, Shannon, Rill & Scott, as it was then named. This firm represents and is likely to represent clients before the FTC; Since May, 2000, I have served as Counsel to the Washington, D.C. law firm of Howrey, Simon, Arnold & White. This firm represents and is likely to represent clients before the FTC; I have consulted with certain clients who have matters either potentially or actually before the FTC, either in my role as Counsel to the law firms mentioned above or as an independent consultant or expert witness; I have consulted clients through Timothy J. Muris, Inc., of which I am the president and sole employee; I am a stockholder and an officer in the Northern Virginia Baseball Academy; I hold a tenured position on the faculty of the George Mason University School of Law.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. I have served as a consultant to three Federal agencies. In 1992, I consulted with the Department of Justice on the redraft of the merger guidelines. In 1999 and through the beginning of 2000, I consulted with the Congressional Budget Office,

commenting on various draft documents, particularly those involving budget concepts. In 2001, I consulted with the Office of Management and Budget regarding the preparation of President Bush's Budget Blueprint.

In 1994–95 I assisted the House Republicans on various budget issues. In 1999–2000, I was an Economic Advisor to the Bush-Cheney Campaign and in 2000–2001 I was a Policy Coordinator for the Bush-Cheney Transition.

Finally, I have testified before Congressional Committees, including the Senate Budget Committee regarding budget process reform, the House Budget and Rules Committees regarding budget process reform, and the House Budget Committee regarding President Clinton's proposed budget in 1993.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Upon confirmation, if permitted, I will take a leave of absence from George Mason University School of Law, cease doing business with my private consulting corporation, and resign from my other non-government positions, including my position as Counsel to Howrey, Simon, Arnold & White.

I will follow the procedures mandated by the Standards of Conduct with respect to matters that could come before the Commission in the future. The Standards require that, for 1 year, I disqualify myself from particular matters involving parties in which Howrey, Simon, Arnold & White or any of my own former clients are involved in any circumstance in which a reasonable person could question my impartiality. Even after the 1-year period, I plan to recuse myself on a case by case basis, after consultation with the Agency Ethics Official, from matters that could raise an appearance of impropriety.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party, in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

F. GENERAL QUALIFICATIONS AND VIEWS

1. Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated. I have served as an outside evaluator of the performance of the Federal Trade Commission (member of the ABA Antitrust Section, Committee to Study the FTC), a member of its staff (Di-

rector of Bureau of Competition and Consumer Protection, Assistant to the Director of Office of Policy Planning and Evaluation, and as a student intern). I have participated in or followed its work since 1973. Moreover, as an academic, I have often written on issues of consumer protection and consumer competition policy. Most important, I believe in the mission in the FTC. I believe the antitrust laws serve our country well and should be enforced with enthusiasm, and I believe that the Federal Government has an important role to play in protecting consumers against marketing fraud, deceptive practices, false advertising, and other practices that cause consumer harm.

2. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? Although I am familiar with most of the issues before the Commission, on some issues, particularly those of recent origin, I am less familiar. I am endeavoring to learn about those issues.

3. Why do you wish to serve in the position for which you have been nominated? I believe that I can help advance the mission in the FTC. I believe the antitrust laws serve our country well and should be enforced with enthusiasm, and I believe that the Federal Government has an important role to play in protecting consumers against marketing fraud, deceptive practices, false advertising and other practices that cause consumer harm.

4. What goals have you established for your first 2 years in this position, if confirmed? The mission of the Federal Trade Commission has become an area of widespread bi-partisan agreement. Thus, I believe the agency has performed well under the extremely capable leadership of Chairman Robert Pitofsky. I want to continue the excellent enforcement program of the current Commission as well as increase the Commission's capability to respond to the evolution in our economy and to understand the impact of both of the practices that it investigates and of its enforcement actions, as I discuss in the answers to the next several questions.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I believe that consumers are best served by a freely functioning market, as opposed to extensive government regulation. The market needs governing rules, however, and the antitrust and consumer protection laws that the Federal Trade Commission enforces provide such rules. On occasion, performance of the market can be improved through government regulation, and in evaluating such occasions, the benefits and costs of the regulation should be considered carefully. Moreover, government programs should be re-evaluated periodically to determine if their benefits exceed their costs and if the program has outlived its usefulness or can be modified to increase its effectiveness.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The major mission of the FTC is to help ensure that consumers receive the benefits of a freely functioning market. To accomplish that goal, the Commission enforces our nation's antitrust laws, principally preventing mergers and anticompetitive practices that harm consumers. It also is the principal Federal consumer protection agency, enforcing laws against unfair or deceptive acts or practices, as well as enforcing various statutes aimed at certain practices in specific industries such as consumer credit. Finally, the FTC studies various aspects of the economy, both as an adjunct to its antitrust and consumer protection law enforcement and as a means to inform Congress, other legislative and regulatory bodies, and the public about the impact of various governmental and private activities on consumers.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years? As our economy evolves, particularly the development of the "new economy," I expect that the Commission will continue to shift resources toward evaluating the impact of these changes. Moreover, much of the Commission's work in the 1990's has involved evaluating the unprecedented merger activity of recent years. There are some signs that this activity may be slackening.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the board/commission and why? Although the Commission has a great many high-quality employees, the continual escalation of salaries in the sectors outside the Federal Government present a real challenge to hiring and retaining such employees. Hiring and retention of high-quality employees is one of the top three challenges facing the FTC, along with the need to understand the evolving changes and the economy as discussed in the answer to Question 7,

and the need to obtain better information on the impact of Commission enforcement efforts, as discussed in my answer to the next question.

9. In further reference to question No. 6, what factors in your opinion have kept the board/commission from achieving its missions over the past several years? I believe that the Commission has performed extremely well in the past several years. I do believe that the Commission needs to strengthen its understanding of the market impact of the various practices that it investigates and of its investigatory activities and enforcement actions regarding those practices.

10. Who are the stakeholders in the work of this agency? Consumers are the FTC's major stakeholders. The business community, the trade regulation bar, and various interest groups are stakeholders. This Committee, and others in Congress, serve as representatives of these many stakeholders.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in Question No. 10? Members of the Federal Trade Commission should strive to enforce the laws within their responsibility to ensure that they work to improve the welfare of consumers. As described in my answers above, particularly question No. 6, I believe that the FTC has a crucial role in contributing to the sound functioning of the economy through effective law enforcement and incisive reporting on legal and economic issues.

12. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe that supervisors should set clear parameters for the work of their employees. They should explain what they expect, delegate sufficient authority to the employees to perform their tasks, and evaluate the employees periodically to provide sufficient feedback. I believe that supervisors should be accessible. They should not do the employees' work for them, but they must provide adequate guidance and feedback. No employee complaints have been brought against me.

13. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. In my past government jobs, I have had close working relationships with Congress both while at the Federal Trade Commission and the Office of Management and Budget. I have worked effectively with Members of Congress and their staffs.

14. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board/commission comply with the spirit of the laws passed by Congress. It is extremely important for members of the Federal Trade Commission to work closely with the Commerce Committee and other stakeholders. The FTC should be responsive to Congressional requests for information about agency activities, ensure that the FTC enforces the laws as intended, and be available to assist the Congress in studying specific legal and economic issues within the agency's expertise and capacity.

15. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please State your personal views. At the moment, I have no legislative action to recommend that Congress consider regarding current FTC activities. If confirmed, I will study this issue closely, and make any recommendations to my colleagues and to Congress that I feel are appropriate.

16. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president. In my experience, Presidents appoint individuals to independent boards or commissions who reflect their general philosophy. Presidents do not have the time or inclination to become involved in the daily business of such boards or commissions. If confirmed, I would expect to adhere to the tradition of the FTC and work with my colleagues to assess independently the various issues presented on the basis of the facts at hand and the relevant legal and economic considerations.

The CHAIRMAN. Thank you very much for your statement. We intend to move your nomination next week.

Mr. Muris, the Federal Trade Commission recently completed a follow-up to its study on the marketing of inappropriate content to minors by the movie/video game/music industries, and I believe there will be another complete study issued sometime this fall, is that correct?

Mr. MURIS. Yes, sir.

The CHAIRMAN. I just hope that you can assure this Committee that you will continue to track the issue. It is an important one to this Committee and, more importantly, to families all across America. It is not an issue of censorship. It is an issue concerning the marketing of material that these industries themselves have deemed inappropriate to children, and I hope you will view it in that context, and I hope you will give some priority to this issue.

Mr. MURIS. Yes, Senator, I will. I think the Commission has done very good work in this area, and I would certainly recommend to my colleagues, if confirmed, that the Commission continue that work.

The CHAIRMAN. In recent years, the Federal Trade Commission has acted on various occasions when it appeared that brand-name drug companies and generic drug companies were working together keeping generic drugs off the market to benefit themselves but harm consumers.

In fact, there has been recent cases where brand-name drug companies have paid, actually paid money to generic drug companies to delay or keep them from producing those same drugs that the brand-name drug company is producing. Do you think that there are any changes in the law that would be appropriate to deter this conduct?

Mr. MURIS. Certainly, what has happened under Hatch-Waxman raises serious problems, and I think the Commission has been appropriately vigilant. There is a case in litigation which I obviously do not want to comment on here. The FDA is considering new regulations, and that is appropriate, and it may be that legislation is needed if the regulations cannot change the incentives to harm consumers that exist in the current law and regulations.

The CHAIRMAN. Clearly, the intent of Hatch-Waxman was to make available generic drugs as early as possible and, at the same time, protecting the patent rights of the brand-name drug manufacturers, some kind of careful balance.

Is there not ample evidence that this, at least the intent of this law is being violated, at least in certain cases?

Mr. MURIS. I believe there is. The FTC has a study undergoing right now to see just how widespread the problem is, and I think the results of that study will obviously inform whatever recommendations that could be made, but there clearly have been problems thus far.

The CHAIRMAN. And I am sure you appreciate that the issue of the cost of prescription drugs, particularly to seniors, is a major problem in America today.

Mr. MURIS. Yes, I do. In fact, one of the very first projects I worked on as a young staffer at the Federal Trade Commission, 27 years ago, was to try to make it easier for generic drug substitution, so I have had a longstanding interest in this issue.

The CHAIRMAN. Finally, the issue of Internet privacy continues to be one that we are going to have to address. There are divisions of opinion as to how to address that issue within this Committee, which is one reason why we have not moved forward with legislation. Do you agree with the FTC's recommendation that Congress should enact legislation to regulate the collection and use of consumer information online?

Mr. MURIS. Senator, that is obviously a very important question, and I think the FTC has done several very beneficial things. It has provided information to the Congress and to the public. It has indeed been partly responsible for making the issue as prominent as it is. It has brought several important cases, in areas of deceptive and fraudulent spam, in pretexting and identity theft. It has had an excellent role, and I would hope that role would continue.

The specific issue of legislation is a new issue to me, and I have been studying it. It is a very complex issue, and at this time I have no specific legislative recommendation. It is one that I would hope to be educated on by Members of Congress, by privacy advocates, by business groups, and by my future colleagues, if confirmed.

The CHAIRMAN. Well, I want you to make that a priority item if you could, because the issue is going to get much larger than smaller. More and more Americans will go online. There will be more and more abuses by some of the less ethical vendors, or people who use the Internet, and there will be greater concerns about individual Americans' privacy.

Obviously, we do not want to enact legislation that would harm the use of the Internet, but at the same time there are already examples of these cookies moving from one place to another, and Americans certainly are not aware, unfortunately, until perhaps they have experienced some discomfort or pain from the knowledge that information that they never believed would be made public is not only being made public, it is being bought and sold by different organizations, so I hope you appreciate that this issue, I think, is one that is not going away. It is going to grow a lot bigger.

Mr. MURIS. I agree, Senator, privacy is a very important value. I know there are three different positions on legislation at the current Commission, and several bills in this Committee. As I said, it is a new issue to me, but I have done a lot of reading, and I hope to be able to continue that reading, and I will make it a priority.

The CHAIRMAN. Thank you. Senator Hollings.

Senator HOLLINGS. Well, Mr. Muris, you have already served with distinction under President Reagan as a Commissioner. We welcome you back in your chairmanship.

But getting right to the point, now, about being educated. We have had 5 years of education under the Federal Trade Commission and Chairman Pitofsky, and they approached it as you indicate it should be approached, in a deliberate fashion, namely, trying to get self-regulation, but the Internet is a many-splendored thing, and the vendors and otherwise are awfully competitive, and you cannot get them all to agree. We have tried and tried.

We have outlined some guidelines at the Commission level. They failed to respond to it, and we live in the real world, and that is why we are looking at legislation. You say it is complex, and maybe I am overeducated, or oversimplifying it, but it looks like a question of whether or not we have opt-in requirements. Everybody agrees on opt-out, but the opt-out has not worked.

And mind you me, these are people taking private information and making a business out of it. Once you put your health or your financial information and so forth on the Internet, it is there, but these are folks who are really making a business of it, and the con-

sumer is unaware, and it seems to me we are going to have to get some kind of requirement about opt-in.

Would you like to comment?

Mr. MURIS. Senator, I understand the seriousness of the issue. Although there has been a lot of discussion at the Federal Trade Commission and a lot of discussion here, the issue really is new to me.

One of the things I have tried to do is look in recent weeks at privacy issues across the broad spectrum. I know there are concerns about treating online and offline differently. I know there are issues about various types and levels of privacy. There are new types of technology, and I really have not had an opportunity to talk to the professionals at the FTC, to talk in-depth to various Members of Congress, to privacy advocates, and to people in the business community. Until I can do that and study the information that is just coming to the fore daily, I am not yet ready to say which type of legislation, if any, is preferable.

Senator HOLLINGS. You are a good candidate for confirmation.

[Laughter.]

Mr. MURIS. Thank you.

Senator HOLLINGS. The other thing of concern is your articles relative to monopolies. After all, you are going now on a consumer protection agency, and not a monopoly protection agency, and your articles indicate that monopolies are wonderful things that promote efficiencies, and even where there is anticompetitive behavior, so long as there is some competition in that market, that you would hesitate acting under your charge as a trade Commissioner, and particularly as the Chairman. What is your comment about that?

Mr. MURIS. Senator, I have written widely about monopolization. It is clear, under the law, that it is difficult to bring a monopolization case. When I was Director of the Bureau of Consumer Protection before we did bring monopolization cases, and I support them, and as well in the Antitrust Division. My criticism really had two parts. One, and this was not a criticism about the FTC, because the FTC did not do this, there were a very large increase in investigations at the Department of Justice aimed at sending a signal that I thought was inappropriate.

I do think that one has to look closely at monopolization, and I would expect that that would continue. It is not a major part of the FTC's resource expenditure, but there are good monopolization cases, and I would have no hesitation to bring a case if I thought it was a good case.

Senator HOLLINGS. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stevens.

Senator STEVENS. Mr. Muris, I remember very well your past service, and I commend you for being willing to accept another position in this agency, so I have no questions.

Mr. MURIS. Thank you, Senator.

The CHAIRMAN. Senator Hutchison. Well, it looks like—oh, excuse me.

[Laughter.]

The CHAIRMAN. I was going to say I thought you got off pretty easily, but I note—

Senator HOLLINGS. Oh, no.

The CHAIRMAN. I note the presence of Senator Wyden.

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman, and I appreciate this hearing. I happen to think the Federal Trade Commission, as Senator Hollings suggested, is one of the most important places in government from the standpoint of the consumer, and I do have a number of questions that are important to me.

Let me begin, if I might, Mr. Muris, the White House announced recently that the President would be vigilant in ensuring that consumers will be protected from price-gouging at the gasoline pump this summer, and he instructed federal agencies to keep a close eye to make certain that there is not price-gouging going on.

If you are confirmed as Chairman of the Federal Trade Commission, how would you carry out the Presidential directive to make sure that consumers do not get gouged at the pump this summer?

Mr. MURIS. Senator, I think it is a very important issue, and I will make it a top priority to recommend to my colleagues, if confirmed, that the Commission vigorously investigate such allegations.

Senator WYDEN. Other than that, you have no specifics you can give us this morning about how you would carry that out? I mean, the President said this is going to be a big priority to him, and the fact of the matter is, all across this country, consumers are trying to figure out how to pay these gas bills, and they would like to know how the government is going to stand up for them.

Mr. MURIS. Senator, I am at somewhat of a disadvantage here. The Commission just had a very extensive investigation with a lot of nonpublic information. Until and if I am confirmed, I will not have access to that information, but I believe it is very important for the Commission to investigate alleged violations of the law. The Commission has had investigations in this area, and I would recommend that they continue, and that they be prosecuted vigorously.

Senator WYDEN. Do you think redlining is anticompetitive? Redlining is a practice where the distributors and the jobbers are prevented by refineries—we have got it going on in the West Coast—from being able to compete. My view is, it is anticompetitive. I think it is about as anti-free enterprise as anything you can find. Do you think redlining is anticompetitive?

Mr. MURIS. Senator, this is an area upon which my knowledge is limited to that in two public statements released by the Commission last week and by the hearings that this Committee held. I certainly believe that it can be anticompetitive. I know there are different forms of redlining.

For whatever reason, the Commissioners in their brief discussion of that issue in the public statements that they released last week did not think that the practices they investigated amounted to an antitrust violation. Without being able to look at the voluminous investigation that they had, I cannot tell you whether I agree with that opinion or not, but that kind of practice certainly can be anticompetitive, and under the antitrust laws there are some practices

which are anticompetitive that are not illegal. Indeed, some of them are even exempt.

Senator WYDEN. Well, here is what the Commission found, because redlining is rampant up and down the West Coast of the United States, and the Commission found that. Let me read to you from their report last week:

Most of the Western states refiners prevented their jobbers from competing with them to supply branded gasoline to independent dealers in metropolitan areas, a practice called redlining.

That is what the Commission found, that redlining is going on in places like Arizona and Oregon, Washington, and California, places that have some of the highest gasoline prices in the country.

Now, it may not be illegal under current law, but it sure as heck is anticompetitive, and I would like to see the head of the Federal Trade Commission do something about it.

Do you have any response to that?

Mr. MURIS. Senator, I do know that the Commission has just had an investigation, and that for reasons, again, I am not fully aware of, because I have not seen the nonpublic documents, concluded that although various forms of redlining existed, that they could not find an antitrust violation.

I do think it is very important for the FTC to be on top of this issue, to provide Congress with information, and I will make it a priority to investigate these practices.

Senator WYDEN. Well, again, I would hope that when you find anticompetitive practices, you do more than say, "Gosh, that is just too bad", because the American people are hurting now. In my part of the country they are getting clobbered in terms of gasoline prices, and for the Federal Government to say, as the Commission did last week, that redlining is going on, that it is anticompetitive, but gosh, the laws are just not on the books and that is the way it goes, that is not acceptable to me, and I hope it will not be acceptable to you if you are confirmed as the chair of this Commission. I thought that was a very, very regrettable message to send to the American people.

It would be one thing to say, we found redlining, we found anticompetitive practices, but you know, we cannot do anything about it under current law, and the Congress ought to dig in and do its job and give us the tools we need. That would have been one thing. But to just say, there is anticompetitive practices going on, and that is the way it goes, is unacceptable to this Member of Congress.

Let me, if I might, ask you about one other question, and that is the matter of airline competition. My guess is that before the year is over you may be able to count the number of major airlines on the fingers of one hand. Remember, the history of deregulation is supposed to bring more competition, but what it has really done is bring consolidation, and the airline industry is basically deregulated in name only, and they are just keeping people in the dark about the information they need.

In fact, the Inspector General sent me a report yesterday saying that when flights are chronically late—constantly canceled, the airlines are refusing to disclose that. Here we are, heading into a season that by the industry's own projections is going to be bedlam for passengers, and I would like to know what, if anything, you are

willing to do to promote the rights of passengers when they are not being told the truth?

As you know, aviation competition, in a precise sense, is not within the purview of the Federal Trade Commission, but certainly it is within the purview of the Federal Trade Commission to take steps when the airlines are not being straight with the public about scheduling, about delays, about not giving them what they purchase.

How would you handle that issue?

Mr. MURIS. There are certainly serious problems raised there. I do not fully know the law in this area. I suspect that the Department of Transportation has the primary jurisdiction over these issues. I know the Antitrust Division deals with the merger issue.

I would certainly be willing to look at whatever the FTC can do and work with the Committee in that area, because it is a very important one for consumers.

Senator WYDEN. I understand with respect to mergers and consolidations that there are areas where clearly your agency, under the current statutes, cannot lead, but with respect to misleading the public, which is what that industry is doing—the Inspector General has said, for example, that even under optimum conditions, when the weather is perfect, all the runways are operating, these airlines cannot fulfill what they are pledging to consumers, and that is a consumer issue. That is an issue that is within the beat of the Federal Trade Commission, and I sure hope that you will follow it up.

I enjoyed my visit with you. I think you are a good man. I am planning to vote for you in this Committee and on the floor, but I think you know—we talked about through my years in the House and the Senate I probably have looked on more occasions to the Federal Trade Commission for leadership on these consumer protection issues than any Member of Congress.

I think it is an extraordinarily important agency, both from the standpoint of your tools under existing law, and the bully pulpit function that the Federal Trade Commission can perform, and I think that in the areas that I have touched on, particularly gasoline prices and the question of getting a fair shake for airline passengers, you can do more.

I thought it was a very unfortunate opinion that the Commission issued last week on gas prices. To tell the American people that they found anticompetitive practices, and that is tough, is just unacceptable to me. I want you to know that if you are confirmed, and I hope that you will be, I will be calling on you often, and Mr. Chairman, I thank you for the chance to ask questions.

The CHAIRMAN. Thank you very much. Professor Muris, welcome again. As I say, we will have a markup next week, and we will move your nomination as quickly as possible. I am confident that we can get that done before the Memorial Day recess. Thank you again for your willingness to serve, and we look forward to seeing you often here before the Committee and in other arenas. Thank you.

Mr. MURIS. Thank you very much, Senator and members of the Committee.

The CHAIRMAN. The next panel is Ms. Maria Cino, Assistant Secretary-Designate, and Director General of the United States and Foreign Commercial Service of the Department of Commerce, Dr. Kathleen Cooper, Under Secretary-Designate for Economic Affairs for the Department of Commerce, and Mr. Bruce Mehlman, the Assistant Secretary-Designate for Technology Policy of the Department of Commerce. Would you please come forward?

The CHAIRMAN. We will wait just a second.

Ms. Cino, do you have any family members that are with you that you would like to introduce today?

Ms. CINO. I do not, sir.

The CHAIRMAN. And Dr. Cooper.

Dr. COOPER. No, I do not. They are still in Texas.

The CHAIRMAN. And Mr. Mehlman.

Mr. MEHLMAN. Yes, Senator. I brought enough for all of us, I think.

The CHAIRMAN. Good.

Mr. MEHLMAN. I have my parents, Art and Judith Mehlman.

The CHAIRMAN. Please stand up. Thank you.

Mr. MEHLMAN. My wife, Amy Mehlman.

The CHAIRMAN. Where is she? Please stand up. Thank you.

Mr. MEHLMAN. My mother-in-law, Judith Rodman, and my father-in-law, Bruce Marshak, who may win the award for farthest distance traveled. He is a career prosecutor down in the U.S. Virgin Islands. I am fortunate that he flew all the way up for me.

The CHAIRMAN. Ah. Welcome. That is a hardship post down there in the Virgin Islands.

[Laughter.]

The CHAIRMAN. Thank you all for being here, and I know this is a proud time for all of you. I know you are especially proud, because Mr. Mehlman has progressed very far in a very short period of time. I thank the witnesses for being here, and we would like to hear your opening statements, beginning with you, Ms. Cino.

STATEMENT OF MARIA CINO, ASSISTANT SECRETARY-DESIGNATE AND DIRECTOR GENERAL OF THE UNITED STATES FOREIGN COMMERCIAL SERVICE, DEPARTMENT OF COMMERCE

Ms. CINO. Thank you. Mr. Chairman, members of the Committee, it is an honor and a privilege to come before you as President Bush's nominee for the position of Assistant Secretary and Director-General of the U.S. Foreign Commercial Service. Thank you for granting me this hearing today. I know how busy you are and I really appreciate the attention to this nomination.

I look forward, if confirmed, to working with Members and staff of this Committee on matters related to export promotion. I would like to thank President George W. Bush and Secretary of Commerce Don Evans for their support of my nomination.

Small and medium-sized American businesses understand and appreciate the unique and valuable role played by the Commercial Service in trade promotion and trade compliance. If confirmed, I have set three goals for the agency: increase the number of exports from traditionally underserved communities, which would include minority, rural, and women-owned business, increase the number

of new exports, and help current exporters increase the number of markets to which they export and, finally, improve the quality of export assistance provided to American companies by the Commercial Service by enhancing the skills of our employees through professional development opportunities.

I welcome the challenge of leading the worldwide field force organization of 1,700 dynamic individuals. My 20-plus years of leading field-based organizations, developing and adhering to complex budgets, setting short and long-term strategic goals, building coalitions, and developing, motivating, and mentoring staff have prepared me for this position. I invite each of you to visit your local U.S. Export Assistance Center to observe first-hand the tremendous service that those men and women provide to your constituent businesses seeking to export.

