

**NOMINATIONS OF DAVID W. OGDEN, OF VIR-
GINIA; AND ROBERT RABEN, OF FLORIDA,
EACH TO BE ASSISTANT ATTORNEY GENERAL
FOR THE DEPARTMENT OF JUSTICE**

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF DAVID W. OGDEN AND ROBERT RABEN, EACH
TO BE ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

—
AUGUST 4, 1999
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NOMINATIONS OF DAVID W. OGDEN, OF VIRGINIA; AND ROBERT RABEN, OF FLORIDA, EACH TO BE ASSISTANT ATTORNEY GENERAL FOR THE DEPARTMENT OF JUSTICE

WEDNESDAY, AUGUST 4, 1999

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

The committee met, pursuant to notice, at 8:38 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Specter, Sessions, and Schumer.

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

The CHAIRMAN. As we begin today's nominations hearing, and commence consideration of two nominees seeking leadership positions within the Department of Justice, I must confess my deep disappointment and concern over the state of affairs at the Department.

Earlier this week, I stated publicly that in my 23 years in the Senate, I had never seen a more politicized Justice Department. This statement is not a hyperbole, nor is it an overly dramatic phrasing of a less-severe situation. It is, rather, my candid assessment of a profoundly disturbing set of situations.

A country's commitment to dispensing justice is best measured by its dedication to the rule of law, and there is no more accurate barometer of this dedication than how a country's top officials police themselves.

Despite a historical legacy replete with examples of integrity, our Department of Justice now seems mired in an ethical quagmire. For more than 4 years now, Federal law enforcement and committees of Congress have been confronted with allegations of illegal campaign contributions from a foreign government to the incumbent President's campaign for reelection. These contributions came at the same time the administration was making a wide range of unusual concessions to that same foreign government on trade, human rights, and technology transfer matters.

More recently, this situation has grown even more serious as these allegations have been compounded with other charges, contained in a unanimous, bipartisan congressional report. That report details how the administration, when told of the possibility of a dangerous breach of national security by the same foreign govern-

ment that was involved in the illicit campaign activities, did not take adequate steps to investigate or halt such activities, despite the fact that these matters concern some of our most closely guarded nuclear secrets.

Indeed, we have learned relatively recently that during the summer of 1997, the Justice Department refused the FBI's request that the Department seek a Court's authorization for wiretap authority to further investigate evidence of espionage at nuclear laboratories, a decision, I might add, that Members of Congress from both parties have found astonishing.

Simultaneous with this decision, the Department has been quietly setting about to terminate investigations and prosecutions of those suspects and criminals who violated our campaign finance laws. Only this past week, news reports appeared suggesting that prosecutors have told reporters that they are "disgruntled" with the way in which the Justice Department political appointees have "botched" the campaign finance probe.

There is good reason for such frustration. Consider some of the specific, irrefutable facts that undermine the Department's heated denial of wrongdoing.

No. 1, next week, the Department intends to ask a Federal District judge in Los Angeles to approve a plea agreement for John Huang, a major political fundraiser with close White House ties who raised some \$1.6 million that the Democratic Party was forced to return. Remarkably, the Justice Department's plea deal focuses only on a pair of minor illegal donation charges, and the Department will recommend a sentence for Mr. Huang, consisting of only a year's probation and a small fine, that would appear so lenient as to raise serious ethical questions concerning the Department's law enforcement efforts.

No. 2, the Justice Department has also drafted a plea agreement that would terminate further criminal proceedings against a reported friend of the President named Yah Lin "Charlie" Trie, who raised more than \$1.3 million that had to be returned. Trie has been permitted to plead guilty to one count of making false statements to the Federal Election Commission, a charge that carries with it a maximum sentence of up to 6 years in prison. Yet, disturbingly, prosecutors have recommended a penalty of only 3 years' probation.

These settlements follow on the heels of generous plea agreements involving other key figures in the campaign finance investigation, such as Johnny Chung, who entered a plea bargain that resulted in a minimal sentence of only probation and community service.

Ultimately, I fear that these plea agreements and proposed sentences, if entered, will constitute the last, sad, tawdry arrangement in an investigation that has already permitted numerous witnesses to flee the country and in which numerous other witnesses have taken the fifth amendment, and one cannot help but contrast the relative dispatch with which these plea agreements were entered, with the Department's reported "active" consideration of other long-standing investigations into Representative Dan Burton and Haley Barbour.