Finally, let me say that I am humbled. I could never have imagined that, while growing up in a blue-collar, ethnic and conservative household, that I would be sitting here today before the U.S. Senate at a confirmation hearing as Assistant Secretary for the Department of Commerce. I want to thank my parents for teaching me that if I work hard, anything is possible, and I also would like to thank my colleagues and friends, who challenged me and gave me the opportunity to grow.

I appreciate the honor of being here today. If confirmed, I look forward to working with Under Secretary Grant Aldonis and my sister International Trade Administration bureaus to promote U.S. exports, to support U.S. trade, and enforce trade agreements.

Thank you very much.

[The prepared statement and biographical information of Ms. Cino follow:]

PREPARED STATEMENT OF MARIA CINO, ASSISTANT SECRETARY-DESIGNATE AND DIRECTOR GENERAL OF THE UNITED STATES FOREIGN COMMERCIAL SERVICE, DEPARTMENT OF COMMERCE

Mr. Chairman, Senator Hollings, Members of this Committee, it is an honor and a privilege to come before you as President Bush's nominee for the position of Assistant Secretary and Director General of the U.S. Foreign and Commercial Service. Thank you for granting me this hearing today. I know how busy you are and I really appreciate your attention to this nomination. I look forward, if confirmed, to working with the Members and staff of this Committee on matters related to export promotion.

I would like to thank Senator Allen for that kind introduction.

I also want to thank President George W. Bush and Secretary of Commerce Don Evans for their support of my nomination.

Mr. Chairman, Congress created the U.S. Foreign and Commercial Service to provide export assistance at a reasonable cost to American companies. From the beginning, our mission has been to help small and medium-sized American business export their U.S. made products and services and protect the interests of U.S. businesses abroad. The Commercial Service has grown into a worldwide organization that facilitates export transactions by linking U.S. suppliers with international buyers through our network of 105 domestic and 159 international field offices.

Small and medium-sized American businesses understand and appreciate the unique and valuable role played by the Commercial Service in trade promotion and trade compliance. Federal, state and local international trade agencies also value the Commercial Service. Over the years we have forged a strong partnership with the Trade Promotion Coordinating Committee to leverage scarce resources and provide seamless export assistance to clients.

If confirmed, I will work to further strengthen the partnerships created through the Trade Promotion Coordinating Committee to better leverage federal resources. The Commercial Service actively pursues partnerships with government agencies and the private sector. I believe that working together through partnerships at the

point of service delivery is the most effective way to help American exporters in today's climate of increased global competition.

We live in a rapidly changing society. Our nation continues to evolve into a service orientated, high-tech based economy where an increased number of exporters are from non-traditional backgrounds. The Commercial Service must continue to respond to these changes.

If confirmed, I have set three goals for the Agency:

- Increase the number of exporters from traditionally under-served communities (minority, rural and women-owned businesses).
- Increase the number of new exporters and help current exporters increase the number of markets to which they export.
- Improve the quality of export assistance provided to American companies by the Commercial Service by enhancing the skills of our employees through professional development opportunities.

This is truly an exciting time and one of tremendous opportunity for U.S. exporters. Commercial Service employees are dedicated, hardworking and committed to providing export assistance services that are second to none. Their enthusiasm is contagious. I invite each of you to visit your local U.S. Export-Assistance Center to observe firsthand the tremendous service that these men and women provide to your constituent businesses seeking to export.

I welcome the challenge of leading a worldwide field-based organization of 1700 dynamic individuals. My 20-plus years of leading field-based organizations, developing and adhering to complex budgets, setting short and long term strategic goals, building coalitions, and developing, motivating and mentoring staff have prepared me for this position. In addition, the contacts I have made in Federal, state and local agencies will enable me to further the goals of the U.S. Commercial Service. It is my hope that my skills in developing successful, strategic marketing and outreach programs will heighten the awareness and value of the Commercial Service's programs to American companies.

Finally, let me say that I am humbled. I could never have imagined that while growing up in a blue-collar, ethnic and conservative household that I would be sitting here today before the United States Senate at a confirmation hearing to be the Assistant Secretary and Director General for the United States & Foreign Commercial Service.

I want to thank my loving parents for teaching me that if I worked hard, anything was possible. I especially want to thank my late father for not heeding the advice of my grandfather who insisted that it would be a waste of money to send a girl to college. I also want to thank my colleagues and friends who challenged me and gave me the opportunity to grow.

I deeply appreciate the honor of being here today. If confirmed I look forward to working with Grant Aldonas and my sister International Trade Administration bureaus to promote U.S. exports, support U.S. trade policies and enforce trade agreements.

Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name: Maria Cino.
2. Position to which nominated: Assistant Secretary of Commerce and Director General of the United States & Foreign U.S. Commercial Service.
3. Date of nomination: April 6, 2001.
4. Address: Information unavailable to the public.
5. Date and place of birth: 4/19/57, Buffalo, New York.
6. Marital status: Single.
7. Names and ages of children: None.
8. Education: St. John Fisher College, 1975–1979, BA—Political Science; University of Dayton School of Law, 1979–1980.
9. Employment record: Department of Commerce, Senior Advisor, Grant Aldonas (Supervisor), Washington, D.C., April 2001–Present; Republican National Committee, Deputy Chairman for Political Operations and Congressional Affairs, Fred Meyers (Supervisor), Washington, D.C., May 2000–March 2001; Bush for President, Inc., National Political Director, Karl Rove (Supervisor), Austin, TX, March 1999–April 2000; Wiley, Rein & Fielding, Government Affairs Consultant, Fred Fielding (Supervisor), Washington, D.C., March 1997–March 1999; National Republican Congressional Committee, Executive Director, Bill Paxon (Supervisor) Washington, D.C., January 1993–March 1997; Congressman Bill Paxon, Chief of Staff, Bill Paxon (Supervisor), Washington, D.C., January 1989–January 1993; Paxon for Congress,

Campaign Manager, Bill Paxon (Supervisor), West Seneca, NY, August 1988–December 1988; American View Point, Research Analyst, Linda DiVall (Supervisor), Alexandria, VA, January 1986–July 1988; Republican National Committee, Washington, D.C., Executive Assistant to the Political Director, January 1985–January 1986, State and Local Programs Director, January 1983–January 1985, Program Director, Political Education, July 1981–January 1983; Bo Sullivan for Governor, Assistant Research Director, Bo Sullivan for Governor Committee, Essex, NJ, January 1981–June 1981.

10. Government experience: Department of Commerce, Senior Advisor, April 2001–Present; Congressman Bill Paxon, Chief of Staff 1989–1993.

11. Business relationships: Wish List (Political Group) Board Member, 1997–1999; VIEW PAC (Political Group) President, 1997–2000; EnterpriseWorks (Non-Profit) Trustee, 1988–2001, resigned 2/01.

12. Memberships: None.

13. Political affiliations and activities: (a) None. (b) National Republican Congressional Committee, Executive Director, 1993–1997; Bush for President, Inc., National Political Director, 1999–2000; Republican National Committee, Deputy Chairman of Political Operations and Congressional Affairs, 2000–2001; Wish List, Board, 1997–1999; VIEW PAC, President, 1997–1999. (c) Collins for Senate, \$500 (1996); Wish List, \$1000 (1998).

14. Honors and awards: None.

15. Published writings: None.

16. Speeches: None.

17. Selection: (a) I believe that the President nominated me for this position because of my unique combination of management skills, extensive experience managing nation-wide field operations, budgetary and fiscal planning acumen, demonstrated leadership in building coalitions and my long-standing commitment and success in motivating, mentoring and developing employees. (b) I believe that my 20-plus years of experience in managing large, national field operations and staff qualifies me for this position, which requires managing a worldwide operation of over 1,700 employees in 250+ offices located in 85 countries and 48 U.S. states. I also have significant experience in developing and managing large and complex budgets, motivating and mentoring geographically dispersed employees and setting clear priorities, goals and objectives.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes, I have severed all relationships with present employers, business associations and organizations.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation, practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealing with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position for which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy? Over the past 10 years, in my capacity as Chief of Staff for a Member of Congress and as a Government Affairs Consultant for the law firm of Wiley, Rein and Fielding, I have worked on a wide range of issues. My primary role was one of gath-

ering information and arranging for all interested parties to discuss their specific views. The issues I worked on ranged from telecommunications, transportation, housing, banking and health care.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. I will consult with the General Counsel of the Department of Commerce and, if appropriate, divest myself of conflicting interests, recuse myself, or obtain a conflict of interest waiver under 18 U.S.C. § 208 (b) if the interest is not substantial.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited a breach of ethics for unprofessional conduct by, or been the subject of any complaint or court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, state, or other law enforcement authority for violation of any Federal, state, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details. No.

4. Have you been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with the deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. The Department of Commerce, as the voice of business within the Administration, has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. While not principally a regulatory agency, all regulations of the Department are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated.

The Office of Legislative and Intergovernmental Affairs does not itself issue regulations and is not typically involved in the review of regulations issued by agencies of the Department. However, to the extent that I do not participate in the regulatory review process, I will ensure that regulations issued by the Department comply not only with the letter, but also the spirit of laws passed by Congress.

5. Describe your department/agency's current mission, major programs, and major operational objectives. *Mission:* The overall mission of the U.S. Commercial Service is to aggressively promote the export of goods and services from the United States, particularly by small and medium-sized businesses, and to protect U.S. business interests abroad. The major programs of the U.S. Commercial Service include: *E-commerce*—capitalizing on new technologies and developing new e-commerce products and services to provide American companies with more accessible, cost-effective export solutions and opportunities; *Services exports*—adapting to the growth of the U.S. services industries by developing new programs to support services exports; *Rural Export Initiative*—providing rural companies with better access to export assistance through a comprehensive network of partnerships, new technologies and unique products; *Communication and Outreach*—raising the profile of the wide array of Federal export assistance programs available to small and medium-sized American

companies; *Professional Development and Retention*—implementing programs to attract talented professionals and retain and motivate employees through professional growth and development opportunities; *Global Diversity Initiative*—providing minority-owned and operated firms with access to export assistance through a comprehensive array of products, services and programs. The U.S. Commercial Service remains committed to achieving greater operational cost savings and efficiencies through automation and streamlining, while maintaining its high level of client service and satisfaction.

6. Are you willing to appear and testify before any duly constituted committee of Congress on such occasions as you may be reasonably requested to do so. Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated? My 20 years of leading field-based organizations, developing and adhering to complex budgets, setting short- and long-term strategic operational objectives, building coalitions, and developing, motivating and mentoring staff have qualified me for this position. In addition, the contacts I have made in Federal, state and local government will enable me to further the goals of the U.S. Commercial Service by nurturing and leveraging partnerships. Further, my skills in developing successful, strategic marketing and outreach programs will heighten the awareness and value of U.S. Commercial Service programs to American companies.

2. Why do you wish to serve in the position for which you have been nominated? This position will allow me to apply my extensive experience, skills and abilities to meet the significant challenge of increasing the number of small and medium-sized U.S. exporters. In doing so, the U.S. Commercial Service will play a part in improving the prosperity of our country by adding new and higher paying jobs by small and medium-sized enterprises (the fastest growing segment of the U.S. economy), and increasing local tax bases to help communities across the country.

3. What goals have you established for your first 2 years in this position, if confirmed? In my first 2 years in this position, I plan to: Increase the number of new exporters and help current exporters increase the number of markets to which they export; Increase the number of exporters from traditionally under-served communities (minority-, rural-, women-owned businesses); Improve the quality of export assistance provided to American companies by the U.S. Commercial Service by enhancing the skills of our employees through professional development opportunities.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? This position requires strong management, motivational, and strategic planning skills for a widely dispersed, worldwide network. These are skills that I have successfully cultivated throughout my career and I believe that they will serve me well in this position. If confirmed, I will continue to seek opportunities to improve my skills in this capacity.

5. Please discuss your philosophical role of government. Include a discussion of when you believe the government should, involve itself in the private sector, and what standards should be used to determine when a government program is no longer necessary. Congress created the U.S. Commercial Service to provide American companies with reliable market information and export assistance at a reasonable price. I believe that it is necessary for federal agencies to play a role in providing export assistance to small and medium-sized enterprises because the cost of getting reliable market information from the private sector would preclude most small and medium-sized companies from exporting. The export assistance provided by the U.S. Commercial Service to small and medium-sized businesses helps to improve the prosperity of our country, add new and higher paying jobs and increase local tax bases to help communities throughout the nation.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The mission of the U.S. Commercial is to help small and medium-sized American companies export. *Major Objectives:* The U.S. Commercial's primary objective is to provide small and medium-sized American companies with export assistance and customized business solutions so that they can effectively compete in the global marketplace. *Operational Objectives:* The U.S. Commercial Service remains committed to achieving greater operational cost savings and efficiencies through automation and streamlining, while maintaining its high level of client service and satisfaction.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years. While the U.S. Commercial Service mission (to help small and medium-sized American companies export) will

not change, the way in which the mission is accomplished will likely change in response to the following market forces: Technological advances that will require the development of new and more effective ways to reach clients; Growth in Service industries that has dramatically changed the structure of the U.S. economy and will result in greater demand for U.S. services exports; Globalization that will introduce a growing number of American companies to exporting.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency over the past several years? At this time, I do not believe that there are any current or foreseeable outside forces that would preclude the U.S. Commercial Service from accomplishing its mission. Certainly, there are challenges including the need to stay abreast of technological advances and to use these new technologies to better serve American companies. In addition, the U.S. Commercial Service must remain flexible and able to respond to new challenges, such as the emergence of new markets and industries. To do so, the U.S. Commercial Service's 1700 employees must have access to professional development, mentoring and other growth opportunities.

9. In further reference to question No. 6, what factors, in your opinion have kept the department/agency from achieving its missions over the past several years? The U.S. Commercial Service has successfully achieved its mission because it has been proactive in responding to changes in the world economy, and adapting new technologies to improve both internal business processes and the range of products and services available to American companies. In addition, we have invested in its employees through professional development opportunities and prioritized resources.

10. Who are the stakeholders in the work of this agency? Small and medium-sized U.S. businesses seeking export assistance are the U.S. Commercial Service's primary stakeholders.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question two? If confirmed, I would lead the U.S. Commercial Service's worldwide network in providing small and medium-sized U.S. businesses with customized export solutions.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? If confirmed, my responsibilities would be to implement effective and efficient management processes to ensure that the U.S. Commercial Service adheres to the established management and accounting controls set by the Department and the International Trade Administration. These processes would include training, accountability measures and mechanisms for collecting and incorporating feedback. (b) What experience do you have in managing a large organization? I have over 20 years experience in managing large, primarily field-based organizations. My collective experience includes developing and adhering to complex budgets, setting short and long-term strategic operational objectives, building coalitions, and developing, motivating and mentoring geographically dispersed staff.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. I believe that identifying relevant performance goals benefits both taxpayers and the Congress by increasing an organization's accountability. Putting strong measures in place and reporting on those measures to the Congress ensures that our funds are being spent effectively and helps the agency stay focused on its core mission. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? Should an agency fail to achieve its performance goals, the Congress should request an explanation of why performance targets were not met and establish a timeline to correct deficiencies. The willingness and ability of an agency to resolve performance issues should determine the appropriate corrective action including the possible elimination, downsizing, privatization, and consolidation. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? If confirmed, my personal performance goals should be identical to the goals of the agency.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? My philosophy of supervisor/employee relationships is to work with my staff to set goals and priorities and establish a workable timeline for com-

pletion. Upon agreement, I empower my staff to manage their projects and programs while I monitor progress. I offer advice and guidance when needed. I have never had a complaint brought against me.

15. Describe your working relationship, if any, with Congress. Does your professional experience include working with committees of Congress? If yes, please describe. As a Chief of Staff for a Member of Congress and Government Affairs Consultant for a law firm, I worked with Congress on a wide variety of issues which included transportation, health care, banking, housing and telecommunications. My professional experience included gathering and distributing information. In addition, I arranged meetings for interested parties to discuss the issues. The Committees of Congress I worked with were Commerce, Banking, and Transportation.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. If confirmed, I will have an open, honest and respectful relationship with the Inspector General. I intend to have regular, candid conversations with the Inspector General to discuss the findings of investigations. I will act on and implement Inspector General's recommendations in a timely manner.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. If confirmed, I will make it a priority to work closely with the Committee and other stakeholders to ensure that regulations, policies and procedures implemented by the U.S. Commercial Service will comply with both the spirit and letter of the laws passed by Congress. In addition, I will consult with the Department's Office of General Counsel and Office of Legislative Affairs to fully research and document any and all actions I may take relating to laws, mandates, regulations and directives of the Congress.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Personally, I believe that there are two primary areas under the Department's jurisdiction that Congress should consider as priorities: Improving the quality and accessibility of export assistance programs to small and medium-sized American businesses; Ensuring compliance with international trade agreements including technology, biotechnology, and intellectual property, to provide American companies with full and fair access to global markets.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. If confirmed, I will pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria. In allocating resources, I will examine the U.S. Commercial Service's programs, initiatives, priorities and staffing patterns to ensure that funding levels support the agency's mission. My actions will be in accordance with budget timetables established by the Department and will be fully transparent and well documented.

The CHAIRMAN. Thank you, Ms. Cino. I think Senator Hutchison wanted to make some comments about Dr. Cooper before we proceed.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Thank you so much, Mr. Chairman. I did want to introduce my friend, Dr. Kathleen Cooper, as a fellow Texan, but also someone that I have known and worked with. She has been my friend for a long time.

She is, of course, nominated to be Under Secretary for Economic Affairs at the Department of Commerce, and she today holds the job of Chief Economist at ExxonMobil Corporation. She has been a clear voice for carefully monitoring the economics of our energy situation, and has long advocated that we should not be dependent on foreign supplies for our energy needs.

Dr. Cooper was Executive Vice President and Chief Economist at Security Pacific Bank before she began work for ExxonMobil. She

has had an extensive career in economics, earning undergraduate and graduate degrees from the University of Texas at Arlington, and a Ph.D. in economics from the University of Colorado. She has also served as co-chair of a Subcommittee of trustees of the Committee for Economic Development, a Committee made up of people from the business background, who also have an interest in improving the stability of the international financial system.

As I said, Mr. Chairman, I have known Kathleen for a long time. She is not only a very smart person, and an experienced person in the field of economics, but she is a person of great character, and I recommend her fully to the U.S. Senate for confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hutchison.

Dr. Cooper, welcome.

**STATEMENT OF KATHLEEN B. COOPER, Ph.D.,
UNDER SECRETARY-DESIGNATE FOR ECONOMIC AFFAIRS,
DEPARTMENT OF COMMERCE**

Dr. COOPER. Chairman McCain and members of the Committee, I am very pleased to be here today to talk with you about my nomination. I thank this Committee for holding today's hearings, and very much thank Senator Hutchison for her very kind words of introduction and support.

I also want to express my gratitude to President Bush and Secretary Evans for the confidence that they have shown in me with this nomination, because after all, confidence is a very important element in any relationship. Over many years, the American people, policymakers, and officials in other countries have developed confidence in the statistics provided to them about the U.S. economy.

The role of the Economics and Statistics Administration at Commerce, the ESA, is, in fact, to make sure that that confidence is well-placed. A very large share of the economic and social data that measures the U.S. economy and moves markets is produced by the analysts at the Bureau of Economic Analysis, the so-called BEA, and the Census Bureau. It is critical, as I am sure you would all agree, that policymakers have the best information possible in making their decisions, and that the American people have the best information possible in making their decisions.

Accurate assessments of the growth rate of GDP, the level of housing starts, and changes in retail sales—all of these indicators of the U.S. economy and more, assist businesses and not-for-profit organizations in their planning processes, and certainly they assist policymakers with their decisions. Knowledge about income growth and distribution and the makeup and health of families also enhances government policy determinations.

The onslaught of new goods and services being produced today, created by the flood of innovation that our economy has witnessed in the second half of the 1990's, presents unprecedented challenges for BEA and the Census Bureau. Americans and others have confidence in the answers provided to them regarding these issues. Important reasons why are the professionalism of the analysts who work for the U.S. Government's economic statistical agencies, and the belief that the latest and best measurement and analysis techniques are being funded and utilized.

After several years of insufficient resource availability for economic statistics, President Bush has requested increased funding for BEA in order to upgrade the analytical capabilities and yardsticks of our economy. I am committed to working hard to ensure that these and future increases are used effectively in an economy and a society that is increasingly organized around information.

Our nation's statistical agencies are a treasured national resource. If confirmed, I will work diligently to protect and enhance this resource. Having spent my career as a user and interpreter of the economic statistics produced by the BEA and the Census Bureau, I relish the opportunity to lead and support their efforts at a very important point in their existence, and I look forward to working with this Committee and with other ESA stakeholders in this important endeavor.

I thank you, and I would be happy to answer questions at the appropriate time.

[The prepared statement and biographical information of Dr. Cooper follow:]

PREPARED STATEMENT OF KATHLEEN B. COOPER, PH.D., UNDER SECRETARY-
DESIGNATE FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

Chairman McCain and members of the Committee, I am pleased to appear before you today regarding my nomination as Under Secretary for Economic Affairs at the Department of Commerce. I thank this Committee for holding today's hearing and thank President Bush and Secretary Evans for placing their confidence in me with this nomination.

Indeed, confidence is a crucial element in any relationship. Over the years the American people, policymakers, and officials in other countries have developed confidence in the statistics provided to them about the U.S. economy. The role of the Economics and Statistics Administration (ESA) of the U.S. Department of Commerce is to ensure that that confidence is well placed. A very large share of the economic and social data that measures the U.S. economy and moves markets is produced by the analysts at the Bureau of Economic Analysis (BEA) and the Census Bureau—and an ever-increasing share of that data is made available electronically by STAT-USA—all a part of the Economics and Statistics Administration of the Department of Commerce.

The American economy is constantly changing. The makeup of our national output is evolving in ways that make it more challenging to measure. Understanding these changes is a critical function of the economic statistics organizations of the U.S. Government, as is employing the more sophisticated techniques required. Priorities for methodological adjustments have been set and some important changes implemented in recent years, but more must be considered.

It is critical that policymakers and the American people have the best information possible upon which to base their decisions. Accurate assessments of the growth rate of GDP, the level of housing construction, and changes in retail sales assist businesses and not-for-profit organizations with their planning and policymakers with their decisions. Knowledge about income growth and distribution and the makeup and health of families also enhances government policy determinations.

The onslaught of new goods and services being produced today, created by the flood of innovation that has swept our economy in the second half of the 1990's, presents unprecedented challenges to the BEA and Census Bureau. Americans and others have confidence in the answers provided to them regarding these issues. Important reasons why are the professionalism of the economic and statistical analysts who work for U.S. government organizations and the belief that the latest and best measurement and analysis techniques are being funded and utilized.

After several years of insufficient resource availability for economic statistics, President Bush has requested increased resources for BEA in order to upgrade the analytical capabilities and yardsticks of the economy. I am committed to working hard to ensure that these and future resource increases are used effectively.

In an economy and society that is increasingly organized around information, a nation's statistical agencies are a treasured national resource. If confirmed, I will

work diligently to protect and enhance this resource. Having spent my career as a user and interpreter of the economic statistics produced by the Bureau of Economic Analysis and the Census Bureau, I relish the opportunity to lead and support their efforts at a very important point in their existence, and I look forward to working with this Committee and other ESA stakeholders in this important endeavor.

A. BIOGRAPHICAL INFORMATION

1. Name: Kathleen Marie Cooper (Maiden name: Bell, Nickname: Kathy).
2. Position to which nominated: Under Secretary of Commerce for Economic Affairs.
3. Date of nomination: April 30, 2001.
4. Address: Information unavailable to the public. Office: Exxon Mobil Corporation, 5959 Las Colinas Blvd., Irving, Texas 75039.
5. Date and place of birth: February 3, 1945; Dallas, Texas.
6. Marital status: Married; Ronald James Cooper.
7. Names and ages of children: Michael Patrick Cooper, 25; Christopher Phillip Cooper, 21.
8. Education: High school—Ursuline Academy, 1959–60; Our Lady of Good Counsel Academy, 1960–63, Diploma, 1963; North Texas State University—1963–64; Part-time student at Texas A&M, 1966–68; University of Texas at Arlington—1968–70, B.A., Mathematics, July 1970; University of Texas at Arlington—1970–71, M.A., Economics, August 1971; University of Colorado—1977–80, Ph.D., Economics, December 1980.
9. Employment record: Administrative positions at the U.S. Civil Service Commission, U.S. Public Health Service, U.S. Agricultural Stabilization and Conservation Service, and U.S. Office for Civil Rights (DHEW), 1964–1970, while completing my undergraduate degree; Economics Department, University of Texas at Arlington, Arlington, Texas, 1970–1971, Graduate Research Assistant; United Banks of Colorado, Denver, Colorado, 1971–1981; Economic Research Analyst, Corporate Economist, Chief Economist; Security Pacific National Bank, 1981–1990; Vice President & Senior Financial Economist, First Vice President & Senior Financial Economist, Senior Vice President & Economist, Executive Vice President & Chief Economist; Exxon Corporation, 1990–1999; Chief Economist Exxon Mobil Corporation, 1999–Present; Chief Economist and Manager, Economics.
10. Government experience: None.
11. Business relationships: Director & Vice Chairman, National Bureau of Economic Research; Trustee, Committee for Economic Development; Director, American Council on Capital Formation; Treasurer, International Women's Forum; Vice Chairman, Conference of Business Economists; Chief Economist, Exxon Mobil Corporation.
12. Memberships: National Association of Business Economists; President, 1985–1986; U.S. Association of Energy Economics; President, 1996; International Women's Forum—Treasurer, 1999–2001; Conference of Business Economists, 1991–Present—Incoming Vice Chairman; Council on Foreign Relations, 2000–Present; Dallas Committee on Foreign Relations since early 1990's.
13. Political affiliations and activities: (a) No political offices held; never a candidate. (b) No memberships or offices held in or services rendered to political parties or election committees during the last 10 years. (c) Checks only available for the period since 1994: (1994) Kay Bailey Hutchison for Senate—\$500; Friends of Kay B. Hutchison Legal Fund—\$250; Republican Campaign Council—\$750. (1995) Kay B. Hutchison—\$500; Republican Campaign Council—\$500. (1996) RNC—\$500; RNC Victory \$1,000; Kay B. Hutchison—\$500. (1997) Governor Bush Committee—\$250; Kay B. Hutchison—\$500. (1998) Governor Bush Committee—\$500. (1999) Governor Bush Presidential Exploratory Committee—\$1000. (2000) McCain 2000—\$1000; Republican Presidential Roundtable \$5000; RNC Victory 2000—\$675; Victory 2000 Presidential Trust \$2500; RNC—\$1000; Bush-Cheney Recount Fund—\$1000; Friends of Carole Keeton Rylander—\$500.
14. Honors and awards: Scholarship, Ursuline Academy (freshman year, high school), 1959; Scholarship, North Texas State University, 1963–1964; Graduate assistantship to University of Texas at Arlington, 1970–1971; Omicron Delta Epsilon Economics Honor Society, early 1970's; Dallas Real Estate Board Special Award for paper prepared on local market, 1972; Distinguished Alumna Award, University of Texas at Arlington, 1992; Senior Fellow, National Association of Business Economists; Senior Fellow, U.S. Association of Energy Economics.
15. Published writings: "Effects of Race on Property Values," *The Annals of Regional Science*, The Western Regional Science Association, December 1972; "Re-

Thinking the Fundamentals of Interest Rate Determination," *Business Economics*, January 1983; "Will High Real Interest Rates Persist?" *Business Economics*, April 1985; "NABE's Role: Fostering the Professional Growth of Business Economists," *Business Economics*, April 1986; "Real Interest Rates: The Unpuzzle," *Business Economics*, January 1987; "Commentary: U.S. Banking in an Increasingly Integrated and Competitive World Economy," *Journal of Financial Services Research*, 1990.

16. Speeches: Very few external presentations were given during my tenure with ExxonMobil; most were internal. Copies of two are provided, however, from the past 5 years.

17. Selection: (a) Most likely due to my long experience as a business economist in a variety of companies and my involvement/leadership positions in business economics professional organizations. (b) The reasons enumerated in (a) above provide evidence of my qualifications for this position. In addition, my professional career has been spent analyzing and interpreting the output of the statistical agencies that report to this position (BEA and Census). I have a deep respect for the importance of these organizations, their leadership, and their output—which will allow me to provide the kind of leadership they deserve.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organization if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. I have defined benefit pensions from each of my three primary employment relationships that will be paid to me by formula beginning at the age of 65. I currently have outstanding vested stock options and a long-term bonus that will be exercisable and paid upon termination of my employment with ExxonMobil.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None of which I am aware.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None of which I am aware.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. I met with staff members of some government agencies and Congressional committees in Fall 2000 and early in 2001 to provide an overview of world energy supply and demand over the long term. The purpose was to provide clarifying material to decisionmakers in the hope that any U.S. energy policy decisions made would take a long-term and global perspective.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) I will recuse myself from decisionmaking if any conflict arises. (I have no trust agreements in place, nor do I plan to execute any).

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details. My two former bank employers and ExxonMobil may have been a party in interest in an administrative agency proceeding in the course of doing business. All have certainly been involved in litigation. The petroleum industry is sporadically subject to Justice Department, FTC, and/or other agency investigations on a range of issues. Banks are scrutinized by regulators, competitors, and customers as well and are certainly investigated and/or sued with some regularity. Lawsuits are, of course, omnipresent in the business world, but all three organizations operated then and now according to high ethical standards.

My positions with these firms did not regularly entail involvement with lawsuits and/or investigations, except occasionally to recommend an expert witness (economist) to be considered in working on a case. I was involved in two cases while at Security Pacific, however.

A group of California residents who filed suit that Security Pacific and other California banks colluded to hold the prime interest rate above "normal" levels. My role was to provide data and backup material about the relationship of the prime interest rate with other interest rates governed by the Federal Reserve Board. I do not know the case's resolution but believe that it was based in San Francisco.

A former employee's complaint that he was unfairly treated when released from his duties with the bank. His name was Tom Graves; he had worked directly for me. He sued the bank 6 to 9 months after having been terminated; I and other bank employees provided depositions and the case was ultimately settled. The events occurred in Los Angeles County in 1986-1987 and would be recorded there if settled cases are indeed recorded.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. Nothing further to add.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. The staff will diligently review legislative output, keep apprised of Congressional statements of intent, and work closely with Members of Congress to ensure that regulations promulgated by ESA/BEA/Census Bureau comply with the spirit of legislation passed by Congress.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The mission of the Economics and Statistics Administration (which includes the Bureau of Economic Analysis) is fourfold: (1) help maintain a sound Federal statistical system that monitors and measures America's rapidly changing economic and social arrangements; (2) improve understanding of the key forces at work in the economy and the opportunities they create for improving the well-being of Americans; (3) develop new ways to disseminate information using the most advanced technologies; and (4) support the information and analytic needs of the Commerce Department, the executive branch and Congress.

BEA's major programs include the national economic accounts, industry accounts, regional accounts, and international accounts; The Census Bureau's core responsibility is large-scale surveys and censuses. Its mission is to use the most up-to-date

and appropriate techniques needed to produce such data in a timely, accurate and cost-effective manner, requiring 10 ongoing research and data analysis to support its capabilities. Not only does the Bureau conduct the decennial census but also the censuses of various industries within the U.S. economy.

These two organizations and ESA as a whole are continually in search of the most effective and cost-effective ways of providing the requisite information regarding the U.S. to the public and other users of the information. In other words, the Federal statistical system is routinely being reexamined and reengineered.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated. Both my professional career and my graduate education have been spent analyzing and interpreting economic statistics for the purpose of (1) assisting my employer in planning its business strategies and (2) sorting out what appropriate policy responses should be. For that reason, I am very familiar with the output of the agencies that would fall under my direction and have a deep respect for their importance. Furthermore, my background provides me with the wherewithal to contribute to the policy formulation process.

2. Why do you wish to serve in the position for which you have been nominated? First, it will allow me to apply my experience/skills to policy formulation rather than just policy assessment and to contribute to my government. Second, I relish the opportunity to lead and support the efforts of BEA and the Census Bureau at a very important point in their existence.

3. What goals have you established for your first 2 years in this position, if confirmed? If confirmed, my top five goals for the first 2 years would be to: Further upgrade U.S. GDP and other statistics; Fully implement the American Community Survey nationwide by 2002; Begin the planning for the 2010 decennial census; Further upgrade the technology/capital base of departmental employees to enhance their overall productivity; Shift our customer base more toward electronic means of data delivery via STAT-USA.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? It is not clear to me that I lack any of the specific skills needed to successfully carry out this position. As with any new position, however, I need to determine quickly the most effective people within the group as a whole, clearly articulate the goals that we need to achieve, and follow through to be certain those goals are met.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. Basically, I believe that government should play a role when an issue cannot be solved by the private sector alone. The simplest example, of course, is national defense. Another is necessary but sensible regulation of certain private organizations to protect either the health, safety, or financial well-being of the American public. If the private sector can provide the good/service without distortions or potential problems, however, I believe that the private sector should be allowed to operate. If the goals of a particular government program have been achieved, the program should be discontinued unless there is sound evidence that the goals were too narrow and should be expanded/broadened.

6. In your own words, please describe the agency's current missions, major programs, and major operational objectives. The mission of the Economics and Statistics Administration is to maintain a sound Federal statistical system that monitors and produces relevant, timely, and accurate national and community economic and household statistics for decisionmaking in a rapidly changing environment. Furthermore, it must develop more effective and cost-effective ways of disseminating information to our stakeholders and of supporting the information and analytic needs of the Commerce Department, the executive branch and Congress.

BEA's major programs include the national economic accounts, industry accounts, regional accounts, and international accounts; The Census Bureau's core mission is large-scale surveys and censuses. It must deliver its product in a timely, accurate and cost-effective manner, which requires ongoing research and data analysis to support its capabilities. The Bureau is best known for the decennial census but also produces numerous other census of businesses and provides regular statistics that helps to validate the overall Federal statistical system.

These two organizations and ESA as a whole are continually in search of the most effective and cost-effective ways of providing the requisite information on the U.S. to the public. In other words, the Federal statistical system is routinely being reexamined and reengineered.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years. Technological change will impact the way in which these agencies fulfill their mission but not the missions themselves. Accurate, timely information regarding the U.S. economy will remain critical to policymakers and economic actors within the United States. If the Census Bureau is successful in implementing more regular surveys of the American public rather than conducting them only every 10 years, that should further improve our ongoing knowledge about the U.S. population.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? Insufficient resources are a potential outside force that could prevent these agencies from accomplishing their goals. Indeed, the top three challenges appear to be: (1) staying abreast of the tools and technologies needed to effectively maintain our statistical system; (2) attracting a sufficient number of talented analysts to carry out the more sophisticated analytical work now required due to these tools; and (3) ensuring the security of BEA/CB data previous to release, given the increasingly serious threat from unauthorized intrusions.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? Insufficient resources have made it difficult for the Bureau of Economic Analysis to pursue a number of important initiatives over the past several years; only recently are more resources being provided. The 2000 Census was also handicapped due to delayed availability of resources.

10. Who are the stakeholders in the work of this agency? The stakeholders include a very broad set of groups and individuals. They include the American people as a whole; potential officeholders in different states, counties and communities; Congress itself, policymakers; and the employees of the organizations.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. I view my role as that of providing the best possible information/leadership to the organization on behalf of these stakeholders.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? Since the departmental CFO's responsibility is to bring more effective financial management practices to the Federal Government, my responsibilities would be to ensure that ESA cooperates fully with our departmental CFO and that appropriate controls exist within the agencies reporting to this position. In this regard, it is important that key people within these agencies have the appropriate training and incentives to function effectively. (b) What experience do you have in managing a large organization? The largest organization that I have managed was very small by comparison to the ESA. But I fully understand that the key to successfully managing any large organization is to have strong individuals in key positions, to clearly communicate goals and expectations, and to provide accurate and timely feedback on performance. If these guidelines are followed, the organization can and should be an effective one.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. The best way of communicating with employees is by discussing goals and expectations. While goals cannot always be numerically defined, general directions certainly can be. Reporting on progress is a way of providing positive feedback to employees but can also serve as a means to guide performance to even higher levels. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? No categorical statement can be made in answer to this question. Whether goals are met depends on a wide range of factors and is sometimes outside the control of the particular agency. Therefore, Congress's reaction should depend very much on the degree of control that the agency has relative to the missed goal, the frequency of missed goals, the degree to which the goals are missed, and the importance of the goal. Taking these issues into account, persistent and/or flagrant under-

achievement should carry a penalty. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? I should be held accountable for the goals of the agencies that report to this position, taking into account the various caveats mentioned in my answer to question 13b.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? My philosophy of supervisor/employee relationships is that the supervisor is responsible for clearly communicating goals and expectations to employees and providing the best possible tools and information such that the employee can be successful. The utmost respect should be provided to the employee in carrying out his/her job, as long as the employee follows the rules of the organization and meets the expectations of him/her. If those expectations are not met or the rules are not followed, the employee should be clearly informed of the deficiency so that improvements are possible. In other words, two-way communication and cooperation are important for successful implementation of agency goals. No formal employee complaints have been brought against me in my career.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. I have virtually no experience working with Congress in my current or former positions.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. The Inspector General's role is to detect and prevent fraud, waste, abuse, and violations of law and to promote efficient and effective operations of the Department. For that reason, it would be important to have open lines of communication with the Inspector General regarding the agencies for which I would be responsible in order to assure that potential issues and problems are identified early and resolved.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. I will ensure that staff regularly review legislation passed by Congress and committee reports of legislation such that regulations reflect congressional intent. Furthermore, we will remain open to other stakeholders through correspondence from the general public and Members of Congress.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. The Department's priorities show up most clearly through the budget process. In the specific area of economic statistics, our priorities include improving core statistics (including Gross Domestic Product and related measures) as well as their means of development and provision to users (requiring further upgrading of our information technology systems). In addition, we believe it is critical to provide funding and authority for: conducting the 2002 Economic and Government Censuses, planning for the 2010 decennial Census, implementing the American Community Survey, and redesigning the demographic survey samples (to incorporate the results of Census 2000).

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. Yes. I will ensure that the staff within my area of responsibility are fully aware of the goals of the administration and stay abreast of any adjustments to it. With those goals in mind, their task as managers of the department will be to plan discretionary spending accordingly.

The CHAIRMAN. Thank you, Dr. Cooper.
Mr. Mehlman, welcome.

**STATEMENT OF BRUCE P. MEHLMAN, ASSISTANT SECRETARY-
DESIGNATE FOR TECHNOLOGY POLICY, DEPARTMENT
OF COMMERCE**

Mr. MEHLMAN. Mr. Chairman and members of this Committee, thank you for considering my nomination so promptly, and thanks to the members and their staff for the courtesies already shown to me in some prehearing discussions that I have had that I found very informative and educational.

It is hard for me to express exactly how honored and humbled I am by the confidence that the President and Secretary of Commerce have placed in me by forwarding my nomination to the Senate. I am also grateful to my family for a lifetime of love and support, and for so many of them joining me here today.

I believe very deeply in public service, and I am excited by this great opportunity to serve. I also believe very much in the power of technology to improve our lives, to overcome our challenges, and to grow our economy. I have provided a written statement and written answers to questions the Committee has asked to expound further on my beliefs and my goals for this job, if confirmed, and I would be happy to answer any questions at this time.

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

PREPARED STATEMENT OF BRUCE P. MEHLMAN, ASSISTANT SECRETARY-
DESIGNATE FOR TECHNOLOGY POLICY, DEPARTMENT OF COMMERCE

Mr. Chairman and distinguished members of the Committee, I am honored and humbled to appear before you today as the President's nominee for the position of Assistant Secretary for Technology Policy in the Department of Commerce. I sincerely appreciate the courtesies that the Committee and the staff have afforded me during this process, and am grateful for such timely consideration.

I am deeply grateful to President Bush and Secretary Evans for the confidence they have shown in me, and for their willingness to entrust me with a leadership position on issues that are of great importance to our nation. If confirmed, I look forward to leading the Office of Technology Policy, an office uniquely well-positioned to address the opportunities and challenges presented by today's technology-based global economy. More than ever before, our government needs knowledge about and an advocate for American innovation and high-tech entrepreneurship.

Rapid advances in technology, especially in information technology, have driven our country's remarkable economic performance over the past decade. Technological innovation has been at the heart of our strong economic growth, accelerating rates of investment, extended low inflation and unemployment, high-wage job growth, and solid increases in productivity—the true path for producing higher standards of living.

There is every reason to believe that technology will play an ever-increasing role in supporting American economic and social success in the years ahead. All around us we see the information technology revolution in progress—in communications, business commerce, in how we educate children and train our people, and in how we enjoy and manage our personal lives. The Internet has only just begun to change how we work, live, play and learn and knock down barriers of wealth and distance. Biotechnology is poised to revolutionize agriculture and medicine, promising new medicines and break-through therapies to those who hope and pray for them. And exciting developments in other cutting edge disciplines, from nano-technology to genetic engineering, suggest great changes to come. Ours is an era of promise. Rapid advances in technology are transforming all human endeavors, creating the potential for a host of new global market opportunities, improvements in our standard of living, and a better quality of life for all Americans.

It is no accident that the United States leads the world in high technology. Our achievements are the dividends that flow from sustained public and private sector investments in research and development, coupled with America's entrepreneurial spirit and willingness to take risks. The private sector plays the dominant role in the process of developing new technology and bringing it to market. But the Federal government plays a key role in creating an environment that supports the private sector's efforts, making a strategic public-private partnership essential. During the past decade, dramatic changes have taken place in the climate for innovation—our forms of commerce are being transformed by new digital technologies and networks; R&D, competition, and markets have all gone global; and technological progress is accelerating. These changes have profound implications for our technology policy, regulations and laws, our economic and tax policies, our investments in human capital, and how we allocate and manage our R&D. Analyzing these changes—what they mean for our economy and our policies—and making recommendations to maximize technology's contribution to the economy and improve the environment for technological innovation is the mission of the Office of Technology Policy (OTP).

I believe my skills and experience are well suited to this mission. Having worked at a leading technology company, I have developed a clear understanding of the challenges and opportunities facing American technology companies today. My work at Cisco Systems, and with its customers and its partners—seeing first-hand how government decisions can impact or support our innovators and employers—will help me anticipate the impact of policy decisions on economic growth, business opportunities, consumer welfare and global leadership in innovation. In addition, working in and around Congress for several years I have witnessed the dedication and commitment of Members of Congress and their staffs. I share your passion for public service, and look forward to again serving the American people together.

If confirmed, I would hope to increase OTP's focus on three priority areas. First, there is widespread and growing recognition that advances in technology are playing a large role in economic growth and productivity gains. While the economists are working to measure these effects, we need to better understand how technology is creating improvements in our economy, and develop appropriate policies to further amplify these positive outcomes.

Second, our outstanding economic performance of the past decade was due in no small measure to high levels of private sector investment in innovation and equipment. We need to ensure that our business environment continues to encourage high-levels of investment in R&D, product development, information technology equipment and software, and in developing our human capital for today's technology-intensive workplaces. For example, we want to encourage the spread of new technologies and new applications to benefit all sectors of our economy, and continue to focus on the Internet as a tool to foster free enterprise.

Third, from information technology to biotechnology, and all manner of technologies in between, new innovations are being developed at a fast and furious pace. Nevertheless, it can take years for innovations to reach consumers throughout the world. We need to examine our policy environment with an eye toward reducing the costs of new, high-tech products and services, and increasingly the speed at which they penetrate consumer markets. This would benefit businesses and consumers alike.

I believe the Office of Technology Policy is poised to make a significant contribution to our nation, consistent with its Congressional mandate. OTP has strong research and analytical capabilities on subjects ranging from the U.S. innovation system and investment in R&D, to foreign R&D initiatives and developing the high-tech work force. It has a history of success in working across government departments and agencies to inform policy-makers, to contribute vital knowledge to the policy development process, and to advance solutions to the challenges presented by rapid advances in technology. The career staff is talented, creative, and they believe deeply in their mission. If confirmed, it would be a privilege and pleasure to lead this group of dedicated public servants.

Mr. Chairman, it is my pleasure and honor to appear before your committee. If confirmed, I look forward to working closely with you and the Committee. I will be happy to answer questions you may have. Thank you very much.

A. BIOGRAPHICAL INFORMATION

1. Name: Bruce P. Mehlman.
2. Position to which nominated: Assistant Secretary of Commerce for Technology Policy.
3. Date of nomination: April 30, 2001.
4. Address: Information unavailable to the public. Office: Department of Commerce, 14th Street & Constitution Avenue, Washington, DC 20230.
5. Date and place of birth: April 27, 1969, Baltimore, Maryland.
6. Marital status: Married 5 years to Amy R. Marshack.
7. Names and ages of children: Jacob D. Mehlman (3 years old); Michael G. Mehlman (14 months old).
8. Education: Gilman School, Baltimore, Maryland, high school diploma, 1983–1987, degree granted 6/87; Princeton University, Princeton, New Jersey, B.A. in US History, 1987–1991, degree granted 6/91; University of Virginia Law School, Charlottesville, Virginia, J.D., 1991–1994, degree granted 5/94.
9. Employment record: June 1992–Aug. 1992, summer associate, Piper & Marbury law firm, Baltimore, MD; June 1993–Aug. 1993, summer associate, Wiley Rein & Fielding law firm, Washington, D.C.; Aug. 1994–Feb. 1996, associate attorney, Wiley Rein & Fielding, Washington, D.C.; Feb. 1996–Feb. 1999, deputy & general counsel, National Republican Congressional Committee, Washington, D.C.; Feb. 1999–Aug. 1999, policy director & general counsel, U.S. House Republican Conference, Wash-

ington, D.C.; Aug. 1999–May 2001, telecommunications policy counsel & deputy DC representative, Cisco Systems, Washington, D.C.; May 2001–present, senior adviser to the Secretary, U.S. Department of Commerce, Washington, D.C.

10. Government experience: (Listed in response to question No. 9.)

11. Business relationships: (Business relationships listed in response to question No. 9) I also co-chair the Princeton University Alumni Schools Committee for Montgomery County Maryland, ensuring that roughly 250 candidates applying for admission to Princeton are interviewed by local alumni each year.

12. Memberships: American Bar Association, member; Maryland Bar, member; DC Bar, member; UVA Alumni Association, member; Princeton Club of Washington, member.

13. Political affiliations and activities: (a) I served as Deputy Counsel of the National Republican Congressional Committee from February 1996 until December 1996, and I served as General Counsel from December 1996 through February 1999. (b) I served as Deputy Counsel of the National Republican Congressional Committee from February 1996 until December 1996, and I served as General Counsel from December 1996 through February 1999. (c) \$500, Bush for President, 6/30/99; \$500, Bush for President, 6/28/00; \$500, Friends of Conrad Burns (for Senate), 9/29/2000; \$500, Friends of Conrad Burns (for Senate), 11/3/2000.

14. Honors and awards: None.

15. Published writings: None.

16. Speeches: None. None of the public speeches I have delivered involved a prepared written text.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? Secretary Evans recommended me to the President, I believe based upon my background and experience working closely with and among the technology industry. (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? I believe I have developed a strong understanding of the challenges and opportunities facing American technology companies while working at Cisco Systems. My work with Cisco and its partners—seeing first-hand how government decisions can impact or support innovators and employers—will help me anticipate the impact of policy decisions on economic growth, business opportunities consumer welfare and global leadership in innovation.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. I presently hold 4,583 vested stock options from Cisco Systems Inc. These “expire” on August 2, 2001. They presently have no monetary value, with strike prices far above current market value. (See Section G, question 8 below for exact option prices).

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. As a lobbyist for Cisco Systems, as policy director at the House Republican Con-

ference, and as an attorney at Wiley Rein & Fielding, I lobbied Congress and the Administration on a variety of issues and legislation, generally related to technology policy and telecommunications issues.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Attachment A to this document is the Ethics Agreement I signed based upon the advice and consultation of the Department of Commerce's Office of General Counsel. I intend to bring any questions to the attention of these same counsels and seek their advice to avoid any potential conflicts of interest. I intend to follow the guidance of the Department's counsels.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? The National Republican Congressional Committee was involved in many proceedings before the Federal Election Commission, before, during and after my tenure as deputy and general counsel. None of these routine proceedings involved me specifically or related to any of my actions at the Committee. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. While the Office of Technology Policy has no regulatory authority at this time, my approach to development of regulations would be to review the legislation, the legislative history, and committee conference reports, as well as consulting with Members of Congress, to ensure that I fully understand the intent of the authorizing legislation.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The mission of the Office of Technology Policy is to develop and advocate national policies designed to maximize technology's contribution to the economy and improve the environment for technological innovation. OTP carries out its mission by: providing expert analysis of factors that affect American competitiveness, such as R&D investment, technology development and commercialization; serving as an advocate for industry and the process of technological innovation in the government policy arena and other key arenas.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated? I believe I have developed a strong

understanding of the challenges and opportunities facing American technology companies while working at Cisco Systems. My work with Cisco and its partners—seeing first-hand how government decisions can impact or support innovators and employers—will help me anticipate the impact of policy decisions on economic growth, business opportunities consumer welfare and global leadership in innovation.

2. Why do you wish to serve in the position for which you have been nominated? I believe very deeply in public service and am humbled and grateful for the opportunity to serve. I believe that technology is crucial to U.S. economic growth, innovation, consumer welfare and business competitiveness. I hope I might be able to assist our national leaders in identifying those policy alternatives that maximize the opportunities for technology to raise our standard of living and improve the quality of life for all Americans.