Incredibly, evidence has now emerged that the courts may have acquiesced in some of these highly suspect arrangements, and I cite the Associated Press article on Judge Sent Hubbell, *Trie* cases to Clinton employees on July 31, of this year. There is a deeply troubling report that the chief judge of the District of Columbia District Court bypassed that court's random case assignment procedures by taking the unusual step of handpicking those judges to whom the *Trie* case and also the Webster Hubbell case were assigned. This account is disturbing because each such case was assigned to judges nominated during this current administration, notwithstanding that the allegations contained in each case implicated the administration. If these reports are true, even if deviations from the district court's random case assignment procedures are technically permitted by local rule, I share the concern that has been expressed by other judges on the court that these assignments will damage the public's confidence that these cases were impartially adjudicated.

Now, having said that, I have no reason to believe that the judge who made the assignments did anything intentionally wrong because my experience has been only of decency and dedication with regard to this judge.

The Department's prosecutorial efforts in these campaign finance matters are too superficial in investigation and too lenient in punishment to give the public confidence that our campaign finance laws, which were designed to protect our democratic election process, are in fact being enforced. Sadly, when such laws go unenforced and the public takes note that the beneficiary of illegal contributions goes unpunished, the likely perception is that justice is being dispensed unfairly, with the powerful protected and others not, and that, of course, is no justice at all.

The questions that flow from this administration's poor handling of these serious allegations remind many of us why we so fervently called upon the Attorney General to appoint an independent counsel for these matters over the past number of years. Faced now with a public perception that this administration is more interested in protecting itself than in enforcing the country's campaign finance laws, we cannot help but question the Attorney General's stubborn refusal on several different occasions to appoint an independent counsel, notwithstanding that the available evidence clearly and credibly raised the possibility of serious crimes by high-level Government officials.

As you know, it has been my view throughout that as a matter of law, such an appointment was mandated. Furthermore, the Attorney General had before her the strongest possible recommendations for such action in the form of a careful, thorough, but urgently worded memorandum from the Director of the FBI and in the form of personal counsel from the very prosecutor, Charles LaBella, she placed in charge of the investigation.

Had such an independent counsel appointment been made by the Attorney General, public confidence most assuredly would have been maintained in the handling of these campaign finance cases, no matter the ultimate disposition. This is because an independent counsel would have removed the conflict of interest caused by the participation of the Attorney General in a criminal investigation

and prosecution in which she was closely identified with an elected official who was "substantially involved in the conduct that is the subject of the investigation."

Incidentally, if this standard sounds familiar, it is because I have just quoted from the Department of Justice's own regulations governing conflicts of interest, and in light of the publicly announced conclusions of both Director Freeh and Mr. LaBella that the Attorney General has a political conflict of interest with the President in the campaign finance matter, and given the Attorney General's own statement to Congress that there is an inherent conflict of interest whenever an Attorney General is called upon to investigate a President, it strikes me as all but impossible that the Attorney General's involvement could be defended as not implicating an appearance of conflict, let alone an actual conflict.

Sadly, the Attorney General's obstinacy in refusing an independent counsel, and her consequent engagement in so conspicuous a conflict of interest in these campaign finance investigations, sadly seems to have taken its toll. Consider the loss of public confidence occasioned by some of the recent actions of this Department.

The Justice Department failed to thoroughly investigate information it had about the transfer of \$300,000 in a Citibank account by a Chinese military officer and former aerospace executive to Johnny Chung, another major fundraiser who entered a plea bargain in exchange for a minimal sentence.

A former Federal prosecutor in California was ordered to halt a probe that had begun in 1996 into fundraising improprieties involving the Vice President.

In 1997, the Justice Department ordered the immediate return to Washington of an FBI agent and prosecutor sent to Little Rock, AR, to stop documents from being shredded by Mr. Trie's secretary.

The Department's own Inspector General recently issued a report concluding that the Department's campaign finance investigation was conducted ineptly.

The Department in 1997 rejected the FBI's request that the Department ask a court for wiretap permission to investigate Wen Ho Lee, the prime suspect for espionage of our country's most coveted nuclear secrets to the same foreign government implicated in the campaign finance scandal.

With all this as merely a partial background to the Department's troubling actions, let me move now to my most pressing concern. As Chairman of the Senate Judiciary Committee, it is my column obligation to exercise oversight over the Department of Justice and thereby provide an indispensable check by a separate branch of Government into the executive power's investigation and prosecution of criminal violations.

To this end, my office has been conducting witness interviews, under oath, of those Department and FBI officials involved in the Chinese espionage investigation, with the aim of putting together a factual record that will shed some light on the Department's actions in this matter.