3. What goals have you established for your first 2 years in this position, if confirmed? If confirmed, I hope in the first 2 years to (1) build upon a first-rate group of career professionals to develop a flexible and effective policy team, (2) establish close working relationships with the technology community and the appropriate Congressional Committees, and (3) make meaningful recommendations to the Secretary and the Administration on technology policies to boost American competitiveness, innovation and technology-driven economic growth.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? There are many programs and activities within the Department of Commerce and Technology Administration which I need to explore and understand better. Likewise, while I have observed the relationship between the Executive and Legislative Branches from the Congressional side, there is much to learn about the unique roles, responsibilities, and unique ways of operating in the Executive Branch. I intend to work hard and closely with the dedicated career professionals at the Commerce Department, and with Congressional experts, to obtain the expertise needed as quickly as possible.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I believe the role of government is to serve the American people. Such service includes economic policies that promote an environment that rewards hard work, fair play and good ideas. Because competitive markets have proven remarkably effective in generating economic growth and consumer welfare, I believe government has an affirmative role to play in supporting competitive markets, often through forbearance, and sometimes by addressing market failures or externalities. I believe policymakers should consider discontinuation of government programs when their goals have been achieved or are no longer appropriate objectives.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The Office of Technology Policy (OTP) exists to inform and advise policymakers on issues of technology policy based upon expert analyses. OTP works closely with the American technology community to identify, assess and recommend policies most likely to promote US economic growth, innovation, global competitiveness and consumer welfare. OTP's major focuses presently include (1) identifying factors that affect technological innovation and support economic growth, (2) assessing investment in research and development, (3) overseeing U.S. technology transfers, (4) assessing technical workforce training and development.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years. Originally set by Congress in the Stevenson-Wydler Act of 1980, the mission of the Office of Technology Policy is more essential today than ever. Considering the increasing importance of technology to our standard of living, its direct impact on economic growth, and the importance of American innovation to our global competitiveness, OTP's mission is likely to remain constant over the coming 5 years.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? The top three challenges facing OTP are likely (1) building and retaining a world-class analytical team with the knowledge and flexibility to address the wide range of issues, (2) understanding and responding to global forces impacting our technology-based economy, and (3) managing efficient and effective working relationships with a technology community that is rapidly evolving and growing dynamically. The outside force most likely to prevent successful accomplishment of our mission is inadequate resources.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? I presently lack adequate perspective to speak to the agency's success or failure in achieving its mission over the past several years, although it appears that limited resources and high career staff turnover have hampered OTP's effectiveness in recent years.

10. Who are the stakeholders in the work of this agency? The primary stakeholders are the American people. Technology can improve the lives of all Americans, by increasing the standard of living through economic growth and productivity and through new inventions and products, such as biotech breakthroughs that cure disease. Stakeholders also include American businesses—big and small, high tech and low—all of whom benefit from innovation. And stakeholders further include the duly elected representatives of the people in Congress and in State capitols around the nation.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. If confirmed, my job would be to work closely with these stakeholders to ensure that OTP's work is responsive, informed and helpful to policymakers.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? If confirmed, I would be responsible for overseeing the activities and expenditures of the Office of Technology Policy. I would intend to have my staff set goals for which they were accountable, and I would expect to set a budget and stick to it. (b) What experience do you have in managing a large organization? As general counsel of a national political party committee with a multi-million dollar budget, I worked closely with the Executive Director and Administrative staff to ensure sound and legal practices in all aspects of the organization, including personnel management and expenditure oversight.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. The process of setting performance goals and metrics forces organizations to focus their energies and resources on what is important to achieving the mission of the organization. By reporting on progress, organization leaders can be held accountable for their effectiveness. Additionally, performance goals are an effective tool to identify problems needing attention and improvement. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? When an Agency fails to achieve its performance goals, Congress should work with the agency and the Department to determine the root causes of failure and the steps needed to get back on track. The proper responses to failure will likely depend upon the causes of ineffectiveness and the remedies available to return the agency to successful completion of its mission, if possible. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? If confirmed, I would expect to be held accountable by the Secretary and by others overseeing my performance for setting appropriate objectives, identifying benchmarks by which the agency's progress could be measured, effectively deploying our resources, and achieving our goals.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I view supervisors like coaches—their job is to motivate individuals on their team to deliver maximum performance, both individually and collectively. Supervisors should help employees identify, understand and focus on the organization's mission, maximize the use of their talents, and grow in understanding and effectiveness. No employee complaints have ever been brought against me.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. As a lobbyist, Congressional staffer, and party committee counsel, I have worked extensively with Members of Congress and their staffs. At Cisco Systems and as an employee in the House of Representatives I worked closely with various committees on legislative matters including Congressional hearings, policy development and analysis, and report drafting and preparation.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. The Inspec-

tor General serves a crucial function, much as the outside auditors did at my prior employers. I will work with the IG to provide whatever information they need, and will turn to the IG for knowledge and advice when appropriate.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. To the extent that the Office of Technology Policy issues any regulations, I would make certain that drafts of such regulations were developed in close consultation with this Committee. I would personally review any such regulations to ensure they comply with the spirits of laws passed by Congress, seeking advice of others as appropriate.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. The President has laid out a clear technology agenda that includes recommendations for appropriate Congressional actions. Personally, I share the President's belief that policymakers should: invest in knowledge, developing our nation's intellectual assets by focusing on educational achievement in math & science, workforce development and R&D; promote economic growth and innovation, through pro-growth tax and trade policies; empower consumers, by investing in e-government technologies that puts more power, information and choices in individuals' hands; and develop infrastructures for the 21st century in critical areas such as energy, broadband and critical infrastructure protection.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. Yes. If confirmed, as part of the process of setting goals and performance metrics in the first few months, I would develop an open and objective method for identifying national priorities within the mission of OTP, so discretionary resources can be allocated to national priorities.

The CHAIRMAN. Thank you very much. I think Senator Stevens has a question for Dr. Cooper, and I think Senator Allen would like to say a few words about Ms. Cino, is that correct, Senator Allen?

Senator ALLEN. Yes, sir. Thank you, Mr. Chairman. I am sorry I had to introduce—yes, sir.

Senator STEVENS. If you would just give me 1 minute, I have got to go chair a hearing, if you do not mind.

Senator ALLEN. I yield.

Senator STEVENS. Dr. Cooper, I just have one question. By the way, I will support each of you, and I am sorry I will not be here for the other two witnesses.

But Dr. Cooper, in October of 2000 the National Fisheries Service came to my office and told me that the cost of a biological opinion that they had just prepared would be \$0 to \$191 million. That same agency, in November, less than a month later, went before the North Pacific Fisheries Management Council and testified that the same biological opinion would cost \$500 to \$800 million.

Now, I have just one request and question. I believe that your position should also coordinate the economic analyses prepared by all agencies of your Department, not just those prepared for specific uses such as the census and others. Would you agree to see if you could try to get a hand on the agencies within Commerce, and standardize their economic analyses so that they make some sense, particularly to those in Congress who have to rely on them?

Dr. COOPER. Well, Senator, you are being—you are making a very interesting point. I will talk to people at Commerce to see what we might do to coordinate so that some of the concerns that you raise can be addressed.

The CHAIRMAN. I do not think that is the right answer, Dr. Cooper.

Senator STEVENS. I think you said you would try. Thank you very much.

Dr. COOPER. I think I will try, I definitely will try, Senator. Thank you very much.

The CHAIRMAN. Thank you. Senator Allen.

Dr. COOPER. But I do not want to go through a power play before I am even confirmed.

Senator STEVENS. Thank you.

The CHAIRMAN. It is hard to construe a desire on the part of the Congress for accurate economic forecasts, cost data, as a power play.

Senator Allen.

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman, and I apologize to you, Mr. Chairman and the members of the Committee, and Ms. Cino. I was over—ending up introducing two people in the Energy Committee with Senator Dorgan, and I am sorry to be late, and I know that Ms. Cino has already spoken, and so it is a belated introduction.

But I will only say, Mr. Chairman and members of the Committee, that this Commercial Service effort is one that I have found was important while I was Governor, going on trade missions to countries. Especially for the smaller and medium-sized businesses, the Commercial Service could be of good help in many of those contacts in credibility for businesses, and when you look at international trade being a great opportunity for our enterprises, the ones who need the most help are usually the smaller businesses.

And really it is only about 1 percent of all small businesses that are involved in exporting, and to the extent that they can increase their enterprises, capabilities by exporting, and also creating good-paying jobs here at home, this is a vitally important effort for our international trade and global competition.

I think Maria has obviously 20 years of experience leading field-based organizations, building coalitions. Developing, motivating, and mentoring her staff will be very, very important to coordinate and work, and I think she clearly has enthusiasm, the energy, the dedication, the commitment for public service, as well as her management experience, which will be exceptionally result-oriented, and she will get clear answers, and we expect measurement from all the good results, so I certainly do very welcome her, and enthusiastically support her as an advocate for our American interests in opening up markets and opportunities abroad.

Thank you, Mr. Chairman, and thank you, Ms. Cino.

The CHAIRMAN. Thank you very much, Governor Allen. As Governor, Senator Allen was one of the most active in encouraging exports, and we appreciate your active role on those issues on this Committee. We thank you, Senator Allen.

Mr. Mehlman, I want to go back to an issue I just raised with Dr. Muris concerning Internet privacy. There was a recent study of the Internet conducted by UCLA that 66 percent of Internet users agree that your privacy is at risk while online. Do you have

any views as to how we can best address this issue, both from an Administration and congressional standpoint?

Mr. MEHLMAN. Thanks for the question, Senator. Online privacy, having come from industry, is a question not only that concerns policymakers, but also the online community, including a lot of the businesses that want to sell products or provide information online, and based upon those concerns, we have seen, I think, a pretty good effort to date by a lot of the online community to get their own affairs in order so that consumers are more comfortable going online.

I think I probably cannot come here today with the silver bullet solution, but I do believe the process is one of cooperation between Congress, between the Administration, and between industry, as well as those who represent consumers, to try to approach this from the position of—we all seem to have the same goal, and the key is, how do we get there without providing solutions that cause unintended consequences if they are overregulatory or if they are underprotective.

The CHAIRMAN. Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you. I regret I was not here at the beginning of the hearing, but as Senator Allen indicated we were both over in the Energy Committee.

I intend to support all three of these nominees, and will be pleased to vote for their confirmation. I would like to say I regret having missed the testimony and being able to ask some questions of Mr. Muris. I would like to submit some questions for him.

The CHAIRMAN. Without objection.

Senator DORGAN. I have some heartburn with statements he has made about monopolies and antitrust and so on, and I really would hope that we would have a Chairman of the Federal Trade Commission who is a real tiger on these issues.

With the growing concentration of virtually every industry in this country, I think consumers are left with the daunting circumstance of confronting more and more economic power, and in some markets I think we have near monopolies, and I just really feel strongly that we need a Federal Trade Commission and the Chairman of that commission who is wanting to be very active and aggressive on those issues.

If I might just ask one question of Ms. Cino, could you describe for me the position dealing with foreign commerce that you are nominated for?

Ms. CINO. I will try. Yes, sir. Senator, Commercial Service is a unique organization in the Department of Commerce, and what we try to do is work with small and medium-sized businesses, and we try to promote them to export abroad. We do this in a variety of different ways through the services that we offer.

Presently, as Senator Allen said, only about 1 percent of small businesses export. Of the 1 percent that actually export, only 63 actually export to one country, and it is our goal to at least double, if not triple, the number of small businesses. We feel without the Commercial Service that many small and medium-sized businesses

would not have the manpower, the resources, or even the know-how to export abroad, and we try to provide, if you will, through our worldwide network of staff, the ability to have folks, small and medium-sized businesses export outside the United States.

Senator DORGAN. How large is that staff?

Ms. CINO. The staff is approximately 1,700, sir.

Senator DORGAN. Mr. Chairman, as I indicated, I intend to support all of these nominees. I think they are nominees with excellent qualifications. It raises the question—I have been thinking through this issue of trade. I think every Administration has tried to grapple with trade in different ways, but we have so many different areas in government in which we are dealing with trade. We probably ought to begin thinking about consolidating them so that we have them all working in tandem, but I am kind of interested in the area you describe, because of my interest in consolidation.

Again, thank all of you for offering yourself for public service, and I would, Mr. Chairman, like to submit, as I indicated, questions for Mr. Muris.

The CHAIRMAN. Without objection. Thank you, Senator Dorgan. Senator HUTCHISON.

Senator HUTCHISON. Yes, Mr. Chairman. I just want to try to clarify a little bit. What Senator Stevens was trying to say to Dr. Cooper was that when you ask for the cost of a study, and you get back something between \$0 and \$190 million for the cost of the study, that causes people in Congress to think maybe someone was not trying very hard, and we just wanted to ask you if you would take the lead, as the person in charge of statistics and economics there, to try to respond to Congress, and be as specific as possible, and give us sound, well-researched information. This information will form the basis of the laws we pass and the policy we set here in Congress. I think that was the point Senator Stevens was trying to make.

Dr. COOPER. Well, thank you very much, Senator. I just, then—for clarifying, you have to remember I am new in town. I just got here last week, and I was not aware of that study, and I was not sure if he was talking about the range of the cost, or an estimate that was made, but obviously we—this is a very difficult issue. There are lots of cost estimates that are tough to come by, but I will do my best to make sure that we come up with some estimates that are worked hard, and I will then work with the Congress on it.

Senator HUTCHISON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Mr. Chairman, thank you. I would only have a few comments directed mostly to Mr. Mehlman, seeing how he was a graduate of the University of Virginia Law School in 1994, and I spoke at your graduation. I am sure you have no memory whatsoever of my commencement address.

[Laughter.]

Senator HUTCHISON. I thought you were going to ask for a report.

Senator ALLEN. No, no, no. Unless you were one of those who were somehow protesting with—there is this great fun of being hit with stuffed animals as I go down the mall.

[Laughter.]

Senator ALLEN. Which my young daughter enjoyed, but you were not one of those doing that.

There are two things I would like to have you address, or at least concerns that I have heard from the technology community and throughout your statement here you clearly are going to be an advocate for American innovation and understand the importance of entrepreneurship, our economic and tax and regulatory policies being very important, which were some of the questions that the Chairman was asking you as far as Internet security, or privacy, and also the focus on the Internet as a tool to foster free enterprise.

There are two areas that I think we will be continuing, or maybe not continuing issues. One is the question of taxation of the Internet and if it is going to expand, as you say, the question is, when will there ever be a time where it is appropriate to impose a tax on access to the Internet, or ever a time where it is appropriate to have discriminatory or multiple taxes on Internet transactions? Do you have any comment about that, since the moratorium on those two aspects are expiring in October of this year?

Mr. MEHLMAN. Well, Senator, certainly coming from industry your great leadership on the issue of Internet taxes has been very much appreciated, and I think the voices that have been heard across Congress and in industry to want to go slow with this new, very promising medium, and to not rush into taxation until the impact can be clearly seen has been the right approach.

I would not want to get out in front of the Secretary of Commerce and the Administration, although they have already spoken on some of these issues with respect to trying to avoid taxes on Internet access and the President throughout the campaign, and the Vice President and they both already indicated a desire to see an extension of the tax moratorium, so certainly I share those beliefs coming in, and I look forward to working with you. I am hoping and assuming you will continue your leadership on the question.

Senator ALLEN. Thank you. Mr. Chairman, if I may ask another question, the other issue as far as our technology innovations is the protection of our intellectual property and the copying of our creativity in other countries. How do you see your role in this very important Assistant Secretariat position in trying to protect the intellectual property of our technology companies abroad?

Mr. MEHLMAN. Thanks also for that question, Senator. The role I will be able to play I suppose I will learn more about, if confirmed, when I am in. Certainly it is very clear the protection of intellectual property rights is essential to promote the creative process and make investments in a lot of technology, and a lot of information worthwhile. At the same time, online media present some new challenges and different issues that need to be thought about.

The Office of Technology Policy I hope is well-positioned and has a lot of very dedicated and intelligent career professionals who are going to try to delve into the questions of what will the various alternatives—in how we go about protecting our intellectual property, what will the alternatives mean for the continuing climate of innovation, continuing investment, and continuing growth of new

technology, so I hope those are the types of issues I will have an opportunity to work on.

Senator ALLEN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. I do not have any questions. I just want to tell Mr. Mehlman that I very much appreciated having a chance to talk with him yesterday, because I think he made a point that will be very helpful to us as we try to deal with Internet taxes, and the variety of issues that have occupied the time of this Committee in the past.

He has, as you can see from his resume, a record of being a pretty active partisan. He spent many years for a young man in the partisan trenches, but when he visited with me he said, "Look, I am going to be taking a different role in this job. I want to figure out a way to help you and the Republicans and folks on both sides of the aisle to try to find some common ground on issues that we have spent", and Senator Dorgan has done a lot of good work on this as well, have spent a lot of time vexing this Committee, and with a deadline coming up on Internet taxes, a willingness to work in a bipartisan way on those kinds of issues is very welcome, and I am looking forward to voting for him.

The CHAIRMAN. Thank you. Mr. Mehlman, do you want to give us the highlights of Governor Allen's speech at your graduation?

[Laughter.]

Mr. MEHLMAN. I have it committed to memory, Senator, but I think for an expeditious hearing I will leave it for another time.

The CHAIRMAN. Thank you. I think that is the reason for your success today.

[Laughter.]

The CHAIRMAN. I thank the witnesses, and I want to again thank you for your willingness to serve the country. We are grateful for your willingness to do so. We think you are very highly qualified, and as I mentioned to the other panel, we will try and get your nominations to the floor and confirmed before the Memorial Day recess. Thank you again, and we look forward to working with you.

Our next panel is Mr. Sean O'Hollaren, who is the Assistant Secretary-Designate for Government Affairs for the Department of Transportation, and Ms. Donna McLean, who is the Assistant Secretary-Designate for Budget and Programs and Chief Financial Officer of the Department of Transportation.

Before we begin, Ms. McLean, Mr. O'Hollaren, would you care to make note of any of your family members that are with you today?

Ms. MCLEAN. Yes, sir, thank you. My husband, Marcus Peacock, and my two daughters, Mey and Iona, and my mother, Caroline McLean, and my father, Ray McLean.

The CHAIRMAN. Welcome. Welcome to the family members. What are your daughters' names again?

Ms. MCLEAN. Mey and Iona.

The CHAIRMAN. They are beautiful children.

Ms. MCLEAN. Thank you.

The CHAIRMAN. Congratulations. Mr. O'Hollaren.

Mr. O'HOLLAREN. I am escorted by my wife, Hilary O'Hollaren, and my 10-month-old daughter, Rory, who may or may not make it through.

[Laughter.]

The CHAIRMAN. Welcome. Welcome, and congratulations. I guess the day care center over there is going to be full, or busy.

We are pleased to welcome Congressman Duncan, but first I would like to ask Senator Wyden, who would like to make some introduction of Mr. O'Hollaren.

Senator WYDEN. Thank you very much, Mr. Chairman. I appreciate your thoughtfulness, and it is really a pleasure to be able to introduce Sean O'Hollaren to the Committee and to support his nomination as Assistant Secretary. I have known Sean and his family for more than 20 years. I think it goes back to the days when he was a high school student in Portland. He and his family have made extraordinary contributions in our state. They have built the Mount Bachelor resort, and Sean has been involved in public service ever since he graduated from Willamette University.

He has extensive experience working on issues that this Committee deals with. When he was with Senator Hatfield we called him the man who dealt with trains, planes, and automobiles, and he was always somebody on a bipartisan basis that was a problem-solver, that was trying to bring people together.

I want to wrap up with one comment that I think really illustrates what he is all about, and that is, when I first came to the Senate and we had a real run of very cold weather, we were having terrible problems getting services and assistance to the homeless.

We found these military surplus blankets in California, and we just did not have any way of getting them to Oregon, so we called up UP, where Sean was. He essentially cut through the red tape, and within a few days thousands of blankets for the homeless were headed on the way to Oregon, so I can tell you this is somebody—and I know I speak for Senator Smith on this—that we Oregonians are very proud to see nominated for this position, and look forward to his confirmation.

The CHAIRMAN. Thank you. Congressman Duncan, welcome. Thank you for coming over.

**STATEMENT OF HON. JOHN J. DUNCAN, JR.,
U.S. REPRESENTATIVE FROM TENNESSEE**

Mr. DUNCAN. Thank you, Mr. Chairman. I am very pleased to be here to introduce to you and the other Members Mrs. Donna McLean, and to recommend her for the position of Assistant Secretary of the Department of Transportation, and its Chief Financial Officer.

Mrs. McLean worked for me in my 6 years as Chairman of the House Aviation Subcommittee, and in that capacity she was one of the main architects of AIR-21, very landmark legislation. She then was stolen from us to go to the FAA as their Chief Financial Officer, and she started a new accounting system over there, and has done some really tremendous work in helping make the FAA operate much more effectively.

I can tell you that in my years that Donna and I spent together I found her to be one of the most capable, competent, intelligent, talented young women with whom I have ever worked, and I am very pleased that she asked me to come over here and introduce her to you and recommend her for this position. I do not think that

President Bush could have nominated anyone any better for this position, and while she is not one of my constituents, I would be very proud if she was, and I really cannot say much more than that.

I notice Rob Chamberlin back over there, who you stole from me. [Laughter.]

Mr. DUNCAN. But when you hire good people, sometimes they move on to bigger and better things.

The CHAIRMAN. Thank you very much.

Mr. DUNCAN. But you also should know that I have long been an admirer of yours, and have supported many of the things in the House that you have supported over here in the Senate, and it is a great honor and privilege for me to appear before you this morning. I have to run back over for a very important Journal vote. Some of you know what I am talking about there, but I do apologize, I need to slip out because I have got two Committee meetings going on right now, but thank you for allowing me to be with you.

The CHAIRMAN. Thank you, Congressman Duncan. You are always welcome here, and I appreciate our years of working together on aviation issues. You are very much appreciated, and your words of recommendation for Ms. McLean are very important. We thank you for taking the time from your busy schedule.

Mr. DUNCAN. Thank you.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR
FROM SOUTH CAROLINA

Mr. Chairman, thank you for scheduling this hearing on these two nominees for key posts at the Department of Transportation.

Mr. O'Hollaren has worked the halls of Congress on behalf of the Senate Appropriations Committee and our former colleagues Senator Mark Hatfield. He most recently represented Union Pacific. He knows transportation, he knows the politics of the issues and he is committed to working with all of us on issues like seaport security, aviation competition, and other key safety transportation concerns.

Donna McLean also comes before the Committee with impressive credentials and is highly recommended. Her peers at the federal Aviation Administration and former colleagues on the House Transportation and Infrastructure Committee all commend her work and her character. Ms. McLean has a tough job—fitting a \$60–\$70 billion “need” to enhance capacity on our roads, aviation system and navigable waters into a \$50 billion box. She is known to be creative and thoughtful and she will need all of her skills in her new position.

One of the DOT's premier missions is to make our transportation systems safer. It is a tough job, pitting many constituencies against one another in finding solutions. Both of these outstanding nominees will be there to help Secretary Mineta, and work with all of us to provide a safer, more competitive, transportation system.

The CHAIRMAN. We will begin with you, Ms. McLean.

**STATEMENT OF DONNA R. McLEAN, ASSISTANT SECRETARY-
DESIGNATE FOR BUDGET AND PROGRAMS AND CHIEF
FINANCIAL OFFICER, DEPARTMENT OF TRANSPORTATION**

Ms. McLEAN. Good morning, and thank you, Mr. Chairman and members of the Committee, and thank you, Mr. Duncan, for your kind words. I am very pleased to be considered for this position in the Department of Transportation and, if confirmed, I look forward to working with you and your staff on the transportation issues that we face.

If confirmed as Assistant Secretary for Budget and Programs and Chief Financial Officer, I will work to support the Department's number 1 priority, safety. We are fortunate to live in a country that has a very good transportation safety record, but this did not occur by chance. The Congress and the Department of Transportation have worked hard to establish the right level of laws, regulations, funding, and oversight, but as with anything, it can always be improved.

I know that the employees at the Department are constantly working to improve the transportation safety record, be it the technicians who maintain the air traffic control systems 24 hours a day, 7 days a week, or the motor carrier employees conducting truck safety inspections, or the Coast Guard personnel who, just last week, seized nearly 13 tons of cocaine. If confirmed, I look forward to doing what I can to support these and other DOT efforts.

One of the biggest challenges faced by this country and the Department is transportation congestion. A recent study of 68 urban areas found that in 1999 alone, highway congestion cost \$78 billion in lost time and wasted fuel. Another report stated that more than one-fourth of airline flights last year were either delayed or canceled.

If confirmed, I look forward to working with and advising Secretary Mineta on financial decisions that will help this nation get the most out of its transportation investments. We need to look at advances in technology to ensure that we are getting the most effective use of today's capacity.

We must also recognize that the country's transportation needs will have to be aided with additional capacity and capital investments. If confirmed, my job is to support President Bush and Secretary Mineta's budget requests, and to provide to the Congress any additional information needed to make sound policy decisions and to assure that the best transportation investments are made.

In addition, I would be responsible for the Department's performance report, as required by the Government Performance and Results Act, or GPRA. The Department's performance report has been referred to as one of the best in Federal Government, and I plan on keeping it that way.

Finally, my responsibilities would include guaranteeing that the Department has the most accurate, timely, and usable financial system available. I would like to assure you and your staff that I will be working closely with Congress. As a former staff member in the House Transportation Infrastructure Committee, I understand the importance of timely responses to congressional requests.

I am eager to serve both President Bush and Secretary Mineta in this position, and I would be pleased to answer any questions you might have. Thank you.

[The prepared statement and biographical information of Ms. McLean follows:]

PREPARED STATEMENT OF DONNA R. MCLEAN, ASSISTANT SECRETARY-DESIGNATE FOR BUDGET AND PROGRAMS AND CHIEF FINANCIAL OFFICER, DEPARTMENT OF TRANSPORTATION

Thank you, Mr. Chairman and members of the Committee. It is an honor to appear before you today. I am very pleased to be considered for this position in the

Department of Transportation, and if confirmed, I look forward to working with you and your staff on the transportation issues that we all face.