With respect to the campaign finance issues, I have sent a letter, together with Senator Specter, that explains that the public has a right to know much of the information contained in a transcript of a hearing at which Attorney General Reno appeared before the Ju-

diciary Committee in early June. Yet, the Department appears to have dug in its heels seeking to keep substantial portions, which in my view do not appear to implicate national security, redacted and away from public scrutiny.

Also, several of my colleagues and I have asked the Department to expeditiously deliver to this committee all documents “pertaining to * * * allegations against, cooperation from and plea bargains with” those persons suspected of campaign finance violations. Although the Department 2 days ago made an initial delivery of documents that I had asked for, the real test of the Department’s willingness to comply with this Committee’s oversight responsibilities remains to be seen.

But I have to say, the Department is deeply mistaken if it believes that it can elude compliance with the request for declassification of the Attorney General’s hearing transcript, or with this committee’s document request, with a gambit that is no more sophisticated than a child’s game of hide-and-seek. The recent book *Shadow* contains an interesting insight into something I have empirically confirmed as being a constant truth under this administration, that it employs a strategy, as author Bob Woodward put it,

Never join the issue, never have an all-out fight with * * * the congressional committees. Never say “no” to requests for documents or testimony. Always say, “We’ll get back to you, we’ll get you what we can. Let’s talk about this, Let’s meet, Let’s negotiate.” Always keep something on the table. Avoid confrontation. Write conciliatory letters. The reason for the strategy was also simple: if there was no confrontation, there was no news, * * * The less scandal news, the better for the president and his reelection.

Now, it is my expectation that this committee will receive the Department’s full cooperation as it takes steps to gain an understanding into the Department’s investigation and prosecutorial decisions concerning the corruption of the law governing our country’s democratic election process. Such oversight is essential if the public is ever to gain an understanding into why the Department, notwithstanding the plain conflicts of interest, has embarked upon a course that is so routinely and properly criticized as lax in its law enforcement efforts, and that is so widely perceived as protecting this administration from investigation and prosecution at all costs.

Let me make very clear that I do not intend to hold up the two nominees before us today because I have larger concerns with the Department, but I do have questions, and many of them, that must be asked and properly answered before I can cast any vote to confirm high-level officials to this Department of Justice.

Now, I took a little longer than I normally do, but I felt like I had to make this statement in light of all the things that have happened and in light of some of my distaste for what has happened. So I apologize to my distinguished colleagues from the House of Representatives for having done so, but I felt like I had to do that this morning.

I will turn to Senator Schumer who represents the Minority.

Senator SCHUMER. Thank you, Mr. Chairman. I have heard your statement. I would like for you to tell us how you really feel about this.

The CHAIRMAN. Well, I was quite light this morning, I have to admit.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator SCHUMER. I guess I will just make a couple of quick points in response to it. I do not think it can go completely unanswered, although I know this is a day for the nominees and their families are here and our witnesses have been waiting. So I will be brief.

I guess, first, I would say, without answering all the specifics, I think it is a bit of a stretch to tie the Wen Ho Lee investigation to previous talk about campaign contributions from China and all of that.

I mean, I have talked to Secretary Richardson, I have talked to law enforcement people, and if you believe them—and I do not think there is anything nefarious going on—they are trying to build a case. You need evidence, and when things are done, particularly on computers, it is awfully hard to get the evidence. So I would certainly take strong difference with any implication that the investigation of Win Ho Lee is in any way tied to the previous investigations which have gone on a long time about campaign finance reform, whatever we think of them, and I think it is a wild stretch to make or imply that analogy. And I would strongly make that point to the chairman.

Second, I guess I would say I have been here now—this is my 19th year in this town, and it has become sport already. When there is a Democratic administration, Republicans are quick to find scintilla of scandal in everything that happens. When there is a Republican administration, Democrats do the same. We have all been through this.

I suppose looking at it from 20,000 feet above, it is a good process overall. It keeps each administration honest, but I think we have to be careful that it does not go overboard. I think what the American people have been saying to us over the last several years, most recently in the last year or 2, get on with the business of making our lives better. If you are going to spend all your time just pointing fingers to each other, we are not going to improve the status of this country.

And I am glad that the chairman, despite his strong feelings, which I respect because I know he is a man of great integrity, has decided to move these fine nominees forward because they are good nominees. I know one of them in particular well, and it is their day. So I am glad that we are moving forward, despite our differences of opinion in regard to many of the things that the chairman said.

With that, I would ask unanimous consent. Senator Leahy is on the floor talking about the dairy compact, and I would ask unanimous consent that his statement be put into the record.

The CHAIRMAN. Without objection, we will put it in the record.
[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I am delighted to see us making progress with respect a few of the scores of nominees backlogged here in the Committee. Both of the nominations for Assistant Attorney General positions at the Department of Justice being considered today are important, both involve people who have dedicated their lives to public service and who can provide outstanding leadership at the Department. I trust that this hearing will be the start of progress toward Committee consideration and a favorable Senate vote on each of them. They have each been delayed too long and will likely now be pushed back beyond the August recess into September.

I also note that the nomination of another outstanding public servant to an Assistant Attorney General position who remains in limbo before this Committee. A Senate vote on that nomination has been delayed over two years. That is wrong. The nomination of Bill Lann Lee to be Assistant Attorney General to head the Civil Rights Division should be delayed no longer. It should be sent to the Senate for a fair vote on its merit.

Last month in communities all around the country and here at the United States Capitol, Asian Pacific Americans led all Americans in a demonstration of our commitment to one America, equal opportunity and equal justice under law by urging the Senate to vote on the nomination of Bill Lann Lee to head the Civil Rights Division at the Department of Justice.

These demonstrations marked the second anniversary of the initial nomination of Bill Lann Lee to the office of Assistant Attorney General for Civil Rights. I repeat today that it is past time to do the right thing, the honorable thing, and report this qualified nominee to the Senate so that the Senate may fulfill its constitutional duty under the advice and consent clause and vote on this nomination without further delay.

After Bill Lann Lee graduated from Yale and then Columbia Law School he could have spent his career in the comfort and affluence of any one of the nation's top law firms. He chose, instead, to spend his career on the front lines, helping to open the doors of opportunity to those who struggle in our society. His is an American story. The son of immigrants whose success can be celebrated by all Americans.

It appears that some on the Republican side want to hold the Lee nomination as a partisan trophy—to kill it through obstruction and delay rather than allowing the Senate to vote up or down on the nomination. This effort started with a letter from the former Speaker of the House, Newt Gingrich, to the Republican Majority Leader of the Senate in 1997. over the ensuing weekend progress toward confirmation of this nomination ground to a halt. Speaker Gingrich is gone but the disastrous consequence of his unjustified opposition to this nomination lingers. It is past time to put injustice to rest.

It is time for the Senate to vote on the nomination of Bill Lann Lee. Let the Senate vote on the confirmation of this good man. We need Bill Lann Lee's proven problem-solving abilities in these difficult times with hate crimes on the rise across the country. He is spearheading efforts against hate crimes, against modern slavery and for equal justice for all Americans.

I ask the Judiciary Committee again today, in the spirit of fairness, that the Committee recognize the 18-month stewardship of the Civil Rights Division of Bill Lann Lee, his qualifications, and his quiet dignity and strength and send his nomination to the full Senate so that the United States Senate may, at long last, vote on that nomination and, I hope, confirm this fine American to full rank as the Assistant Attorney General for Civil Rights.

When confirmed Bill Lann Lee will be the first Asian Pacific American to be appointed to head the Civil Rights Division in its storied history and the highest ranking Federal Executive officer of Asian Pacific American heritage in our 200-year history.

Civil Rights is about human dignity and opportunity. Bill Lann Lee ought to have an up or down confirmation vote on the Senate floor. The Senate should fulfill its constitutional duty under the advice and consent clause and vote on this nomination. He should no longer be forced to ride in the back on the nominations bus but be given the fair vote that he deserves.

I call on the Judiciary Committee and the Senate to bring this nomination to the floor for an up or down vote without obstruction or further delay so that the Senate may vote and we may confirm a dedicated public servant to lead the Civil Rights Division into the next century. Let the Senate move forward from the ceremonial commemorations earlier this year by doing what is right and voting on the nomination of Bill Lann Lee.

The Chairman has previously told this Committee that he was reviewing the actions of the Civil Rights Division over the last several months and that he had hoped to have concluded his review by Memorial Day. I hope the Committee will not serve to block this nomination any longer but will afford the Senate a fair opportunity to vote to confirm Bill Lann Lee without further delay or obstruction.

Senator SCHUMER. I yield back the rest of my time.

The CHAIRMAN. Senator Specter, who has taken a very special interest in this, has asked for a few moments. So I will turn to him, and then we will turn to our witnesses.

Senator SPECTER. Thank you very much, Mr. Chairman.

I think you have made an important statement, and I would like to make a comment or two and I will be brief. We have very distinguished Members here who are waiting to speak on the pending nominees.