If confirmed as the Assistant Secretary for Budget and Programs and Chief Financial Officer I will work to support the Department's number one priority—safety. We are fortunate to live in a country that has a very good transportation safety record. But this did not occur by chance. The Congress, and the Department of Transportation have worked hard to establish the right level of laws, regulations, funding, and oversight. But as with anything, it can always be improved.

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I am eager to serve both President Bush and Secretary Mineta in this position, and I would be pleased to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name: Donna Rae McLean.
2. Position to which nominated: Assistant Secretary for Budget and Programs/Chief Financial Officer, U.S. Department of Transportation.
3. Date of nomination: April 3, 2001.
4. Address: Information unavailable to the public. Work: Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591.
5. Date and place of birth: 07/09/64, St. Louis, MO.
6. Marital status: Married to Marcus Christopher Peacock since May 2, 1992 (I did not change my name, so I have no maiden name.)
7. Names and ages of children: Iona Rae McLean (DOB 01-06-97); Mey Rose McLean (DOB 01-06-97).
8. Education: 8/86 to 5/87 & 8/88 to 5/89 Indiana University, School of Public and Environmental Affairs, Bloomington, Indiana—Masters in Public Administration received 5/89; 8/82 to 5/86 Indiana University, Bloomington, Indiana—Bachelor of Arts (majors in Political Science and Anthropology) 5/86.
9. Employment record: (8/99 to Present) Assistant Administrator for Financial Services/Chief Financial Officer, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, S.W., Washington, D.C. 20591; (2/93 to 8/99) (during this period, took 3 month break to serve with NCARC, see below), Republican Professional Staff Member, Aviation Subcommittee, Transportation and Infrastructure Committee, U.S. House of Representatives; (5/97 to 8/97) Director of Budget Policy, National Civil Aviation Review Commission. This was a temporary Commission. Chaired by Secretary Norman Y. Mineta, located in Washington, D.C.; (4/90 to 2/93) Budget Examiner, Transportation Branch, U.S. Office of Management

and Budget, 725 17th Street, N.W., Washington, D.C.; (8/89 to 4/90) Program Analyst, Office of Budget and Programs, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C.; (15/88 to 8/88 and 5/87 to 8/87) Summer Intern, U.S. Office of Management and Budget, 725 17th Street, N.W., Washington, D.C.

10. Government experience: Complete list provided in last question.

11. Business relationships: Indiana University, School of Public and Environmental Affairs, Alumni Board, Current Member (contact at IU is Dick McGarvey 812-855-0163).

12. Memberships: Indiana University, School of Public and Environmental Affairs, Alumni Association, Advisory Board Member.

13. Political affiliations and activities: (a) None. (b) None. (c) \$250 and \$251 to Republican National Committee 6/19/00 and 10/11/00 (under my husband's name, Marcus Peacock).

14. Honors and awards: (5/86) Elected to Pi Sigma Alpha, honor society for political science, Indiana University; (8/86-5/87) Full Tuition Scholarship from Indiana University, School and Public Environmental Affairs, Elected to Pi Alpha Alpha honor society, Received the Chancellor Wells book award for academic achievement; (8/88-5/89) Full Tuition Scholarship from Indiana University, School and Public Environmental Affairs; (1989) National Academy of Sciences, Transportation Research Board, Graduate Scholarship; (2001) Selected by the School of Public and Environmental Affairs at Indiana University as the Alumni of the Year (to be presented May 4, 2001).

15. Published writings: Article in the Transportation Research Board, Transportation Research Board Record 1257, 1990, "General Aviation Safety: Where Can Safety Improvements Be Made?"

16. Speeches: All of my public speaking appearances have been relatively informal and I have spoken from talking points and hand written notes.

17. Selection: (a) I believe I was chosen because of my background in U.S. transportation policy and the Federal budget process. My previous commitment to Republican policies by serving as a staff member in the U.S. House of Representatives was also a contributing factor. (b) I have always been interested in transportation policy which is illustrated in my past employment experiences—in particular, I have focused on transportation policy through the Federal budget process. I have worked at the U.S. Department of Transportation, U.S. Office of Management and Budget, and the U.S. Federal Aviation Administration on transportation budget policy. In addition I have demonstrated my ability to work with both political parties. For instance, while I worked as a staff member at the Transportation and Infrastructure Committee, I was asked to work for 3 months on the National Civil Aviation Review Commission, which was chaired by Secretary Norman Y. Mineta. Finally, I believe my current position, as Assistant Administrator for Financial Services/CFO for the U.S. Federal Aviation Administration, provides me a strong background for this appointment.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? I currently work for the Federal Aviation Administration.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. Please refer to the Acting General Counsel's opinion letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or

acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. In my past position (2/93 to 8/99) as a Republican staff member at the Transportation and Infrastructure Committee of the U.S. House of Representatives my job description included drafting legislation. However, my actions were directly related to wishes of Congressional members. While working for the Office of Management and Budget (4/90 to 2/93) and my current position at FAA, I have been asked by Congressional staff to provide technical assistance in drafting legislation.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.) Please refer to the Acting General Counsel's opinion letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. There has been an EEO complaint filed against FAA by an employee in my current office that mentions several managers, including me. The case is being handled in accordance with the Federal sector EEO administrative process. The complaint was filed March 26, 2001 and the case number is 2-012074.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my abilities.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, to the best of my abilities.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes, to the best of my abilities.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. The Office of the Assistant Secretary for Budget and Programs/CFO has the responsibility to review the economic impact of all significant DOT regulations. If confirmed, it would be my responsibility to verify the cost of a regulation to both the Department and the industry. I know that the Department's authority to issue regulations is defined by law. I would work with other DOT officials to address congressional concerns with proposed regulations. For additional information, please refer to my response to question 17, under section F.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department's top mission is to support and provide a safe and efficient transportation system. This is accomplished in a variety of ways, including issuing regulations, providing safety inspections, operating safety services, investing in infrastructure, developing new technologies, and providing public education.

The Department is committed to managing for results and this is reflected in its strategic goals and performance plan required by the Government Performance and

Results Act (GPRA). DOT is committed to five overarching transportation goals, which are to improve safety, mobility, economic growth, human and natural environment, and national security. DOT has specific goals that relate to each of these categories. In 2000, DOT reached over 70 percent of its goals. For additional information, please refer to my response to question 6 under section F.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualify you for the position for which you have been nominated. My career over the last 14 years has focused on Federal transportation policy. I have worked both for Congress and the Administration. I believe investments in transportation have provided substantial benefits to our country. As a result, my career has focused on the Federal budget process and the importance of that process for maintaining and improving transportation infrastructure. My career working for Congress, Office of Management and Budget, and the Federal Aviation Administration, provides me with a well-rounded Federal background as the candidate for the DOT Assistant Secretary for Budget and Programs/CFO.

2. Why do you wish to serve in the position for which you have been nominated? I have great respect for President Bush and Secretary Mineta. My professional career has focused on Federal transportation issues. To be able to serve the public, President Bush, Secretary Mineta, and to focus on transportation policy would be a great personal and professional honor. I know that working at this level for the Federal Government is both demanding and challenging. The position for which I have been nominated provides a comprehensive view of transportation policy through funding decisions. I hope to be afforded the opportunity to provide counsel and guidance to the Administration and Congress on identifying top transportation priorities and recommending appropriate funding levels.

3. What goals have you established for your first 2 years in this position, if confirmed? DOT's top goal is to provide the safest and most efficient transportation system possible. My personal goal would be to aid in achieving that goal by providing appropriate funding recommendations. Although DOT is a \$59 billion department, priorities still must be made. My goal would be to recommend support for safety programs that provide the most improvement to our transportation system. With respect to efficiency, both in aviation and surface transportation we are seeing congestion and choke points that result in significant costs to the country. I intend to review programs targeting these problems and recommend funding for programs that most effectively solve our capacity problems. One of the responsibilities of DOT's Office of Budget and Programs is the compliance with the Government Performance and Results Act (GPRA). DOT has been praised in the past for its Performance Plan as being one of the best in government. I believe one of the best ways to hold Federal Government agencies accountable is to set goals and manage to those goals. This is the philosophy GPRA I intend to continue and improve DOT's efforts in compliance with this law, if confirmed. Finally, it is the role of the Assistant Secretary for Budget and Programs/CFO to improve financial management efforts of the Department. In this area, my goals would include to achieve and maintain a clean audit for the Department. In addition, my goals would include continuing to modernize and improve DOT's financial systems to better manage our programs and to most efficiently use the tax payers' money. My intention would be to provide DOT managers with real-time financial information at their desktops—something that its current system cannot provide.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? My knowledge of aviation issues is broad. I do not have as much knowledge in the other modes of transportation. However, I believe that going through the nomination process and having to immediately deal with the 2002 budget request will allow me to quickly refine my knowledge of the other transportation modes. I will also work with the Department's staff, Administration officials, Congress, and other relevant transportation organizations to broaden my knowledge.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. I believe that the government should step in where the market fails. It is true too, that over the past several years, the market has stepped in where the government has failed. I think a large part of our country's success can be attributed

to our ability to watch, challenge, and change the responsibilities of government versus the private sector. Since the Department was established, its top priority has been safety. But the role DOT plays in assuring the level of safety has changed over time, and the safety of the system has improved. Policy decisions redefining the role of DOT have also led to improved efficiency in transportation operations. For instance, most citizens have benefited from the economic deregulation of the aviation system. At the beginning of the aviation era, it was believed that the intensive capital investment necessary to begin air service could not be sustained by the private market, and government intervention was needed. However, as the industry matured, the government's decision to implement economic deregulation led to improved air service in most communities. However, for some smaller communities where service was not improved, the government has provided assistance to ensure a reasonable level of air service. While not perfect, this balance of government and market incentives has produced the most productive aviation market in the world. This great success in aviation and in surface transportation has resulted in some areas where demand is greater than the infrastructure can support. The challenge of providing enough capacity for transportation users has ignited the debate again on the role of government versus the private sector. I believe we should turn to the private sector whenever possible to aid in solving these problems. However, I also believe it is clearly the role of the Federal Government to ensure safety and a competitive marketplace.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. Our nation's well-functioning, interconnected transportation system is critically linked to our nation's growth and prosperity. The Department's mission is to shepherd and maintain that system, ensuring that safety and security are always top priorities. The Department has 11 individual transportation modes or administrations. But I like to think of the Department's mission programs, and operational objectives based on the major goals identified in DOT's performance plan.

Safety: DOT's No. 1 priority is to maintain and improve a safe transportation system. For the Federal Aviation Administration (FAA), that means safely operating a 24-hour, 7 days a week air traffic control system. FAA's responsibilities also include inspecting the industry's operations through their flight inspector workforce. The National Highway Traffic Safety Administration (NHTSA) and the newly established Federal Motor Carrier Safety Administration (FMCSA) issue safety regulations, support research projects, and support public education activities to improve private and commercial highway safety. The responsibility of the Federal Railroad Administration (FRA) includes regulating the operations and equipment of the U.S. railroad industry. The Coast Guard (CG) clearly has a strong safety mission, as they save one life every 2 hours. In addition to air and sea rescue activities, the CG oversees the regulation of vessels and seamen. The Research and Special Programs Administration oversees pipeline safety and the transportation of hazardous materials.

Mobility: As our country grows, transportation congestion continues to increase. The Department plays a key role in increasing system capacity to better accommodate transportation demand. The FAA must continue to purchase and build technology to handle the ever-growing air traffic operations. FAA also administers the Airport Improvement Program, providing Federal grants primarily for airport construction. The FHWA and FTA also administer grant programs that improve highway and transit capacity.

National Security: It is critical that the Department ensure that the U.S. transportation system is secure and U.S. borders are safe from illegal intrusion. The FAA accomplishes its goal by issuing key regulations and security requirements for the aviation industry, and provides the appropriate level of inspectors to enforce the requirements. The CG conducts migrant interdiction actions and drug enforcement operations—in fact, since October 2000 the CG has seized 27 metric tons of cocaine. In addition, the Maritime Administration is responsible for maintaining a fleet of ships which with a few days notice, can be available for national security purposes.

Other enabling agencies include: the Saint Lawrence Seaway Development Corporation which operates and promotes its unique international waterway with Canada; the Bureau of Transportation Statistics which collects data and conducts research for public policy decisionmaking; and the Office of the Secretary which provides policy guidance and management oversight for the Department components.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years. The pressure we are currently seeing in aviation and highway capacity is stressing our transportation infrastructure. Although the Department's current mission encompasses improving transportation capacity, the recent and continuing growth in the nation's transportation needs will have to be addressed more aggressively by the Department. The Depart-

ment's focus will be to both increase transportation infrastructure, but also to use the current infrastructure as efficiently as possible. This means that enhancing investments in new technology, such as intelligent transportation systems, and improved coordination between government and industry will be necessary (this is occurring in the Spring/Summer 2001 effort with FAA and the airlines sharing information several times a day to improve the management of the air traffic system and reduce air traffic delays). While we are all concerned about transportation congestion, as we increase infrastructure investments, the Department must also be mindful of concerns about noise and the environment. While transportation congestion places costs on our economy and environment, so too do infrastructure investments. Understanding these constraints and weighing the challenges of transportation solutions takes a highly qualified workforce. Attracting and keeping a strong employee base has always been difficult, and will continue to be a challenge for the Department.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why? In the area of dealing with demand for capacity, I believe we have seen that an outside force is the health of the overall economy. The sluggish economy of the early 1990's had the U.S. Government discussing the economic health of the aviation industry. With the most recent economic growth, the Department must ensure that the substantial increases in infrastructure funding provided by TEA 21 and AIR 21 are used to increase transportation capacity and are managed effectively. If the economy's growth slows significantly, the Department may explore different policy decisions to maintain the safest, most efficient, and reliable transportation system possible.

Regarding the Department's top three challenges, I agree with Secretary Mineta's top three challenges he has identified: (1) maintaining focus and effectiveness in a world that is increasingly globalized, interconnected, and consolidated in the delivery of transportation services; (2) managing the Department to meet its historical mission of protecting safety while being innovative in our service delivery; and (3) working with Congress to ensure that the Department has adequate resources.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? While the Department often is criticized for its actions, there are many success stories in DOT. DOT's has identified clear and difficult-to-attain goals in compliance with the Government Performance and Results Act (GPRA). In 2000, the Department succeeded in reaching over 70 percent of these goals. These goals are purposely set to be challenging, yet attainable—so you would not expect a department to reach 100 percent of its goals. For the most part, safety indicators show that transportation safety is improving.

Where the Department is currently having trouble is providing enough capacity to avoid aviation and highway congestion. Keeping pace with the growing economy over the last several years has been a challenge for many government agencies and businesses.

Another challenging area for the Department is its efforts to modernize its air traffic control system. Although the FAA installed new computers in all of its en route facilities last year, there are still areas where FAA modernization is needed. FAA must develop systems that are not currently in existence. In systems where software must be developed, the FAA has often had cost overruns and delays. It will continue to be a challenge of this Administration, and mine, if I am confirmed, to aid in keeping these programs as close to on time and under budget as possible.

10. Who are the stakeholders in the work of this agency? I believe the American citizens are a broad definition of the Department's stakeholders. Since transportation is essential to bring food to our tables, to deliver us to work daily, and plays a vital role in cases of national emergencies, most Americans benefit from actions of the Department. More specifically, the Department's stakeholders include the Congress, State and local officials, the traveling public, transportation related businesses, and the employees who build, maintain, and operate our nation's transportation system.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. If confirmed, I would clearly be accessible and responsive to the stakeholders mentioned above. My actions, however, would be balanced with the clear legal and ethical standard of not allowing special interests to dictate the policy and operations of the Department.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? If I

were to be confirmed as Assistant Secretary for Budget and Programs/Chief Financial Officer, I would have direct responsibility to insure that the agency has proper management and accounting controls. I believe it is key for Federal managers to have reliable, accessible, and accurate financial information. The Department's accounting system is an old, internally developed system called DAFIS. The Department is currently in the process of upgrading to an Oracle-based financial system. Getting this "off-the-shelf" system installed successfully would be a top priority for me, if I were to be confirmed. To make the transition to a new accounting system a success, I would work closely with the Inspector General's office and the General Accounting Office—two organizations that have identified the need to improve the Department's financial systems. Because this effort will be key to the Department, I would continually inform the Secretary and Deputy Secretary on our progress. (b) What experience do you have in managing a large organization? I am currently the Assistant Administrator for Financial Services/Chief Financial Officer at the Federal Aviation Administration. I have held that position since August of 1999. In this position, I am responsible for a staff of approximately 120 employees and the office budget of approximately \$48.4 million. In addition, as CFO of FAA, I am responsible for shaping and defending FAA's overall budget request of over \$13 billion.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. I believe strongly in the spirit and intent of GPRA. Fortunately, the Department also values this law and has received accolades as having one of the best GPRA performance plans in government. Implementing GPRA in any department will bring a level of focus and accountability that all businesses and government agencies should strive to implement. The GPRA law requires an agency to identify its strategic goals (longer-term goals) and then identify annual goals. The annual goals are what the Department usually refers to as its GPRA goals. Without a strategic plan and without annual performance goals, an agency would lack focus and would lack the message to lead its employees to success. It would also lack any definition of success. By aggressively implementing and using the GPRA law, an agency provides a clear message to its employees and stakeholders of what should be expected from them over the next year. If the goals are reasonable and are met, the agency can be identified as successful. On the other hand, if the goals were reasonable and not met, then the agency must identify changes in its behavior to make it a success. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? Managing to performance is always difficult and I believe each situation needs to be handled on an individual basis. The steps mentioned above, elimination, privatization, downsizing, or consolidation of departments or programs could be appropriate actions to take. I believe that GPRA goals should be set at a level that is hard to attain—often referred to as stretch goals. This provides incentives to challenge the workforce and see real improvements in performance. If an agency fails to achieve more than the majority of its performance goals, then I think the agency should re-evaluate its goals, identify what programs are being implemented to change the desired performance, and possibly identify changes to both its actions and goals. In some cases, we may find that an agency is actually spending a great deal of time and funds trying to change some performance indicator, but without success. Increasing funds to those programs may or may not be the right answer. On the other hand, if an agency has met 100 percent of its goals, I think the goals should also be re-evaluated and probably changed. Perhaps the agency set goals that were not very challenging, or the programs were successful and may not need to be continued at the current level. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? If I were to be confirmed, I would be responsible for administering the GPRA performance plan. I would hold myself accountable to all of the Department's top goals. I would also identify, with the coordination of the Secretary and Deputy Secretary, annual performance goals for my office. These goals would include being responsive to Congress and other stakeholders, and properly implementing the duties of the Office of Programs and Budget—specifically achieving and maintaining a clean audit.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? I believe that the relationship between a supervisor and employee should be open, honest, and mutually respectful. I also believe that any employee's performance should be measured by objective requirements. If that individual performs, then that performance should be rewarded. However, if perform-

ance levels are not acceptable, then that employee should be held accountable. Holding employees accountable is not always done in the government, and therefore is often resisted. There was an EEO complaint filed against the FAA that named several managers in the FAA including me. The case is being handled in accordance with the Federal sector EEO administrative process. It was filed March 26, 2001 and its case number is 2-012074.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. Having worked for the House Committee on Transportation and Infrastructure for 6 years, I have strong ties to both Congressional Members and staff. In my current job at FAA, I try to be responsive to Congressional staff and members. If confirmed, I would continue that effort and make sure that my office understands the important decisionmaking role that Congress has in the Federal Government.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. One of the many goals of the Inspector General is to ensure that the Department is operating in a way that is free of waste, fraud and abuse. That is certainly a goal of mine as well. In the past, there has been a strong relationship between the Inspector General and the Assistant Secretary for Budget and Programs. The Inspector General may identify problems that are not readily apparent to the rest of the Department. I have spoken to the Inspector General and welcome his offer to continue an open, candid relationship with me, if I were to be confirmed.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. Regulations are proposed only when the Department has legal authority or direction to impose the regulations. In reviewing regulations, I would refer back to existing law and confirm that the regulation reflected Congressional intent. I would work with other DOT officials to address Congressional concerns with proposed regulation. While serving as the Assistant Administrator for Financial Services at FAA I did brief Congressional staff on the status of the overflight rule before it was issued. I knew that this rule had strong Congressional interest, and I wanted to make sure that the Congressional staff was aware of the agencies' actions. The Office of Budget and Programs is responsible for reviewing all regulations for budgetary impact both on the Department and the industry. The office would also be responsible for notifying Congress if the resources are not available to complete a regulatory effort and propose alternatives to gain the necessary resources.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. Congestion in both the aviation and highway modes will continue to be a problem. The reauthorization of both TEA-21 and AIR-21 should soon be a priority of the Department and Congress. Reviewing the current law, and identifying successful provisions and provisions that may need changing, should be done soon in preparation for these reauthorization efforts.

Helping FAA successfully utilize modernized air traffic equipment should also be a priority for Congress and the Department. While FAA has been able to purchase and install many modern pieces of equipment, FAA has historically had difficulty with developing high-tech systems. I think the Congress and the Department should look to the industry and the private sector for specific improvements to successfully develop these highly technical air traffic systems.

The authorization legislation of other transportation modes, such as NHTSA, RSPA, FRA, MARAD, and the Coast Guard will also be important to continue their important roles in the Department. In addition, support for the Coast Guard's operating expenses and deepwater asset replacement program will be essential.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a time frame for their implementation. I strongly believe that discretionary spending in the highway and aviation grant programs should be based on national priorities and determined in an open fashion. The criteria used should be based on Congressional intent identified in law. I will make sure that I am familiar with reports on this subject, such as the 1998 Inspector General's report on discretionary spending. In addition, I will follow the direction Congress sets in law.

The CHAIRMAN. Thank you. Mr. O'Hollaren.

**STATEMENT OF SEAN B. O'HOLLAREN, ASSISTANT
SECRETARY-DESIGNATE FOR GOVERNMENTAL AFFAIRS,
DEPARTMENT OF TRANSPORTATION**

Mr. O'HOLLAREN. With your blessing, I will summarize my remarks and ask that my full statement be included for the record.

The CHAIRMAN. Without objection.

Mr. O'HOLLAREN. Chairman McCain, members of the Committee, let me begin by thanking you for the opportunity to appear before you today. Following graduation from college in Oregon, I left for my first job in Washington, D.C. and it was as an intern on this Committee, so it is indeed a great honor for me to be here on this side of the dais today.

While I have held a number of positions since my internship, I have always considered Oregon home, and I am deeply honored and grateful to have the support of my home state Senators, Ron Wyden and Gordon Smith.

Since being nominated, I have asked people who deal with the Governmental Affairs Office of their expectations and what could be done better. In response, one theme was consistent throughout. Its customers expect Governmental Affairs to be the primary point of contact for their dealings with the Department and, when they call, they expect to hear back in a timely fashion, and the information they receive to be accurate.

Secretary Mineta's knowledge of transportation and his distinguished career on Capitol Hill give him a thorough understanding of what is expected of the Department in its dealings with Congress. He expects us to work with you to ensure that the Department complies with both the spirit and the letter of the law as passed, and to make certain that the line of communication between Congress and the Department is always open.

Secretary Mineta also expects us to coordinate the congressional activities of the Department, so that we speak with one voice. It is not just a matter of providing and processing information, but doing so professionally, expeditiously, and politely. In other words, there needs to be a strong focus on customer service and, in this case, Mr. Chairman, members of the Committee, you are the customers. I share Secretary Mineta's belief and, if confirmed, will work diligently to fulfill his expectations.

The opportunity to serve as Assistant Secretary to President Bush and Secretary Mineta is a great honor, and a rare privilege. Should I be confirmed, I will commit my energy, experience, and enthusiasm to working with you in carrying out the Bush Administration's transportation agenda, and in furthering the vital mission of the Department. I will always be straightforward with you and receptive to your input and ideas.

I am anxious to begin working, and I thank you for the opportunity to appear before you today. I would be happy to address any questions.

[The prepared statement and biographical information of Mr. O'Hollaren follow:]

PREPARED STATEMENT OF SEAN B. O'HOLLAREN, ASSISTANT SECRETARY-
DESIGNATE FOR GOVERNMENTAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Chairman McCain, Senator Hollings, Members of the Committee, let me begin by thanking you for the opportunity to appear before you today as President Bush's nominee for Assistant Secretary for Governmental Affairs at the Department of Transportation. Following graduation from college in Oregon, I headed across the country to take my first job in Washington, D.C.—as an intern on this Committee. Without a doubt, I could not have imagined then, as I helped prepare for Committee hearings, that I would ever be before you being considered for confirmation. So indeed it is a great honor for me to be here today.

While I have held a number of positions in government and the transportation industry since my internship on this Committee, I have always considered Oregon home and I am deeply honored and grateful to have the support of my home state Senators, Ron Wyden and Gordon Smith.

Mr. Chairman, since being nominated for the post of Assistant Secretary, I have spent some time speaking with elected officials and staff who deal with the Office of Governmental Affairs. I asked them about their expectations of the operation and what could be done better. While there is a wide variety of opinion, one theme was consistent throughout: Its "customers" expect not only to be able to turn to the Office of Governmental Affairs as a primary point of contact for their dealings with the Department of Transportation, but they expect to hear back in a timely fashion, and they expect the information they receive to be accurate. Having worked with the Office of Governmental Affairs as a Senate staff member, I share those expectations and, if confirmed, will work diligently to fulfill them.

Secretary Mineta's broad depth of knowledge and experience in transportation, as well as his distinguished career in Congress, give him a thorough understanding of what is expected of the Department in its dealings with Congress. Secretary Mineta knows, that in addition to being a responsive and reliable source of information, there needs to be a strong "customer service" component to the office. It is not just a matter of providing and processing information, but doing so professionally, expeditiously and politely. In the Office of Governmental Affairs, you and your colleagues in the House and in other levels of government are the customers.

Mr. Chairman, as Secretary Mineta elaborated in his appearance before this Committee, the Department's top priority is promoting transportation safety. This mission holds true throughout the Department. If confirmed, it will be my top priority to work with Secretary Mineta and my colleagues at the Department to improve transportation safety in every mode, every day. It is clear that the safe and efficient movement of goods and people is vital to the health and well being of the national economy and our overall quality of life. It is the role of the Department to enhance, not impede, this mission. Additionally, the Department is charged with the job of helping to build and maintain our nation's transportation infrastructure. These goals go hand in hand in determining the health of our national transportation system. Without a healthy national transportation system, goods cannot move to market, people cannot get to work, we cannot defend our nation, and we cannot feed and keep our people healthy. If confirmed, I will work with you to help achieve this mission—whether it be through a modern air traffic control system, the interstate highway system, a viable rail, pipeline and maritime industry or in support of the unique mission of the U.S. Coast Guard, the nation's "fifth armed service."

Mr. Chairman, we have all seen and experienced increased congestion and delay in virtually every mode of transportation. Closing the gap between transportation capacity and the demand for transportation services is a top transportation priority identified by both President Bush and Secretary Mineta. The growth in our transportation infrastructure has not kept pace with the growth in our economy. This gap impedes the effective movement of people and cargo. Should I be confirmed, I will work diligently to provide the support of the Office of Governmental Affairs to the President and the Secretary in working to solve this problem and in carrying out the mission of the Department of Transportation.

The Office of Governmental Affairs must be composed of an energetic team of people who are knowledgeable about transportation issues and willing to be responsive and professional when dealing with Congress, governors, state and local officials, other federal departments, branches and agencies, and relevant transportation industries. It would also be my goal to work closely with the various modal administrations to coordinate their dealings with Congress so that the Department may speak with one voice on critical policy issues. The Office of Governmental Affairs must serve as a conduit of communication between the Department and Congress, the White House, state and local governments and other federal departments and

agencies. It must be a key point of contact for solving problems that may arise between the Department and its various constituencies.

If confirmed, it is my intent to work with you to ensure that the Department complies with both the spirit and letter of the laws passed. It is also my intent to make certain that the lines of communication between the Congress and the Department are always open. It is critical to be in constant consultation with Congress and other transportation stakeholders in order to effectively implement laws and regulations and to fully understand congressional intent and the impact of the laws and regulations on the transportation system.

Mr. Chairman, Members of the Committee, in the coming months, the Department and Congress will have the opportunity to work together on initiatives that improve safety and expand capacity. As major authorization legislation expires, such as TEA-21 and AIR-21, continued focus must be placed not only on safety enhancements, but also on building even more capacity to meet continually growing demand. There is also the opportunity to work together to address the Coast Guard's deepwater asset replacement program, and to reauthorize the entire Coast Guard program. Reauthorization will be needed for this important agency, and also for the Research and Special Programs Administration, the National Highway Traffic Safety Administration, the Federal Railroad Administration, and the Maritime Administration. Additionally, while separate from the Department, Amtrak capital and operational shortfalls and the recommendations of the Amtrak Reform Council merit legislative consideration. High priority will need to be given to modernization of the Air Traffic Control system and implementation of the recently enacted TREAD legislation. It is my hope to work with you and the White House Legislative Affairs team to produce solutions to these and other issues of mutual concern to meet the growing need for transportation services.

The opportunity to serve as Assistant Secretary to President Bush and Secretary Mineta is a great honor and a rare privilege. Should I be confirmed, I would commit my energy, experience and enthusiasm to working with you and my transportation colleagues in carrying out the Bush Administration's transportation agenda and in furthering the vital mission of the Department. Without a doubt, this job will be challenging and educational. The issues will constantly change, creating new and different opportunities to solve problems and to help give taxpayers a return on their investment in government. Mr. Chairman, Members of the Committee, I will always be straight forward with you and receptive to your input and ideas. I am anxious to begin working together to improve transportation in America. Again, I thank you for the opportunity to appear before you today.

A. BIOGRAPHICAL INFORMATION

1. Name: Sean Brendan O'Hollaren.
2. Position to which nominated: Assistant Secretary of Transportation for Governmental Affairs.
3. Date of nomination: April 5, 2001.
4. Address: Information unavailable to the public. Work: U.S. Dept of Transportation, 400 Seventh St, SW, Washington, D.C. 20590.
5. Date and place of birth: September 4, 1961, Portland, Oregon.
6. Marital status: Married to the former Hilary Newhn.
7. Names and ages of children: Rory McHugh O'Hollaren, born July 12, 2000.
8. Education: Georgetown University, Certificate Program in Business Administration, 1987; Willamette University, Bachelor of Science in Political Science and Psychology, 1983; Villanova Preparatory School, Diploma, 1979.
9. Employment record: Union Pacific Co., Director of Washington Affairs—Tax & Environment, Washington, D.C., November 1991–April 2001; U.S. Senate Committee on Appropriations, Professional Staff, Washington, D.C., May 1990–November 1991; U.S. Senator Mark O. Hatfield, Legislative Assistant, Washington, D.C., August 1987–May 1990; U.S. Senator Mark O. Hatfield, Staff Assistant, Washington, D.C., January 1985–August 1987; U.S. Senator Mark O. Hatfield, Washington, D.C., Intern, September 1984–January 1985; U.S. Senate Committee on Commerce, Science and Transportation, Washington, D.C., April 1984–September 1984, Intern; Oregon Department of Justice, Office of Attorney General Dave Frohnmayer, Salem, Oregon, September 1983–April 1984, Intern/Paralegal; Marion County Court, Juvenile Justice Department, Salem, Oregon, Instructor, January 1983–June 1983.
10. Government experience: U.S. Senate Committee on Appropriations, Professional Staff, Washington, D.C., May 1990–November 1991; U.S. Senator Mark O. Hatfield, Legislative Assistant, Washington, D.C., August 1987–May 1990; U.S. Sen-

ator Mark O. Hatfield, Staff Assistant, Washington, D.C., January 1985–August 1987; U.S. Senator Mark O. Hatfield, Washington, D.C., Intern, September 1984–January 1985; U.S. Senate Committee on Commerce, Science and Transportation, Washington, D.C., April 1984–September 1984, Intern; Oregon Department of Justice, Office of Attorney General Dave Frohnmayer, Salem, Oregon, September 1983–April 1984, Intern/Paralegal; Marion County Court, Juvenile Justice Department, Salem, Oregon, Instructor, January 1983–June 1983.

11. Business relationships: Union Pacific, Director of Washington Affairs, Tax & Environment.

12. Memberships: West Annapolis Civic Association, Board Member 2000–2002, Treasurer, 2001–2002; Environmental Transportation Association, President, 1993–1996; Calvary Woman's Shelter, Board of Directors, 1994–1996; Villanova Preparatory School, Alumni Board Member, 1999–2001; Washington Decade Society (charitable organization), 2001 Ball Co-Chair; Sigma Alpha Epsilon Social Fraternity, President, 1981–1983; Union Pacific Fund for Effective Government (Political Action Committee), Board Member, 1991–2001; Capitol Hill East Condominium Association, Board Member 1991–1993; Willamette University Associated Student Body, Senator, 1981–1983; Capitol Mini Cooper Register (automobile club), 2000–2001; Mercedes-Benz Club of America, 1987–2001; Club VW, 1998–2001; Land Rover Owners 1997–2001; Audi Quattro Club, 2000–2001; MGT Register 1995–2001; Severn Sailing Association, 1999–2001; St. Mary's Catholic Church, 1999–2001; Oregon State Society, 1984–2001. (Note: The automobile clubs listed are social and technical in nature and do not take positions on legislation or matters before the Department of Transportation).

13. Political affiliations and activities: (a) I have held no previous elected or appointive political offices. (b) I served as a volunteer on the 1980 Bush for President campaign in Salem, Oregon, and as a volunteer on the 1992 Bush/Quayle campaign in Washington, D.C. Additionally, as a member of Union Pacific's Fund for Effective Government Political Action Committee, I volunteered to serve on numerous steering committees to raise funds for Republican Senate and House candidates. (c) To the best of my knowledge, I have made the following personal political contributions of \$500.00 or more over the past 10 years: Republican National Committee, Victory 2000—\$500.00; McCain 2000 Inc.—\$750.00; Abraham for Senate 2000—\$1,000.00; Republican Majority Fund—\$500; Union Pacific Fund for Effective Government Political Action Committee: 2000—\$1096.00, 1999—\$1063.00, 1998—\$1016.00, 1997—\$973.00, 1996—\$940.00, 1995—\$906.00, 1994—\$871.00.

14. Honors and awards: Willamette University Senior Certificate for Outstanding Contributions to the University, 1983; Union Pacific Executive Achievement Award, 1999.

15. Published writings: None.

16. Speeches: While at Union Pacific, I made numerous speeches and presentations on issues relating to transportation and Federal affairs, however, only notes and overhead slides were used in lieu of prepared text.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? While the reason for my selection was not elaborated to me, my experience in the transportation industry and as a staff member in the U.S. Senate were likely strong factors. Through these experiences, I have worked across political boundaries and with a wide variety of industries and government agencies to accomplish legislative goals. I believe it is President Bush's objective to put together a team of people who will work together as a team with Secretary Mineta to advance the transportation agenda on Capitol Hill and throughout the country. (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? Should I be confirmed by the U.S. Senate, I would bring to the position nearly 10 years of work in governmental relations from a regulated transportation sector and more than 8 years of experience in Congressional offices that, had regular interplay with government agencies at all levels. This has given me a keen understanding of the needs of Capitol Hill and the transportation industry.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. The only remaining financial arrangement with my former employer is a pension obligation earned over more than 9 years of service (roughly \$1,660.00 monthly at age 65). Please see the attached opinion letter from the Department's Acting General Counsel on this matter.

2. Indicate any investments, obligations, liabilities, or other relationships, which could involve potential conflicts of interest in the position to which you have been nominated. All transportation stocks have been divested from my portfolio. My wife is a current employee in the Washington Office of AT&T. Because of her work and associated benefits and stock holdings, the Acting General Counsel has also addressed this matter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated? Union Pacific's compensation package included the award of stock and stock options. To date, all of the stock held has been sold and all options vested have been exercised and sold. I have divested all UP holdings and entered into a recusal agreement with the Department of Transportation, which would be effective, should I be confirmed. Additionally, all unvested options of Union Pacific Corporate stock were revoked upon my termination of employment, March 28, 2001.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. From November 1991 to April 2001, I served as a registered lobbyist for Union Pacific. In that capacity, I worked on a wide variety of transportation and related legislation of interest to Union Pacific and its subsidiaries. While I have outlined some of the major issues below where I took a position on legislation on behalf of the Company, complete copies of the lobbying reports for the past 10 years are on file and available for review with the Clerk of the House and the Secretary of the Senate.

HR 4475 Treasury Appropriations—In support of U.S. Customs Service funding; H.R. 4475 Transportation Appropriations—Monitored various rail provisions; H.R. 4578 Interior Appropriations—Supported mining and coal provisions; H.R. 4577 Consolidated Appropriations—Monitored Whistle Ban language; H.R. 833 Bankruptcy Reform Act—Supported rail rolling stock provisions; S.608 Nuclear Waste Policy Amdt.—Monitored for transport provisions; H.R. 4507 Transit Rail Access—Opposed; H.R. 4514 Rail Merger Reform—Opposed; H.R. 3163 STB Reauthorization—Opposed; H.R. 3398 Railroad Competition Act—Opposed; S.98 STB Reauthorization—Supported; H.R. 2614 Community Development Act—Supported repeal of 4.3 cent fuel tax on railroads; S.3152 Community Renewal (AMTRAK)—Monitored; H.R. 1001/S.820 Transp. Tax Equity Act—Supported; H.R. 4844 Railroad Retirement—Supported; Various Managed Care bills—No position/monitored; Various Medical Confidentiality bills—Supported rail provisions; S.1090 Superfund Reform—Supported rail provisions.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. Please refer to the attached opinion letter from the Department's Acting General Counsel.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? While I have never been named personally as a party, Union Pacific Corp. has been and is involved in both administrative proceedings and civil litigation.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. I can think of no additional information that is not already covered in other sections of this document.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, to the best of my ability.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes, to the best of my ability.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress. It is my intent to work with every agency of the Department of Transportation to ensure that laws and legislative intent are effectively implemented, administered, and enforced. I will consult with affected modal administrations to help review the laws and regulations. Additionally, I will work with Members of Congress and their staff to gain a strong understanding of legislative intent. Secretary Mineta has the advantage of being a former Member of Congress, and accordingly, he fully understands what is expected of the Department in its dealings with Congress.

5. Describe your department/agency's current mission, major programs, and major operational objectives. The Department's mission is to assure safety in all aspects of transportation. Its second mission is to provide available financial assistance to invest in the country's infrastructure network that will support national defense and economic growth. The national transportation system connects resources with consumers and enables citizens to travel to where they need and want to go. The Department's major programs support this mission. Highway and transit funding are authorized in the Transportation Equity Act for the 21st Century (TEA-21), and aviation operating, capital and airport grant funding are authorized in the Aviation Investment and Reform Act for the 21st Century (AIR-21). The Department also funds rail and marine transportation improvements, Coast Guard operations, pipeline inspections, and transportation safety programs. These programs reflect the Department's five main operational objectives: enhancing safety, the human and natural environment, national defense, mobility, and economic growth and trade.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualifies you for the position for which you have been nominated? As an undergraduate, my major area of study was in political science. As part of my education, I interned in the Oregon State Legislature prior to moving to Washington, D.C., to begin work on Capitol Hill. My first experience in Washington was as an intern on the Senate Commerce Committee. When I began handling legislative issues in a Senate office, I was assigned transportation as my area of responsibility. During this period, I completed an intensified executive program in Business Administration at Georgetown University. The program was helpful in gaining an understanding of the interplay between business and government. When I moved to the Appropriations Committee, I handled transportation funding and related matters. In 1991, I left the employment of the Federal Government to begin work in the transportation industry. This combination of education and work experience has given me a keen understanding of the relationship between government, at all levels, and the transportation industries it regulates. I have dealt with the Department of Transportation

from the perspective of a congressional staff member and as a representative of the transportation industry.

2. Why do you wish to serve in the position for which you have been nominated? This is an honor and a rare opportunity to serve two people I greatly respect, President Bush and Secretary Mineta. The job will be challenging and educational. The issues will constantly change, creating new and different opportunities to solve problems and to help give taxpayers a return on their investment in government. Not only is transportation my career, but it is my passion. For someone who is passionate and enthusiastic about transportation and politics and government, this is perhaps the ultimate job.

3. What goals have you established for your first 2 years in this position, if confirmed? My primary goal will be to provide the support of the Office of Governmental Affairs to the President and the Secretary in carrying out the mission of the Department of Transportation. If confirmed, I would hope to put together an energetic team of people who are knowledgeable of transportation issues and willing to be responsive and professional when dealing with inquiries from Members of Congress and their staff, Governors, State and local officials, other Federal departments, branches and agencies, and relevant transportation industries. The Department of Transportation should be recognized as the most responsive department in the Federal Government. While this may seem lofty, there is no reason for the Department not to be fully responsive to its stakeholders.

It is also my goal to better coordinate the Congressional and Intergovernmental Affairs activities of the various modal administrations with that of the Office of Governmental Affairs. Achieving this will allow the Department to lay out clear objectives and to speak with one voice on critical policy issues. The Office of Governmental Affairs must serve as a conduit of communication between the Department and Congress, the White House, State and local governments and other Federal departments and agencies. It must be a point of contact for solving problems that may arise between the Department and its various constituencies.

As part of my goal to make the Office of Governmental Affairs easier to work with, I would hope to improve communications with Congress and various other government entities through enhanced use of the Internet. Grant announcements can be expedited and distributed simultaneously to congressional offices using the Internet to make such announcements. Additionally, questions tabbed on a Governmental Affairs Home Page can be directed to the various modal administrations for response, thus vastly improving the length of time in responding to inquiries on Departmental matters. This technology is used in numerous governmental agencies and virtually every congressional office. There is no reason why it cannot be put to more efficient use in enhancing the effectiveness of the Governmental Affairs Office.

In summary, I hope to represent the President and the Secretary in an honest and straightforward manner; be prompt and responsive; exemplify integrity and the highest ethical standards; effectively communicate between the Department and its various constituencies; and be courteous and "customer friendly." These are my personal goals as well as those of the Governmental Affairs operation.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills? I believe I have the necessary skills to successfully carry out the job of Assistant Secretary of Transportation for Governmental Affairs. While I do not expect to know everything about the numerous issues the Department will face, I do possess the desire and willingness to learn and to be humble. The job does carry high expectations and great challenges which I intend to do my best to meet.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary. First and foremost, I do not believe that government has the answers to all problems in American society. My philosophical views of government adhere very closely to the principles on which this democracy was established, as outlined in the Declaration of Independence and the Constitution. Aside from the responsibilities of government outlined in the Constitution, I do not believe there is a defined litmus test to determine when and where the government should step into the private sector. In transportation, government is a partner with the private sector in virtually every mode. The role of government in the private sector has to be determined on a case-by-case basis, issue by issue.

It is my belief that the private sector has a basic obligation to serve and provide for certain public interests. When the private sector and the competitive marketplace fail to meet this obligation, government needs to step in with the force of law to give direction. If the imposition is too great, it will damage the private entity.

If the imposition is too little, certain entities will take advantage of the resources available and will refuse to serve any public good.

Take for example, the case of industrial pollution. Prior to certain environmental laws and regulations being enacted, many companies used available resources to manufacture their products and produce a profit, but often returned only waste to the environment. In this case, the government imposed certain laws to protect the public's interest. In the case of transportation, the government has implemented laws to protect the safety of the public while using transportation systems. In the case of economic regulation of certain transportation sectors, as I have seen in rail, government overreached and forced many companies into bankruptcy. This brought on a correction under deregulation, which again allowed companies to prosper and invest to better serve the public interest. In the long run, government should try to encourage the private sector to find solutions to problems and should work with the various levels of governments to determine the appropriate level of involvement.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives. The primary objective of the Department of Transportation is to do everything in its power to ensure that the national transportation system is the safest and most efficient in the world. Each of the safety agencies within the Department has as its mission to maintain and improve upon the record of safety. The safe and efficient movement of goods and people is vital to the health and well being of the national economy and our overall quality of life. It is the role of the Department to enhance, not impede, this mission. The Department is also charged with a major economic mission in building and maintaining transportation infrastructure. Without the ability to move people to their destinations, whether it be to work, to school or to a hospital, our economic vitality is directly linked to mobility. Without healthy transportation systems, goods cannot move to market, we cannot defend our nation, and we cannot feed and keep our people healthy. The health of the overall transportation is directly linked to the overall health and well-being of the nation. It is the Department's mission to keep the transportation system healthy—whether it be through a modern air traffic control system, the interstate highway system, or a viable rail, pipeline and maritime industry.

The Department is responsible for providing direct financial assistance, regulatory oversight and enforcement, operational safety services, public education and research. The Department also has a unique mission in its support of the U.S. Coast Guard, the nation's "fifth armed service."

The Department of Transportation's strategic objectives include promoting health and safety by reducing the number of transportation related injuries and deaths; improving mobility by delivering accessible, affordable and reliable transportation system for people and goods; and ensuring the security of the national transportation system.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years. One issue that has plagued the national transportation system is congestion. This has become an increasingly difficult issue for both the effective movement of people and cargo. We have seen this problem grow in virtually every mode of transportation. Much of this congestion is a result of the growth in our economy. However, the growth in our transportation infrastructure has not kept pace. Bridging the gap between the demand for transportation services and capacity of our infrastructure is one of Secretary Mineta's top priorities, and should I be confirmed, I will work to support Departmental activities that relieve congestion.

Changes in technology, the environment and the economy will put pressure on the Department to adjust its mission to remain modern and efficient. The Department must be willing to experiment with innovative programs, and wherever reasonable, it should embrace private sector solutions to problems that affect our infrastructure system.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three, challenges facing the department/agency and why? The outside force that could prevent the Department from accomplishing its mission is significant economic downturn, which may diminish the revenue provided to the Department by Congress. The top three challenges facing the Department are: (1) Proper stewardship of financial assistance for mega-projects; (2) Applying best available technology to Air Traffic Control; (3) Having the resources to meet the challenges of the 21st Century.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years? Each agency within the Department has its own specific mission and accordingly,

its own failures and successes. The Inspector General has outlined many of these in a recent report—with a focus on safety, stewardship of transportation funding and aviation system performance. From my current perspective, it is difficult to cast judgment without having the benefit of understanding what obstacles may exist within the Department. However, in spite of a skilled and professional workforce at the Department, it often fails to be innovative and dynamic, as is demanded of the private sector. This is in large part, because it is difficult to be nimble and responsive in any large organization. The willingness to maintain the status quo is prevalent because it is easiest. This also goes for financial discipline. There are often too many places for abuses to occur, and thus if any fraud or abuse exists, the Department has failed in its mission. Additionally, I do not believe the Department has effectively outreached to its constituencies in transportation. In particular, businesses regulated by the Department are forced to “shop around” for someone within the Department to take their call, because there is no obvious stopping point. This could be addressed by creating an “Industry Affairs” office, which could subsequently direct inquiries to the appropriate person. I also believe that poor communications between the Department and its stakeholders has contributed to some failings. Often the channels of communication seem to be open within the Department, but narrowed with outside constituencies. If confirmed, it would be one of my objectives to improve the level of communication between the Office of Governmental Affairs and Congress, as well as other branches and of government and relevant transportation partners in the private sector—all as a means of improving customer service.

10. Who are the stakeholders in the work of this agency? The Department’s stakeholders are: Congress, State and local elected officials, the various transportation industries, the numerous government employees who help build, maintain, and administer transportation systems, and the traveling public. Given the role transportation plays in the nation’s economy, defense, and well-being, the stakeholders are as broad and diverse as the American people.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10. My position requires me to be held accountable to the stakeholders. As a user of most modes of transportation under the Department’s jurisdiction, however, I also include myself as a stakeholder. If confirmed, the proper relationship would be to listen to the concerns of stakeholders, learn the issues, and communicate the Department’s objectives as part of carrying out my official duties. My primary responsibility will be to communicate between the Department and its various stakeholders, and to facilitate finding solutions to problems in the transportation system.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls? Management and accounting controls at the Department of Transportation are the primary responsibility of the Assistant Secretary of Transportation for Budget and Programs, who also serves as the Department’s Chief Financial Officer. If confirmed, I would work with the Budget office to ensure that proper accounting and financial planning and procedures were adhered to within the Office of Governmental Affairs. I also share Secretary Mineta’s policy of zero tolerance for waste, fraud and abuse. I believe every employee of the Department has an obligation to expose every possible case of misuse of taxpayer funds. It would also be my intent to work with the Department’s Inspector General to address various financial concerns within the various modal administrations, to make sure that every dollar spent is in accordance with the law, and that appropriate financial controls are in place. (b) What experience do you have in managing a large organization? For almost 10 years, I served as a manager in the Washington, D.C., office of a large transportation company. However, the office I worked in was quite small with a management focus on issues, rather than a large number of employees. If confirmed, I would work to instill a management style that encourages people to perform by motivating to succeed, versus instilling fear over what will happen if they fail at their duty. Secretary Mineta has discussed various ways to manage by holding people accountable for their actions and giving them the responsibility to perform.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals. My experience in the private sector had a strong emphasis on setting annual goals to use as a performance standard throughout the year. These goals could be updated, and would be periodically reviewed so that per-

formance adjustments could be made. In establishing objectives, both personal and organizational goals would be included. This was useful as a measure of performance and to make certain everyone was working toward mutual organizational objectives. This also allowed managers to test the success, or lack thereof, of certain methods used to achieve these personal and organizational goals. We also engaged in a feedback program that allowed peers and subordinates to rate managers as a way to improve the quality of management. I would hope to use similar methods if confirmed. (b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs? While the Department sets its own goals, many of the Department's performance goals are determined by Congress. Congress expects these goals to be met, but it has the responsibility to provide the Department with the necessary tools and resources to fulfill the objectives outlined in legislation. If the Department fails to meet its objectives, the reasons for the failure must be determined and the Department must take appropriate action to correct the problem. This could include eliminating, privatizing, downsizing, or consolidating operations. Additionally, the Department must learn from its mistakes and put appropriate safeguards in place to prevent a recurrence. As in the private sector, government must be innovative and creative in its approach to the issues it is charged with addressing. Outstanding performance should be rewarded and poor performance should have consequences. (c) What performance goals do you believe should be applicable to your personal performance, if confirmed? As stated in question No. 3, my primary goal will be to provide the support of the Office of Governmental Affairs to the President and the Secretary in carrying out the mission of the Department of Transportation. If confirmed, I would hope to put together an energetic team of people who are knowledgeable of transportation issues and willing to be responsive and professional when dealing with inquiries from Members of Congress and their staff, Governors, State and local officials, other Federal departments, branches and agencies, and relevant transportation industries. The Department of Transportation should be recognized as the most responsive department in the Federal Government. While this may seem lofty, there is no reason for the Department not to be fully responsive to its stakeholders. I should be judged on my ability to represent the President and the Secretary in an honest and straightforward manner; be prompt and responsive; exemplify integrity and the highest ethical standards; effectively communicate between the Department and its various constituencies; and be courteous and "customer friendly."