The Congress has very substantial oversight responsibilities, and commensurate with that, very substantial oversight powers. I believe that there are many questions which have to be asked and answered. I believe you, Mr. Chairman, have posed many of those questions, and I would agree with Senator Schumer that we ought not draw conclusions as to Wen Ho Lee and campaign finance connections, but I believe that as to Wen Ho Lee and Peter Lee, there are very major questions as to how those prosecutions were handled. I think it is time, Mr. Chairman, that we put into the record the letter which you and I sent to Attorney General Reno on July 22, which poses those questions.

[The letter follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 22, 1999.

The Honorable JANET RENO,
Attorney General of the United States, U.S. Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: We are writing to request that you provide to the Judiciary Committee all documents in the Department's possession relating to (1) the Department's investigation of illegal activities in connection with the 1996 federal election campaigns, and (2) the Department's investigation of the transfer to China of information relating to the U.S. nuclear program. Your submission should include a copy of Charles La Bella's report recommending appointment of a campaign finance independent counsel. In addition, your submission should include, but not be limited to, any and all memoranda, reports, agreements, notes, correspondence, filings and other documents pertaining to:

1. The allegations against, cooperation from and plea bargains with Peter H. Lee.
2. The allegations against, cooperation from and plea bargains with Johnny Chung.
3. The allegations against, cooperation from and plea bargains with Charlie Trie.
4. The allegations against, cooperation from and plea bargains with John Huang.
5. The Department's reported decision not to prosecute Mr. Wen Ho Lee.
6. Any other individuals who were or still are under investigation by the Department for campaign finance violations.
7. Any other individuals who were or still are under investigation by the Department for passing nuclear technology to China.

These matters—for which we now seek documents—are at the heart of this Committee's oversight responsibilities. Indeed, it would be difficult to imagine more compelling cases for this Committee's oversight than those involving the Department's investigation and prosecutorial decisions concerning the possible theft of the nation's nuclear secrets and the possible violation of our campaign finance laws. The fulfillment of these oversight responsibilities is imperative to ensure that our national security and campaign finance interests are adequately protected, and to identify any shortcomings in current law or procedure so that any necessary corrective act can

be taken in a timely fashion. Moreover, the information we seek herein is imperative if this Committee is to meaningfully address various matters left outstanding following your appearances before this Committee on March 12, May 5 and June 8, 1999.

We would appreciate a response within ten days as to whether you intend to comply with this request, including a timetable for document production.

Thank you for your cooperation.

Sincerely,

ORRIN G. HATCH.

BOB SMITH.

JON KYL.

JEFF SESSIONS.

ARLEN SPECTER.

STROM THURMOND.

CHUCK GRASSLEY.

MIKE DEWINE.

Senator SPECTER. Campaign finance matters are separate, but they also require answers, and our letter specified not only Peter Lee and Wen Ho Lee, but also Johnny Chung and Charlie Trie and John Huang and all others who were under investigation. This ought to be done in the spirit of asking questions, looking for answers, not making charges unless the facts will support those charges.

When it comes to Attorney General Reno's testimony before this committee on June 8, we did not get a transcript until July 2. The transcript was so badly redacted that the pages were mostly black, with almost nothing remaining. I would like to put into the record, Mr. Chairman, letters which I sent to you on June 29, July 13, and July 26, which summarizes, without my going into any detail, but that this committee is prepared on a bipartisan basis, at least to some extent, to file a petition for a resolution with the full Senate for the disclosure of these matters under rule 29.

[The letters were not available at presstime.]

Senator SPECTER. We have delayed that in order to be doubly and trebly sure that the disclosures will not compromise sources and methods. They have been reviewed and re-reviewed, and we are having them reviewed for a third time at the present time because the affidavit of probable cause, which was submitted to the Justice Department in the Wen Ho Lee case, was powerful, and I say that with having had some experience in statements of probable cause for search warrants.

Then there is the issue of the selection of judges on sensitive cases in the U.S. District Court for the District of Columbia, and here again, only questions to be raised, but I have prepared legislation and I am glad to know that you, Mr. Chairman, will join with me to require random selection of judges.

In my days as a trial lawyer and as a prosecutor, a fairness is assured when the judges are taken off in a random way, not assigned in any specific way. It certainly has the appearance of raising a question. Whether there is any question really there remains to be seen by the facts, but this legislation proposal will set the stage for a Judiciary Committee hearing, although we have oversight responsibilities, and this does not go to the issue of judicial independence as to how judges decide cases. These are administrative matters which are subject to congressional control as we legislate it on a speedy trial rule and time limits on habeas corpus and many other administrative matters.