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you? My supervisory model integrates the practices learned from management courses I have taken and from the various supervisors I have had during my career. In general, I believe that a supervisor has to have the respect of his or her colleagues and staff to be effective. The more professional the relationship, the more effective the team will operate together. I believe in charging individuals with responsibility and accountability in carrying out their responsibilities. An effective manager must provide leadership, but use a cooperative team approach to problem solving rather than intimidation. I believe that giving credit where credit is due is a very important management tool. I am not aware of any complaints brought against me.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe. My entire professional career has involved working with committees of Congress. My first direct working relationship with Congress at the Federal level was as an intern on the Senate Commerce Committee. As a Legislative Assistant for a U.S. Senator, my work involved constant interaction with not only the Committees he served on, but the relevant committees for my areas of responsibility as well. I also served as professional staff on the Senate Appropriations Committee. Finally, as a governmental affairs representative for a transportation company, I was constantly meeting, corresponding and discussing issues with both members and staff of the relevant committees of jurisdiction.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency. It is my understanding that the Inspector General (IG) is directed by statute to report directly to Congress. The IG is independently appointed and confirmed and is designed to remain insulated and somewhat independent of activities in the Department. This is done to allow the highest level of objectivity in reporting on the Department's practices and activities. The findings of the IG are important tools that should be taken seriously and used as a fulcrum for change at the Department. If confirmed, I would communicate openly, candidly, and cooperatively with the IG and work to

implement needed changes that may be discovered and outlined in his or her findings. I view the IG as a powerful and much needed watchdog of the Department's activities.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress. The Senate Committee on Commerce, Science, and Transportation is one of the primary committees with authorizing jurisdiction over the Department of Transportation. If confirmed, it is my intent to work diligently with Committee Members and staff to make certain that the Department complies with both the spirit and letter of the laws passed by the Committee. It is also my intent to make certain that the lines of communication between the Committee and the Department are always open. It is critical to be in constant consultation with the Committee in order to effectively implement laws and regulations and to fully understand congressional intent. Much is the same for other stakeholders. It is critical to be in constant consultation with a wide spectrum of stakeholders in order to fully understand the impact of the laws and regulations on all the various stakeholders in the transportation system.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views. The Department and Congress should work together on initiatives that improve safety and expand capacity. These are closely linked. The current demand for transportation services far exceeds the system's ability to deliver. Accordingly, effort and energy should be focused on enhancing and expanding capacity, largely through the addition of new transportation infrastructure. As major authorization legislation expires, such as TEA-21 and AIR-21, continued focus must be placed not only on safety enhancements, but on building even more capacity to meet the continually growing demand.

It is also important to continue support for the Coast Guard's deepwater asset replacement program, and to reauthorize the entire Coast Guard program. Reauthorization will be needed for not only this important agency, but also the Research and Special Programs Administration, the National Highway Traffic Safety Administration, the Federal Railroad Administration, and the Maritime Administration.

Additionally, decisions will need to be made and legislation enacted on AMTRAK's ongoing capital and operational shortfall and the recommendations of the AMTRAK Reform Council. High priority will need to be given to modernization of the Air Traffic Control system and implementation of the recently enacted TREAD legislation, although it is not expected that further legislation is needed in these areas.

The focus needs to remain on funding for these critical Departmental programs. Without the needed financial resources, it will be impossible for the Department to carry out its mission and fulfill the mandates of Congress.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation. The discretionary funds allocated by the Department are significant and must be awarded using established and public criteria. It is important to note that much of the funding distributed by the Department goes directly to the states, and they determine the priorities and basis and eligibility for awarding grants. With the combination of the amount awarded to states and Congressionally earmarking, the percentage of funds where the Department has total discretion is relatively small. Given the importance of transportation to the overall economy of the country, the Department has an obligation to make certain that limited resources are spent on the highest priority and most cost-effective projects. To this end, the Department must work diligently with Congress and State and local governments to do its best to assure that every dollar is put to use to improve the well being of the transportation system, and accordingly, the economy. If confirmed, my timeframe for imposing the allocation process would be immediate.

The CHAIRMAN. Thank you.

Ms. McLean, the GAO and DOT Inspector General have reported that several major infrastructure projects that received federal money, including the Boston Central Artery Tunnel project, known as the Big Dig, the Los Angeles subway project, and the San Francisco BART, have experienced significant cost overruns and schedule delays. The Boston Central Artery Tunnel project is now the most expensive public works project in the history of this nation.

What actions will you take to ensure federally funded projects contain costs, meet schedules, and do not increase the financial exposure of the American taxpayer?

Ms. MCLEAN. Mr. Chairman, I understand I believe the Department's role has probably changed in the last several years, where we had previously been, or the Department had previously been issuing grants, and the proper oversight probably was not being done. In the last Administration, there was the beginnings of this oversight for these large megaprojects, that is what the Department refers to them as, and Secretary Mineta, I know, is committed to continuing a very strong oversight role.

The specifics of that oversight have not been determined, but I am definitely going to be working with the Secretary if I am confirmed, and Deputy Secretary Michael Jackson, to make sure that those projects are overseen by the Department, because these grants, issuing the grants is not where our responsibility, or the Department's responsibility should stop, so I understand the importance of that oversight.

The CHAIRMAN. The Congress approved legislation in 1995 which directed the FAA to develop a cost-accounting system, which I believe is very important. The projected roll-out date has slipped several times, and since then most recently to 2002. Do you believe you can make that system be fully developed and in place by 2002?

Ms. MCLEAN. As you know, working at FAA over the last 18 months, we have been working extremely hard on the cost-accounting system, and I believe that we can meet the deadline by 2002, sir. In the last fiscal year we have been able to basically have monthly reports come out of the cost-accounting system that equates to about 70 percent of FAA's total cost, so I think we are progressing on that system. However, it is frustrating at the length of time it has taken to get to this point.

The CHAIRMAN. You think you can get it done by 2002?

Ms. MCLEAN. I believe so, sir.

The CHAIRMAN. What is your view in general of user fees?

Ms. MCLEAN. Well, I strongly support the user fees that were passed on oversight for international flights, and that right now is in litigation, and I am anxious to see that come to closure so that FAA can receive the user fees for international flights that currently those users are not paying into the system.

Overall user fees for transportation, I believe that users right now are paying into the system through taxes, but you know, user fees obviously is another option for having users pay for their use of a system. I think that in general users should contribute to a system.

The CHAIRMAN. Finally, the predictions are that we are going to have the worst summer in history as far as aviation is concerned, particularly if there is an onset of bad weather. I think this not only is disruptive to average citizens, but obviously could have further debilitating effects on the economy.

Do you have any views in the short term or the long term about this issue, particularly as far as programs are concerned?

Ms. MCLEAN. Well, I think that FAA's recent efforts to issue benchmarks of the airports, in other words to identify exactly what the capacity of each airport is, and to clearly note, in good weather

and bad weather, what is a reasonable number of flights to come in and out of airports.

It is helpful in the sense that we have to acknowledge that there are limits to the capacity that are at airports currently today, and without additional technology in the short term, or runway expansions in the long term, we are not going to see, unfortunately, any significant, probably, improvement in the delays we saw last year this coming year.

However, FAA is also doing some additional coordination with airlines at their Herndon Center which allows airports and airlines to understand what the capacity and delay concerns are, and I think a lot of the problems and frustration in traveling is that the travelers do not have the information. The travelers do not understand that in fact their flight is going to be delayed until the last minute.

With this effort, with FAA working with the airlines, I believe that information is getting to airlines quicker, and the intention of the airlines is to pass that on to the consumers, which I think in the short term will hopefully help people understand the system.

The CHAIRMAN. Well, I think our babies are getting restless—
[Laughter.]

Ms. MCLEAN. I thank them.

The CHAIRMAN [continuing]. So I will congratulate you both, and we look forward to a rapid markup and confirmation so you can get to work. We thank you for your willingness to serve, and we are very pleased to have two individuals of your quality serving in these very important positions.

Thank you very much.

Ms. MCLEAN. Thank you.

The CHAIRMAN. This hearing is adjourned.

[Whereupon, at 10:47 a.m., the Committee adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. SAM BROWNBACK, U.S. SENATOR FROM KANSAS

Thank you Mr. Chairman, for holding this hearing in an expeditious manner and thank you to all the witnesses for being here today and your willingness to serve in our nation's government in your respective agencies. I have had the opportunity to meet with some of you, particularly Ms. McLean and Mr. O'Hollaren, I appreciate your taking the time to visit with me about Transportation issues. I am particularly pleased to see Sean O'Hollaren up here today, who I have had the great pleasure of working with over the years in his capacity at Union Pacific railroad, through good times and bad. I'm sure he is glad he does not need to hear any more from me about the grain sitting on the ground in Kansas during harvest time. I look forward to working with you both at the Department of Transportation, and I take pleasure in supporting both your nominations.

Ms. McLean and Mr. O'Hollaren. I would like to make some general remarks about an issue I am deeply concerned about, and get your reaction to them, if I may. This concerns an issue we discussed when we met last week, and which I have raised before in this Committee.

Summer is right around the corner, and the traveling public can expect the same horrendous air travel delays experienced during the past several years. We have a capacity crisis in our nation's aviation infrastructure, and unless we build new runways and build them faster than we are now, aviation gridlock will become a permanent feature of air travel. In order to speed up runway construction, we must bring some common sense and predictability to the convoluted, sluggish and prolonged environmental review process governing runway construction.

The unbearable air travel delays experienced during the past few summers are proof that our nation's aviation system has been pushed to its capacity. During the past 10 years, the number of people using the aviation system has increased by 40 percent. However, during this time, only six new runways have been built at the nation's busiest airports. In addition, passenger traffic is expected to reach one billion persons by the end of the decade. Experts say that in order to keep pace with anticipated growth, airports would have to recreate the equivalent of the 17 largest airports. It's also been said that the nation is about 50 miles of runways short of where it needs to be to meet future demand.

Last year, Congress took an important first step to reducing aviation gridlock by providing historic increases in funding for airport construction projects through the FAA reauthorization bill, AIR-21. However, money is only one piece of the puzzle. Without a more efficient environmental review process, airports will not be able to complete necessary construction projects in time to meet the expected demand in passenger and cargo enplanements even with increases in federal spending.

Over the years, multiple reviews by federal, state and local governments, open-deadlines for completion of these reviews and different state and local requirements have bogged down the review process and have strangled airport construction projects across the country. Currently, there are 40 federal laws and executive orders that govern runway construction. None are synchronized and there are no deadlines for these reviews. A number of agencies including, but not limited, to the Federal Aviation Administration, the Environmental Protection Agency, the Department of Interior, and the Army Corps of Engineers all have jurisdiction over the environmental review process and each works at their own pace. The result of this complicated review process is that runway construction projects can take 10 to 15 years from start to completion, even without opposition.

Last month, President George W. Bush said that the nation needed to expand airport capacity in order to reduce the number of air travel delays and that there were a number of environmental regulations that prohibit the expansion of runways. I agree with the President and have been actively working with Senate Appropriations Chairman Ted Stevens on legislation to streamline current environmental reviews required of critical airport construction projects so the nation can reduce aviation gridlock and meet future demand.

It's important to point out that we are not seeking to change, weaken or loosen existing environmental law. What we are working on is a coordination of the environmental review process for runway construction so that it is not a series of overlapping jurisdictions and neverending deadlines. We need to bring some order to an important but unproductive environmental review process that threatens the ability of the U.S. aviation system to meet future demands.

In January, during the Senate Commerce Committee's confirmation hearing for Secretary of Transportation Norman Mineta, I said that the 107th Congress needs to be aggressive to improve airport capacity. My constituents are frustrated with flying, because of flight delays, cancellations and congestion at our airports. All of us have sat waiting for hours on tarmacs of different airports, and those delays fuel the lion's share of the public's frustration with the aviation industry. We have a capacity crisis in our nation's aviation infrastructure, and my constituents have caught on to the problem. They fly defensively, avoiding if at all possible certain airports that are notorious for delays.

Streamlining the environmental review process for building new runways will not reduce the delays expected this summer, but it will reduce delays in the long-run. We must increase the capacity on the ground at our nation's airports. We must build more runways and build them faster than we are now. We faced a crisis in air transportation last summer, and the summer before that, and we did nothing about it. If Congress does not streamline environmental reviews required of runway construction projects, aviation gridlock will become a permanent part of air travel.

Ms. McLean, Mr. O'Hollaren, your thoughts on this, please.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO TIMOTHY J. MURIS

Question 1a. It appears from the many academic articles you have written about mergers that your approach to merger reviews is different from that of the current Federal Trade Commission. In particular, you appear to advocate placing greater weight on the efficiencies that could arise from mergers and less weight on theoretical harms that could result. Is this a fair characterization of your approach? Can you elaborate on this?

Responses. On the overwhelming majority of mergers, my approach will not be different. Regarding efficiency, throughout my career, I have followed closely the issue of the efficiency defense in merger cases. I was an early critic of the government's position of outright hostility toward efficiencies, a position that the government has abandoned in the last twenty years. I would not allow claims based on *possible* efficiencies, but would insist that the merging parties show that the merger would *likely* lower costs. If so, then I believe that the government should show, through a detailed examination of the specific facts in the industry at issue, that the merger will likely raise prices. In its internal processes, my experience is that the government normally follows this standard. In litigation, however, some of the government's cases still reveal too much hostility toward likely efficiencies.

Question 1b. Are there any merger review cases that the Commission has handled within the last few years that you would have handled differently?

Answer. Merger analysis is fact intensive, and I have personal knowledge of the relevant facts in only a minority of cases. I have criticized the government's decision in two cases, and raised additional questions about a third.

First, I found it surprising that the Antitrust Division did not challenge Microsoft's \$425 million acquisition of WebTV. With the rise of the Internet, new devices were invented to provide access without using a personal computer. These devices directly threatened Microsoft's dominance. Although Microsoft had previously introduced a product for digital set-up boxes, the government allowed the merger to proceed.

Second, I believe that the FTC should not have challenged the recent Heinz/Beech-Nut baby food merger, on which I consulted with Heinz. Although the parties had an excellent efficiency defense, my primary disagreement was whether there was substantial competition between the merging parties in the nationwide market for baby food. The strongest evidence that there was no such competition was that Gerber, the dominant firm in the market, feared that the merger would increase competition, a view that numerous grocery retailers shared. If the merger was in fact anti-competitive, then the grocery retailers, who sell the product directly to consumers, would have had no incentive to support it.

Obviously, people disagreed over this merger, as the FTC staff recommendation to the Commission was split, the full Commission vote was 3-2, and the district court disagreed with the FTC.

Finally, I have disagreed with the court's decision in *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34 (D.C. 1998). Although the FTC may have been correct in challenging the merger, I believe that the court's opinion provided an inadequate basis to find for the government.

Question 2. At a time when the price of gasoline is rising, there are a number of oil company and energy company mergers pending before the FTC. During a recent subcommittee hearing in the Commerce Committee on the topic of West Coast gasoline prices, concern was expressed about the relatively small number of gasoline refiners on the West Coast. How do you think your review of the pending mergers in the oil industry will differ from that of your predecessor?

Answer. Merger analysis is fact-intensive, and I do not have detailed data about the recent oil mergers that the FTC has evaluated. While Director of the Bureau of Competition in the 1980's, however, we required substantial divestitures and other relief in two significant oil industry mergers, Texaco-Getty and Chevron-Gulf. Based on this experience, I would have supported similar relief in the recent mergers, assuming that they raised problems like those that we encountered in the 1980's.

Regarding any mergers that are currently pending, I will evaluate them carefully under the applicable legal standards, but do not yet possess specific details regarding such mergers.

Question 3. Do you think that the Intellectual Property guidelines adopted in 1995 by the Justice Department and the Federal Trade Commission are consistent with the statement of outgoing Federal Trade Commission Chair Robert Pitofsky that, "intellectual property is now a principal, if not the principal barrier to new entry in high tech markets?"

Answer. The principles of the Intellectual Property Guidelines are generally sound. I do agree with Chairman Pitofsky that the relationship between antitrust and intellectual property is increasingly important, including in high tech industries. Although the ownership of valid intellectual property can include exclusive rights that the antitrust laws must respect, the Intellectual Property Guidelines address abuses of those rights outside the protection of the laws of intellectual property. If confirmed, I will make evaluation of the antitrust-intellectual property relationship a high priority.

Question 4. The Court of Appeals for the Federal Circuit in a recent case involving *Xerox* asserted that in essence unless a patent was fraudulently procured, intellectual property protection trumps antitrust, and the patent owner is free to impose any license restrictions whatsoever, regardless of their alleged competitive effect in the particular case. The Supreme Court declined to hear an appeal from this decision. The court's view seems to be that, even if refusals to license intellectual property rights, or restrictions in such license seem to create some short-term problems for particular competitors, such policies may be pro-competitive in the long run. What is your view?

Answer. I have not closely studied the facts of *Xerox* and thus cannot comment on the specifics of the decision. In general, as stated in my answer to the previous question, antitrust law must respect valid intellectual property rights, but those rights can be abused in violation of the antitrust laws. The possession of intellectual property rights does *not* preclude liability under the antitrust laws. For example, anti-competitive behavior in excess of the intellectual property rights could violate the antitrust laws.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE
TO TIMOTHY J. MURIS

Question 1a. For the past two years, the Senate Committee on Small Business, of which I am a member, has been investigating the competitive effects of slotting fees in the grocery industry. In the two hearings the Committee has held, the Committee heard from numerous witnesses testifying about the harm that can be inflicted on small businesses and consumers by the imposition of certain types of slotting fees. To date, the Federal Trade Commission (FTC) has been responsive to the information collected by the Committee, including holding a public workshop on slotting allowances, taking slotting allowances into consideration in merger reviews of retailers and investigating an increasing number of complaints by small manufacturers on the anti-competitive application of such allowances. Nevertheless, Congress' and the FTC's current understanding of the market practices related to slotting fees is still limited. Accordingly, in a bi-partisan effort, Congress requested the FTC to collect comprehensive data on the current competitive environment related to such practices, assess their impact and report back to Congress on appropriate

policy considerations. That effort is ongoing. Do you support the continued investigation of complaints received by the FTC by small manufacturers and consumers of anti-competitive activity related to the payment of slotting fees?

Answer. Yes.

Question 1b. What assurances can you provide demonstrating that you support the FTC's ongoing examination of the competitive effects of slotting fees and, if necessary, will support efforts to ensure that retailers and manufacturers produce the information that is required to comply with this Congressional directive?

Answer. I fully support the FTC's ongoing examination of this issue. I will support any necessary efforts to insure that the FTC receives the information necessary to comply with the congressional directive.

Question 1c. If the report to Congress finds that slotting fees are being applied by manufacturers or retailers in an anti-competitive manner, in certain circumstances, what action do you believe would be appropriate for the FTC to take?

Answer. If slotting fees are being used in violation of the antitrust laws, law enforcement would be appropriate.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KAY BAILEY HUTCHISON
TO TIMOTHY J. MURIS

Question 1a. With summer approaching, this country is again faced with the problem of surging gasoline prices. The Federal Trade Commission recently issued a report in which it concluded that last summer's price increases were not the result of collusive activities. Rather, the price spikes stemmed from a general tightness in supply and the difficulties that refiners encountered in trying to comply with the EPA Phase II regulations for summer-blend gasoline. Reformulated gasoline is subject to a series of patents which have reportedly caused some refiners and blenders to forego the reformulated gasoline market. Refiners and blenders are incurring additional costs, which ultimately are largely absorbed by the consumer. Moreover, refiners have only a narrow window in which they can both avoid the patents and comply with the regulations. The resulting reduced refining flexibility can magnify the effects of any supply disruption. Do you agree that the Commission should look into this matter closely to ensure that consumers are not needlessly paying higher prices at the gas pumps?

Answer. I am not personally familiar with the intellectual property issues regarding reformulated gasoline that this question raises. In general, intellectual property can be abused in ways that violate antitrust laws. The current Commission has been vigilant in this area, and, if confirmed, I would seek to continue this vigilance.

Question 1b. What options would the Commission have to address this situation?

Answer. If there are problems, a variety of solutions exist, including law enforcement and recommendations to Congress for appropriate legislation.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK
TO TIMOTHY J. MURIS

MARKETING VIOLENCE TO CHILDREN

Question. One of the most important achievements of the FTC within the last year has been the completion and submission of its report on the marketing of violent, adult-rated entertainment to children. As you know, an interim report was submitted a few weeks ago, and a more comprehensive follow-up report is due in September. Can you tell me what priority the FTC will place on the conduct of this report, and how, if at all, your lines of inquiry will differ from the report or last year?

Answer. If confirmed, I will place high priority on this issue. I have no plans to change the current lines of inquiry, but will be responsive to market developments, if appropriate.

FEDERAL TRADE COMMISSION,
Washington, D.C., June 13, 2001.

Hon. ERNEST F. HOLLINGS, *Chairman,*
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to respond to the follow-up questions submitted by Senator Wyden in connection with the Committee's May 16, 2001, hearing

on my nomination as Chairman of the Federal Trade Commission. My responses are enclosed with this letter. Please let me know if I can be of further assistance.

Sincerely,

TIMOTHY J. MURIS,
Chairman.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RON WYDEN
TO TIMOTHY J. MURIS

Question 1. Some argue that the high tech sector should not be subject to the antitrust rule applicable in other sectors—that the enforcement of the rules should either be suspended or substantially rewritten for the high tech sector. One of the reasons given is that New Economy markets that appear monopolistic by Old Economy standards may be quite competitive. Federal Reserve chair Alan Greenspan has testified before Congress that many high-growth, high technology industries are “extremely competitive.” Former Treasury Secretary Summers has noted that “The only incentive to produce anything (in the New Economy market) is the possession of temporary monopoly of power . . . so the constant pursuit of that monopoly power becomes the central driving thrust of the new economy.[”] Do you believe the “constant pursuit” of monopoly of power as the central imperative of New Economy business merits revision of antitrust law?

Answer. The proper application of the antitrust laws to dynamic, high-technology markets is one of the major challenges of antitrust enforcement today. I believe the current antitrust laws are capable of such application. One of the chief strengths of the U.S. antitrust system is the consciously evolutionary scheme established in the federal antitrust statutes. In designing these laws, Congress anticipated that the courts would adapt doctrine to account for “changed circumstances and the lessons of accumulated experience.” *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). This approach generally has succeeded in adjusting antitrust legal concepts to meet challenges posed by new economic phenomena.

Even assuming that the pursuit of monopoly is the central imperative of New Economy businesses, that assumption does not, in itself, suggest that the antitrust laws should be revised. I believe such business strategies can readily be examined under current law. The law recognizes that monopoly power may be a consequence of “superior product, business acumen, or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966). The acquisition or maintenance of monopoly power through such means is not unlawful. Thus, if a firm’s pursuit of monopoly power in the new economy simply involves an attempt to gain a competitive advantage over rivals by providing superior technologies, products, or services, consumers likely will benefit from the rivalry and antitrust enforcement would be uncalled for. On the other hand, as the leading antitrust treatise states, the law is violated where there is “conduct other than competition on the merits, or other than restraints reasonably ‘necessary’ to competition on the merits, that reasonably appear[s] capable of making a significant contribution to creating or maintaining monopoly power.” 3 Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶651(c), at 78.

Question 2. If confirmed, would you instruct the FTC’s Antitrust Division to examine the special characteristics of “sequential” or “leapfrog” monopolies and whether such characteristics pose any conflict with the FTC’s mandate to promote and protect competition through antitrust enforcement?

Answer. The agency’s Bureau of Competition staff would be instructed to examine closely any business practices that may result in anticompetitive effects, but it does not appear necessary to single out sequential or leapfrog monopolies for special examination. We already know a fair amount about the competitive dynamics that can result in those kinds of monopoly situations, and not all of them are anticompetitive. As suggested by my response to the first question, it is important to consider the nature of the business conduct and market dynamics that lead to a sequential or leapfrog monopoly.

Conditions of sequential or leapfrog monopoly generally arise when a new technology essentially overtakes and displaces an older technology. A variety of factors can contribute to such a change. Most fundamentally, a new firm (or the incumbent) may simply develop a break-through technology that renders the old technology obsolete or, at least, substantially less desirable. Users may be disinclined to switch away from the product they currently use, unless a new product offers substantial advantages. Thus, a leapfrog technology may be a new firm’s best hope for breaking into the market. Once users switch to the new product, it, too, may enjoy temporary market power, but consumers nonetheless will have benefitted through this process

of innovative competition. The emergence of a break-through monopoly in that manner would not be of antitrust concern. On the other hand, as I stated in my answer to the previous question, certain exclusionary conduct can, and should, violate the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO MARIA CINO

Question 1a. In your responses to the nomination questionnaire, you repeatedly stressed the importance of providing small and medium-sized enterprises with export assistance and customized business solutions to increase the competition of these enterprises in the global market. What are the primary challenges faced by U.S. manufacturers to expand global markets?