Finally, Mr. Chairman, I agree with you that these nominees ought to be processed promptly. I do not believe we should hold up the work of the Justice Department by delaying confirmations of nominees, but we have seen these questions, and this will be detailed later, where questions have been posed to the Attorney General on hearing after hearing after hearing after hearing and there is always a response that is a valid question, we will get back to you, and the Department of Justice and the Attorney General never do. I believe that this oversight matter is going to have to be pursued as they have been historically and we have to be prepared to be tenacious, and that involves subpoenas and that involves contempt citations and that involves taking these cases to the Court of Appeals, if not the Supreme Court, but the law is plain that we have the authority to discharge that important responsibility.

I am glad to hear you commented, Mr. Chairman, and again in a context of raising questions, no answers, let's find out. I hope and I think we will be joined in a bipartisan way, as we will on the resolution to compel disclosure of the Attorney General Reno deposition and these other matters which touch on national security.

When you get to campaign finance reform, it may be a little different, but I think we will even have bipartisan support there.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Specter.

Let me just say, with regard to Wen Ho Lee, I did not mean to imply that was part of the campaign finance problems, but it is a part of a problem, a series of problems that troubles me down there at the Department. Of course, nothing I said would indicate I was trying to bring that into that context, but one thing that bothers me about that is that the Department of Energy had obtained a waiver. So the FBI could have gone in and shut down that computer and got all of the materials from it and prevented the downloading that actually occurred, where our legacy codes were allegedly lost. Of course, they did not tell the FBI about it, and that is something that is really very troubling to me, but be that as it may, I have raised a lot of issues here this morning that I think have to be raised and I believe are importantly raised and honestly raised, and we will go from there.

We have some very distinguished witnesses with us this morning. I understand Senator Warner will be here, and we will see what happens here, but Senator Bob Graham is here from Florida to testify, and then we have the distinguished chairman of the Judiciary Committee in the House, a great friend of mine, who will then be next to testify, and then a great friend, the Ranking Minority Member in the Judiciary Committee in the House, Congressman John Conyers.

So we are delighted to have you with us. We are honored to have you all here.

We will start with you, Senator Graham. When Senator Warner comes, we will go to him next, if we can.

**STATEMENT OF HON. ROBERT GRAHAM, A U.S. SENATOR
FROM THE STATE OF FLORIDA**

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

In deference to the time of this committee and the distinguished visitors who have come from the House of Representatives on behalf of Mr. Robert Raben, I will file my statement for the record and speak briefly and extemporaneously.

Mr. Chairman, it is a great privilege to introduce Robert Raben for your consideration as the next Assistant Attorney General for Legislative Affairs. I would like to take this opportunity to introduce his family members who have joined him today, his wife, Carol, and daughter, Madeline—oh, they will be back. I am sorry. You have a treat in store for you—his parents, Mr. and Mrs. Murray Raben.

The CHAIRMAN. We are happy to welcome all of you to the hearing this morning.

Senator GRAHAM. Mr. Chairman, as you will hear in more detail from two distinguished Members of the House of Representatives who have worked closely with Robert Raben, he has demonstrated throughout his career a mastery of the law, a dedication to the principle of bipartisanship, an abiding commitment to public service, and a keen understanding of Congress, qualities which will be critical in the discharge of his new responsibilities.

I would like, Mr. Chairman, before going further, relative to Mr. Raben, to thank my good friend and colleague, Senator Mack, who has joined me in this recommendation and introduction. Unfortunately, because of other commitments, he could not be with us today, but I would like to ask if I could submit a statement from Senator Mack.

The CHAIRMAN. Without objection, we will place it in the record immediately following yours.

Senator GRAHAM. Mr. Chairman, that is an occasion to also thank you and the other members of the committee for your many courtesies to Senator Mack and myself relative to the rather large number of nominations; particularly for the Federal District Court, which have come from Florida and have been handled with such courtesy and dispatch by this committee.

The CHAIRMAN. Thank you, Senator. We appreciate the way both of you have worked together on these nominees, and that has helped greatly. We are very happy to help you.

Senator GRAHAM. I appreciate that, and I am confident that the same experience will be afforded to Mr. Raben in his current nomination.

I think one of the most impressive aspects of Mr. Raben's service, which has been primarily to various Democratic Members of the House of Representatives and to the Democratic Members of the House Judiciary Committee, has been the strong support that he has received from the chairman and the Republican Members of the committee. I would like to file for the record a letter to you, Mr. Chairman, dated April 26, signed by a dozen or more Members of the Judiciary Committee from the Republican side of the aisle, and just to quote one sentence from this letter,

Robert has demonstrated a superior ability to work in conjunction with the Majority, and where there are differences of opinion, disagree respectfully and constructively. We can think of no more important quality to have for the position of Assistant Attorney General for Legisla-

tive Affairs and hope you will give his confirmation great consideration.

That is a tribute to the qualities that Mr. Raben has demonstrated, and it will be extremely important as he carries out his duties as the Assistant Attorney General for Legislative Affairs.

[The letter follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY,
Washington, DC, April 26, 1999.

The Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We write to support the nomination by the President of Mr. Robert Raben to the position of Assistant Attorney General for Legislative Affairs and urge you to hold a hearing on his confirmation by the Senate.

Robert has served the House Committee on the Judiciary since 1995 as Democratic Counsel to the Subcommittee on the Constitution, then as Democratic Counsel to the Subcommittee on Courts and Intellectual Property. Throughout his tenure with the Judiciary Committee, Robert has distinguished himself with a commitment to his profession, and a dedication to serving the Members. We credit him for his strong intellectual curiosity and his ability to grasp the ramifications of complex legislative proposals while being ever mindful of the political landscape through which legislation must pass to become law.

As you know, especially on our Committees, the legislative process is not always the most harmonious of endeavors; yet Robert has demonstrated a superior ability to work in conjunction with the majority, and where there are differences of opinion, disagree respectfully and constructively. We can think of no more important quality to have for the position of Assistant Attorney General for Legislative Affairs and hope you will give his confirmation great consideration.

Sincerely,

HENRY J. HYDE,
Chairman, Committee on the
Judiciary.

HOWARD COBLE,
Chairman, Subcommittee on Courts and
Intellectual Property.

GEORGE GEKAS,
Chairman, Subcommittee on Commercial
and Administrative Law.

ASA HUTCHINSON,
Committee on the Judiciary.

JOE SCARBOROUGH,
Committee on the Judiciary.

LAMAR SMITH,
Chairman, Subcommittee on Immigration
and Claims.

JAMES E. ROGAN,
Committee on the Judiciary.

CHARLES CANADY,
Chairman, Subcommittee on the
Constitution.

BILL MCCOLLUM,
Chairman, Subcommittee on Crime.

BOB GOODLATTE,
Committee on the Judiciary.

MARY BONO,
Committee on the Judiciary.

ED PEASE,
Committee on the Judiciary.

ELTON GALLEGLY,
Committee on the Judiciary.

Senator GRAHAM. I might say he has been also recognized by the group such as the Fraternal Order of Police who have described him as an ideal choice for this important post, who has distinguished himself by his bipartisan approach to crafting policy.

Mr. Andrew Fois, who previously served in the position of Assistant Attorney General for Legislative Affairs, described Mr. Raben as an exceptional individual and well qualified for this position.

Mr. Chairman, we have before us a man whose full career has prepared him for this specific and important responsibility, serving both the Department of Justice and the U.S. Congress.

I would urge with my colleague, Senator Mack, that his nomination be given expeditious and positive consideration by this committee.

Thank you.

[The prepared statement of Senator Mack follows:]

PREPARED STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM THE
STATE OF FLORIDA

Mr. Chairman and members of the committee, it is my privilege to introduce Robert Raben for your consideration as the Assistant Attorney General for Legislative Affairs at the Department of Justice.

Mr. Raben has an impressive resume and a distinguished legal career. He began his academic studies at the University of Pennsylvania where he graduated with a B.S.E. degree from the Wharton School of Finance. Mr. Raben then earned his Juris Doctorate from the New York University School of Law.

Shortly after completing law school, he served as a judicial clerk for the Honorable James Robertson of the Supreme Court of Mississippi. Such clerkships are few and far between, and granted only to those who have mastered the theory of law during the course of their studies.

After his one-year clerkship was complete, Mr. Raben was again awarded a privilege that is earned by a very few. Only one year out of law school, Mr. Raben was invited to teach Professional Responsibility, Legal Writing, and Racism and the Law at the University of Miami School of Law.

After spending a year as a professor, Mr. Raben moved on to another aspect of his varied legal career. He joined a prominent Washington, D.C. law firm where he specialized in the practice of international trade, Federal lobbying, and white collar criminal defense.

In 1994, Mr. Raben came to Capitol Hill. He began on the Hill as counsel to the personal staff of Representative Barney Frank, and then served as counsel to the House Committee on the Judiciary, Subcommittee on the Constitution. Presently, Mr. Raben is counsel to the House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property. In a letter to the Judiciary Committee, Henry Hyde, Charles Canady, Howard Coble, and Bill McCollum stated that "we credit [Robert Raben] for his strong intellectual curiosity and his ability to grasp the ramifications of complex legislative proposals while being ever mindful of the political landscape through which legislation must pass to become law." That is a wonderful compliment from four esteemed members of the House of Representatives.