Answer. Education.—American companies who are new to export don't fully understand the exporting process and are not aware of the resources available to help them.

Export Process.—The paperwork associated with exporting and export regulations can be complicated. The export process is often a long-term (rather than short-term) endeavor that requires a commitment outside of the regular quarterly profit cycle.

Budget.—New-to-export American companies are often concerned that they will not get paid by their international customers. Many American companies do not know how to get financing.

Limited personnel/resources to locate partners in markets.—American companies often do not know how to find overseas partners.

Strong dollar.—Strong value of currency makes U.S. products over-priced in markets.

Question 1b. What are small and medium-sized businesses currently doing to meet these challenges?

Answer. More small and medium-sized businesses are reaching out to U.S. Government agencies, including the Commercial Service, for help with these issues. At the Commercial Service, each of the 105 domestic U.S. Export Assistance Centers conducts seminars, which educate American companies about the exporting process. These seminars also describe the available federal and state export assistance programs, including financing programs. Companies can call their closest U.S. Export Assistance Center for export information and to schedule one-on-one meetings to discuss export objectives and to formulate an international marketing strategy. In addition, companies are participating in trade missions sponsored by federal and state agencies that bring them access to international markets. American companies are looking to public and private sources for assistance with international financing. For example, Department of Commerce Trade Specialists incorporate export finance information/options when helping American companies develop their international marketing strategies.

Question 1c. What is the role of e-commerce in this expansion?

Answer. The U.S. & Foreign Commercial Service has effectively integrated e-commerce into its daily operations. The Internet has become widely accepted as a powerful vehicle for conducting business both within the U.S. and worldwide. For domestic business, e-commerce is part of the business landscape. The Internet is increasingly perceived as infrastructure—as basic as electricity or the telephone—and E-Business is an integral part of every corporate strategy. The products described below were developed by the U.S. & Foreign Commercial Service to assist American companies export.

Video Products.—Clients and other partners may want to have a *video conference* with their overseas distributor, agent or other parties overseas. (1) *The Video Gold Key* provides the client with an opportunity to test the market prior to traveling to the country for the Gold Key, prescreen foreign buyers, and focus their efforts. (2) *The Video Market Brief* is a 30-minute appointment that allows U.S. companies to connect with post via video to obtain a current view of the overseas market. After a 15-minute presentation by overseas staff the videoconference is open for questions.

Webcast Library.—An online series of video streamed seminars and briefings on current international business. Over 60,000 unique visitors viewed our webcast series on the Internet last fiscal year, with an average viewing session lasting 21 minutes.

www.USATrade.gov.—The U.S. Commercial Service's website that provides an overview of available export assistance services through the worldwide network of 105 Export Assistance Centers nationwide and 160 overseas posts. International market research, country-specific Commercial Guides, information on U.S. & For-

sign Commercial Service matching services, promotional events and opportunities are found on this site.

BuyUSA.com (summer 2001 launch).—The Commercial Service e-marketplace, is envisioned to be a “one-stop,” export transaction focused website. BuyUSA will integrate technology with the Commercial Service’s worldwide physical network, to offer unequalled export assistance to U.S. firms operating in the global e-economy. BuyUSA will ease the exporting process for U.S. SMEs, to help more export-capable U.S. firms begin to export, expand their international sales to new countries, or within existing markets overseas.

Question 2. In your responses to the nomination questionnaire, you highlight the importance of increasing “the number of new exporters from traditionally under-served communities,” such as minority, rural, and women-owned businesses. What can be done within the law regarding preferences to promote exports by these enterprises?

Answer. U.S. & Foreign Commercial Service programs do not give preference to minority, rural and women-owned businesses. Rather, US&FCS has identified these groups as being under-served by export promotion programs but having a high export potential. While small women, minority, and rural businesses are the fastest growing segment of the economy, these firms export at half the rate of other firms. US&FCS programs identify and recruit these under-served U.S. export groups and expose them to the same export promotion services that are used by more traditional U.S. exporters. Although some US&FCS programs are tailored to different subgroups of the US&FCS clientbase, all US&FCS programs are available for all U.S. companies that are eligible in terms of U.S. export potential.

US&FCS programs targeted at under-served businesses: Introduce under-served U.S. firms to U.S. & Foreign Commercial Service programs; Train new-to-export firms, improving their ability to successfully sell their products in the international market; Promote new, technology-based services and programs aimed at providing information and access to international markets; Organize trade missions and other export assistance programs and services; Offer logistical support and encourage participation in global trade events; Help create partner networks.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN MCCAIN
TO KATHLEEN B. COOPER

Question. How does the Department plan to ensure an accurate census count, especially in those locations where there have been documented undercounts in the past?

Answer. Census 2000 was the most successful decennial census ever along a number of important dimensions. Most critically, the current measures of accuracy for Census 2000 indicate that the net national undercount was reduced from the 1990 rate of 1.61 to 1.18 percent in 2000. This reduction is substantial and reflects high census quality.

More important than the overall totals, the reduction in the undercount for various population groups showed great progress. The estimated undercount rate for non-Hispanic blacks was cut to less than half of its 1990 level—from 4.57 percent in 1990 to 2.17 percent in 2000; the estimated undercount rate for Hispanics fell from 4.99 percent to 2.85 percent. The undercount rate for American Indians and Alaska Natives on Reservations in Census 2000 was 4.74 percent, a reduction from 12.22 percent in 1990. For American Indians and Alaska Natives off Reservations, Native Hawaiians and Other Pacific Islanders, and non-Hispanic Asians, Census 2000 showed undercount rates of 3.28 percent, 4.60 percent, and 0.96 percent, respectively. The undercount rate for renters dropped from 4.51 percent to 2.75 percent and for children from 3.18 percent to 1.54 percent.

While Census 2000 showed enormous improvement from the 1990 level, the Census Bureau is taking additional steps that may improve the accuracy of census data for future uses. Municipalities will have the opportunity to question the Census 2000 housing unit counts and their group quarters population counts. The U.S. Census Bureau is currently developing the Count Question Resolution (CQR) program, which includes the procedures and guidelines for receiving, processing, and responding to questions regarding officially released counts. The Census Bureau will review challenges filed according to the procedures defined for the CQR program. Action will be taken to correct detected geographic errors regarding boundaries and geocoding. Action will also be taken in cases where processing errors were made by the Census Bureau that may have resulted in either the incorrect inclusion or exclusion of housing units or group quarters population data that were identified and collected during Census 2000 operations.

The Census Bureau also conducted an Accuracy and Coverage Evaluation (ACE) to determine whether a statistical adjustment would improve the accuracy of the data required for redistricting. After carefully examining data from the ACE, the Census Bureau recommended that the unadjusted data were the best available data for this purpose, because this examination produced serious reservations regarding the quality and accuracy of the adjusted data. Nonetheless, the Census Bureau is conducting even further analysis of the ACE over the summer and will be releasing a recommendation in the fall regarding whether or not the ACE can improve the accuracy of Census 2000 data for future uses.

The Department of Commerce awaits the Census Bureau's report, and I can assure you that we will give all due consideration to their conclusions when they are presented to us. In the meantime, we are deeply encouraged by the results achieved by the dedicated professionals at the Census Bureau, whose goal was achieved—to conduct the most successful and accurate census in our nation's history.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO BRUCE P. MEHLMAN

Question 1. The Office of Technology Policy works with industry to identify, assess and recommend policies to promote global competitiveness. Given your experience in the technology industry, what would you say are the greatest challenges for the American technology industry over the next few years in terms of global competitiveness?

Answer. The American technology industry faces several challenges over the next years in its quest to maintain its global leadership. In my opinion, the greatest challenges in terms of global competitiveness include:

- Opening foreign markets to U.S. high tech products and reducing barriers to trade;
- Protecting U.S. intellectual property rights overseas;
- Ensuring American workers and students have the information and quantitative skills needed in a knowledge-based economy;
- Competing with foreign companies that are increasingly spending more on R&D, improving their technological capabilities, and enjoying growing support from foreign governments (through research and technical assistance);
- Ensuring adequate domestic infrastructures, both physical (e.g. energy and broadband) and policy (e.g. regulatory and legal systems that keep pace with technological change).

Question 2. What are the major barriers to the commercialization of federal technologies by private industry?

Answer. There are several barriers to commercialization of federal technologies by private industry. The Office of Technology Policy recently released a report to Congress detailing many of these barriers, and I look forward to learning more about this important subject and how policy makers might address it. Some of the barriers to the commercialization of federal technologies include:

- Matching companies seeking assistance with the right federal labs. Companies still have difficulties finding the right federal laboratory. While individual agencies and the Federal Laboratory Consortium have put considerable effort into creating web sites and printed information and conducting outreach to make their capabilities better-known to industry, it remains difficult for businesses unfamiliar with the federal laboratory system to find the labs with the expertise or technologies available to address a specific problem.
- Handling intellectual property issues generated by or used in cooperative research. Several areas of intellectual property management present a continuing challenge, including procedures related to exclusive licensing, treatment of pre-existing inventions brought into Cooperative Research and Development Agreements (CRADAs), confidential treatment of data within a CRADA, and government receipt of licenses to their partners' CRADA inventions.
- Financing further development of federal technologies. Many federal technologies require substantial investments to make them commercially viable, either because they have not yet been developed beyond early-stage basic research or because they were developed for specific federal missions.
- Negotiating CRADAs. Some companies have difficulty in negotiating CRADAs and patent license agreements with federal agencies due to concerns over exclusive licensing arrangements, treatment of pre-existing inventions, data confidentiality, and liability and indemnification terms.

Question 3. Over the past few years, there has been a lot of discussion and attention given to Information Technologies. Given the government investments in large

science and technology projects such as the International Space Station, we continue to be troubled by challenges in other technology areas such as aerospace, energy and health. How will you work to ensure a balanced approach is used in technology policy decisions?

Answer. The Office of Technology Policy attempts to reach out to all industries to identify emerging policy issues and contribute to their resolution, not just information technology companies. If confirmed, I would hope to address the important technology policy issues that face both providers of new technologies and users of technology in established industries. Likewise, I would hope to work with a wide array of business sectors, to meet a representative cross-section of technology users and producers, and to ensure a balanced approach is used in policy analyses and recommendations.

Question 4. There has been a lot of discussion about doubling the U.S. investment in Research & Development over the next few years. Do you believe that the United States is in need of an overall Research & Development strategic plan to ensure that we are prepared to make these future investments?

Answer. Certainly the Federal Government needs to approach its investments in R&D strategically. federal dollars should be focused on specific federal missions (such as defending the nation or curing infectious diseases) and higher-risk, longer-term research (as opposed to commercial applications) that industry has less incentive to undertake.

At the same time the Federal Government must be careful not to presume to know better than the markets where private investment dollars should flow. Policy makers may find it more valuable to use strategic principles to guide investments of federal dollars, rather than a comprehensive plan, to ensure the maximum flexibility and responsiveness to changes in technology, markets and federal needs.

Question 5. The current uncertainty in our economic situation has led to reduced corporate investment in Research & Development. What will the Administration do to maintain an adequate amount of Research & Development to ensure America's continued competitive edge?

Answer. Having not been confirmed or appointed, I cannot speak for the Administration and what steps it will take to ensure adequate R&D. In addition, it is not clear that corporations have reduced their investments in research & development. For the year 2000, the NSF estimates that industry invested \$181 billion in R&D. That is an increase of almost 11% and puts the total U.S. R&D portfolio at an estimated \$265 billion, \$21 billion above 1999. Further, R&D as a percentage of U.S. GDP has grown from 2.58% (in 1999) to 2.66% (in 2000) despite more than a trillion dollar increase in the size the U.S. GDP.

In my personal opinion, the Administration has already proposed several appropriate steps to ensure America's continued competitive R&D edge. First, the tax plan submitted by the President recommends permanent extension of the research and experimentation tax credit. Permanent extension will provide corporate planners the certainty needed to encourage maximum private investment. In addition, the Administration has proposed an R&D program that will increase federal commitment to R&D to a record high of \$95 billion, including a doubled commitment to medical research. And the Administration has indicated its intention to facilitate a business environment that supports and encourages innovation.

As for determining the adequacy of U.S. R&D, there is a real need for better understanding of the quantity and quality of R&D investment in the U.S. Congress and the Administration will need to better measure and understand the nature of research being performed by the private and public sectors, to ensure federal dollars are most wisely invested.

Question 6. One of the major complaints of U.S. industry is the shortage of American students graduating with science, math and engineering degrees. In addition, there have been complaints that American students who graduate with these degrees still lack basic skills in these fields. What role can the Office of Technology Policy play in working with industry to resolve this problem?

Answer. The Office of Technology Policy has been working with industry to analyze the question of technical workforce development and help promote math and science education. And OTP has a constructive role to play going forward. If confirmed, I look forward to leading dedicated career professionals on new and ongoing initiatives including:

- Preparing IT Workforce Analyses: OTP published a study of IT workforce trends ("Digital Work Force: Building Infotech Skills at the Speed of Innovation") in 1999 and will conduct a new analysis of IT worker training over the next year;
- Listening to Industry: OTP can reach out to industry on workforce issues and other policy matters to better understand their needs and ensure their voice is heard and appreciated by policy makers;

- Leading the GetTech program: GetTech is a public-private partnership working to inspire teens to choose and prepare for technical careers. The partnership has developed a public service campaign and website to provide information on technology careers. OTP is the government lead in this effort.

Question 7. According to numbers released last month, 163 million Americans (58 percent of the U.S. population) have Internet access at home, up 33 percent from 123 million Americans a year earlier. High speed Internet access nearly doubled in one year from 7 percent to 13 percent. While these numbers show tremendous growth in just one year, it is important to ensure that the enormous benefits of advanced telecommunications services are accessible to all people, regardless of where they live, what they do, or how much they earn. What can we do to ensure continued growth of Internet access and the deployment of high speed Internet access to rural America?

Answer. The Internet is changing the way we work, live, play and learn. The numbers of Americans going online has exploded over 300% in 4 years, from an estimated 51 million in June 1997 to roughly 163 million today. Our online population will continue to expand as more services and applications become available.

The continued growth of Internet access, and the deployment of broadband services in rural America, is important to all of our citizens and to the health of our economy.

To ensure continued growth of Internet access, policy makers should first do no harm. The growth of the Internet has occurred in a largely deregulated competitive environment. Any new proposed regulation or taxation should be scrutinized carefully, and with a skeptical eye. In many ways, Internet growth would be best served by doing more of what we are doing now—imposing a minimal regulatory burden, extending the moratorium on Internet taxation and banning taxes on Internet access.

With regard to broadband access in rural America, I know from personal experience that the private sector wants to bring broadband to rural markets. And I believe that there is a strong rural market for those services.

New wireless and satellite technologies are lowering the costs of bringing broadband to rural areas, and thereby will make it ever easier to provide broadband service to rural markets. Policymakers must make sure that spectrum is available for those services, and that undue regulation does not impede their rollout. To the extent policymakers determine that rural broadband deployment should be further accelerated, they may consider other options as well.

Question 8. Your written statement states that the private sector plays the dominant role in the process of developing new technology and bringing it to market. Can you elaborate on this point given the number of technologies, including the Internet, that are the result of federally-funded research?

Answer. While the Federal Government's research investments have clearly played a critical role in promoting America's leadership in high-technology (and other industries), the private sector plays the dominant role in turning new technologies into products and services and bringing them to market.

The U.S. private sector has increasingly dominated U.S. R&D, its R&D investments surpassing the Federal Government's in 1980 and now accounting for more than two-thirds of the total U.S. R&D investment. While Federal Government investments in R&D remain critical for future innovation, federal dollars are generally targeted at specific federal missions (such as defense needs) and higher-risk, longer-term basic research (as opposed to commercial applications) that industry has little incentive to undertake. The federal research establishment is not as focused on commercial markets nor should it be. And only the private sector has the wherewithal to make the necessary investments in labor, manufacturing and product development to successfully translate innovations into viable commercial products.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO DONNA R. MCLEAN

Question 1. As you may be aware, I prefer to eliminate restraints on U.S. businesses' competitiveness rather than provide subsidies that remove incentives for businesses to find new ways to operate and compete in the world market. I continue to believe that U.S. companies are struggling to compete in the international maritime industry in part because of the prevalence of subsidies by other flag-states. What are your views on maritime subsidies?

Answer. While I am new to the maritime area, the evidence indicates that foreign government subsidies to national industries and restrictions and barriers to free trade have hurt U.S. companies in global markets. It appears that U.S. maritime

companies encounter a variety of such foreign measures that affect their operations, including, for example, subsidies that are particularly prevalent in the shipbuilding sector and restrictions that foreign governments impose on intermodal operations of foreign carriers. I know that the Department of Transportation's leadership is opposed to such measures, which distort or interfere with the free market, and it seeks to eliminate them wherever possible.

Question 2. Please explain the rationale behind the President's proposal to zero out funding for the Title XI maritime loan guarantee program?

Answer. My understanding is that the President's Budget Request seeks no new funding for Maritime Guaranteed Loan Subsidy Program as a step, not only in this area but in others as well, to trim corporate subsidies in the federal budget in favor of more compelling needs.

Question 3. Are you aware of the recent report published by private maritime interests, which argues that the federal Title XI maritime loan guarantee program has been a net revenue raiser for the Federal Government? I am concerned the findings in the report have not been subjected to any outside independent analysis. If confirmed, will you commit to providing the Committee with a full accounting of the total cost and revenues associated with this program?

Answer. Yes, I am aware of the report. If confirmed, I will be pleased to provide the Committee with a full accounting of the total costs and revenues associated with the Title XI program.

Question 4. While AIR-21 significantly increased funding for the Federal Aviation Administration, much of the Operations' budget seems to have been consumed by pay raises for air traffic controllers. I have been contacted by several FAA safety inspectors who say their ability to do their jobs has been seriously affected by budget cuts in areas such as training and travel. What is being done to ensure that safety inspectors are receiving adequate resources?

Answer. In fiscal year (FY) 2000, the FAA had a budgetary shortfall in the Operations account of \$184 million. This necessitated reductions in all areas, including funds for both travel and training for Flight Standards inspectors.

With increased funding in FY 2001, the agency was able to increase the levels for travel and training and restore these reductions. When measured from FY 2000 to 2001, the FAA will increase Flight Standards inspector training by 15.5 million (65 percent). For travel, this increase is \$8.2 million (46 percent).

These higher levels are maintained in the President's FY 2002 budget request.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN
TO SEAN B. O'HOLLAREN

Question 1. What is your view regarding the Administrations preparedness to fulfill the cross-border traffic requirements of NAFTA and, more important, what is the Department doing to prepare for the anticipated opening of the border by the end of this year? Will the Administration submit a proposal to Congress to authorize additional funding for border-related activities or seek other related authority?

Answer. In my View, DOT will be prepared to comply with our NAFTA agreement while maintaining the highest possible levels of transport safety at our borders and across the nation. DOT has focused on the cross-border provisions at the southern border, fully consistent with the recent final decision by a NAFTA arbitration panel. DOT will work to ensure that all truck and bus drivers along with their vehicles, regardless of country of origin, comply with the federal Motor Carrier Safety Regulations.

President Bush has indicated his commitment to fulfilling the terms of the NAFTA Agreement on access of commercial vehicles from Mexico to the full U.S. market and on Mexican investment in U.S. trucking companies. On March 22, DOT had discussions with Mexican transportation and trade officials on implementation of these provisions. The meeting went well, and it is my understanding that the Department intends to fulfill the NAFTA access provisions by the end of the year.

At the beginning of the month, DOT published three proposed regulations, two of which govern the application process for Mexican motor carriers that wish to operate in the U.S. These proposed rules identify information requirements that will address specific elements of a carrier's safety management system. Additionally, the rules intend to provide a basis for our federal Motor Carrier Safety Administration to determine the ability of an applicant to be in compliance with our safety standards prior to receiving operating authority. The third proposal addresses the process by which DOT will review the safety records of these carriers during the first 18 months of their U.S. operations.

The fiscal year 2002 Budget Request recently submitted to Congress by President Bush contained a proposal to authorize additional funding for border-related activities and other related authority. To ensure that opening the U.S./Mexico border is carried out with the utmost attention paid to motor carrier safety, close to \$100 million (\$88 million over fiscal year 2001) is requested in fiscal year 2002 to support motor carrier safety at the southern border. This has three components:

- \$17.5 million (\$13.9 million above fiscal year 2001) for federal enforcement operations and safety audits of Mexican Carriers at the southern border. This funding will place 80 additional federal commercial motor vehicle enforcement personnel at the border, for a total federal presence of 140 enforcement staff.
- \$26 million (\$18 million above fiscal year 2001) for grants to states for motor carrier inspection and enforcement programs at the border. (This includes \$18 million from FMCSA Revenue Aligned Budget Authority (RABA) and \$8 million in Motor Carrier Safety Assistance Program (MCSAP) grants.)
- \$56.3 million in new funding (from federal-Aid Highways RABA) for southern border safety inspection facilities construction. Funding will be based on need, with states submitting proposals to qualify for federal funding. \$2.3 million of this is for federal construction of areas to park unsafe vehicles placed out-of-service at the border.

With the augmented safety information and monitoring that would be available under the proposed rules, the added funds for both staffing and infrastructure at the border in addition to the continuing efforts to engage with the Department's Mexican counterparts, we should be able to implement NAFTA's provisions with full confidence by year's end that cross-border operations meet our highest safety expectations.

Question 2. Over the last several years, it has become apparent that it is difficult at best to get reports and regulations cleared for release by DOT. Reports to Congress are regularly late and regulations are often held up for months as they make their way through the various agencies within DOT. Apparently even DOT agencies that have no role in the development, oversight or enforcement of regulations are routinely required to review and sign off on regulations and reports before clearance. For example, this Committee is currently awaiting a report on the Department's plan for disposal of obsolete vessels that was due on April 30th. While no time estimate has been given as to when the report may actually be released, the Committee has been made aware that it is being held up in "clearance." What action would you take to improve interagency communication and cooperation within DOT and to streamline the review process for regulations and reports? What will you do to help ensure that reports to Congress are completed and submitted in a timely manner?

Answer. The timeliness of congressionally mandated reports from the Department is a key area of focus by Secretary Mineta. While the Secretary shares your frustration in the tardiness of some reports, efforts are under way to improve DOT's record in this area. Much of what the Department is working on now is carry over from the previous administration. While we are currently assessing the status of all reports due to Congress from the Department, it can be expected that some nearly completed reports may be delayed in order to accurately reflect the views of Secretary Mineta. If confirmed, I will make every effort to ensure that reports to Congress are completed and submitted in a timely manner by regularly requesting a progress report from the mode tasked with the report. If this is done well in advance of the due date of a mandated report, adequate time will exist for the Secretary to intervene with whatever action is needed to ensure that the report is submitted to Congress on or before the date it is due.

Secretary Mineta's frustration with delinquent reports from the Department while serving as a Member of Congress and my own experience as a committee staff member have demonstrated the need for accurate, timely information as a key component for decisionmaking by Congress. Additionally, the Deputy Secretary has made timely regulatory action by the Department and its modes a very high priority, in line with recent recommendations of the Inspector General. My understanding is that DOT is constantly trying to improve its rulemaking process, and the current Administration will reemphasize the need for meaningful change. The DOT Inspector General (IG) studied delay in DOT rulemaking (report issued July 20, 2000), and its recommendations form the basis for improved interagency communication and cooperation. Interestingly, the report did not find the OST-managed review process to be a problem. The IG did find areas where there were opportunities for improving efficiency and effectiveness and made several recommendations, all of which the Department has implemented or is implementing. It is my understanding that other DOT agencies are not necessarily asked to routinely review the rulemaking actions of others modes within DOT unless the rulemaking could directly affect programs

within their immediate jurisdiction. For example, FRA may be asked to review an FMCSA rulemaking on railroad crossings and NHTSA may review a FAA rulemaking on child seats.

With respect to the Department's report on the plan for disposal of obsolete vessels, I have been informed that it will be submitted to the Committee the week of May 21, 2002.

Question 3. Two years ago, federal Aviation Administrator Garvey established a committee to provide input to the FAA on how fractional ownership programs for general aviation aircraft should be regulated. Last year, that committee submitted a draft rulemaking to the FAA. It is my understanding that in February of this year, the FAA completed its internal review and forwarded the draft rulemaking to the Department of Transportation for review. What is the status of the Department of Transportation's review of the proposed rulemaking on fractional ownership of aircraft?

Answer. It is my understanding that the review by the Office of the Secretary should be completed shortly. With the incredible growth of fractional aircraft ownership programs, there has been a growing concern over accountability and responsibility and the appropriate regulatory structure. It is also my understanding that the FAA has focused on: defining fractional ownership and their various participants; clearly allocating responsibility and authority for safety of flight operations; and, ensuring that fractional ownership operations maintain a high level of safety equivalent to that of Part 135 air carrier operators. In this area as in others, I believe the Bush Administration can and will bring new focus on processing its rulemakings and it's reporting to Congress on schedule. If confirmed, I commit to do my part.