In addition to his work on Capitol Hill, Mr. Raben makes time in his busy schedule to teach courses as an adjunct professor at Georgetown University School of Law, and to serve as Treasurer on Hispanic Bar of the District of Columbia.

Mr. Raben's credentials are impeccable, and it is evident that he has achieved excellence in his career. He is respected by his peers and praised by his superiors.

Mr. Chairman, it has been my honor to introduce this fine and capable man to the Judiciary Committee this morning. Thank you.

The CHAIRMAN. Thank you, Senator. That is high praise, and, Mr. Raben, I am sure you feel honored to have a Senator speak for you.

We are very honored to have the chairman of the Judiciary Committee in the House, someone to whom I have always looked up and whom I considered, along with the Ranking Member, to be personal friends. So we are sorry it has taken so long to get to you, but we will turn the time over to you now, Chairman Hyde.

**STATEMENT OF HON. HENRY HYDE, A U.S. REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ILLINOIS**

Representative HYDE. Thank you very much, Senator Hatch, and my good friend, Chuck Schumer, and Senator Sessions. It is an honor and a privilege to be invited here to testify, and it is something I was eager to do because, frankly, when I heard that Robert Raben was in line for this important post of Assistant Attorney General for Legislative Affairs, I was really overjoyed.

In working with him since 1995, I found him to be an extraordinarily competent lawyer, a very fair-minded, straight-shooter, and someone who wants to be helpful. He is a liberal Democrat, but he understands how to service the committee of what our needs are and has been remarkably nonpartisan or bipartisan in helping us get information.

I cannot think of a tougher job than being liaison between the Justice Department and the Senate and House Judiciary Committees, but Mr. Raben welcomes the appointment, and I was just as pleased as I could be because he has been enormously helpful to us.

Our problem is somewhat similar to your problem, Senator Hatch, and that is getting answers from the Justice Department. I believe Rob Raben will help us get those answers. He has already been very helpful on certain legislation that I was interested in, and so it is a real privilege to endorse his nomination. He has an extraordinary academic background. He is an adjunct professor at Georgetown University School of Law. He taught at the University of Miami Law School. He has practiced with Arnold and Porter. He clerked for a Justice of the Supreme Court of Mississippi, and he is a graduate of the Wharton Business School of the University of Pennsylvania and the New York University School of Law. So he has an outstanding background.

He is a fine person. He is a straight arrow. He works in a nonpartisan way on this very difficult job, and I hope that he is speedily confirmed. I think things will be a lot better between the Justice Department and our committee.

Thank you.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Raben, that is certainly very, very good praise.

My friend, John Conyers.

STATEMENT OF HON. JOHN CONYERS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CONYERS. Good morning, Mr. Chairman, to my friend, Charles Schumer, Senator Sessions, and to my colleagues here at the table.

My job is easy because the description of Robert Raben comports exactly with the person that I know. The only difference is that I was less enthusiastic about the possibility of this appointment and him leaving us than perhaps they are.

The CHAIRMAN. I am starting to think you were one of those that gummed everything up for him, you know.

Representative CONYERS. I was hoping that he would get it, but I was not really over here working overtime because of his personal value to me and the staff members on the Democratic side. He is a person that fits into all of the many issues that come within the jurisdiction of the Judiciary Committee, and I think he is uniquely qualified for Assistant Attorney General for Legislative Affairs.

I have known him for many years, first as a legislative assistant to Barney Frank, then as Minority counsel for the Subcommittee on the Constitution, then as the Minority counsel for the Subcommittee on Courts and Intellectual Property, and then as counsel for the full Judiciary Committee. I have had a tremendous time

and an enjoyable one as well working out many of the very sticky problems, including constitutional ones, that come before us.

During all this time, Mr. Raben has consistently displayed a firm grasp of both the policy and political ramifications of the Committee's work. He has worked on a wide variety of complex issues that come before the Committee, on almost every one of our subcommittees, and is respected, as the testimony that has already come in on both sides of the aisle shows. His integrity is unquestioned, and on numerous occasions, he has helped Democrats and Republicans bridge gaps and build consensus on the often contentious matters that come before the Committee on the Judiciary, and this included the lobby reform bill enacted during the 104th Congress and last year's digital millennium copyright bill.

So I believe that all of these skills and experiences serve to recommend Mr. Raben for the challenge that lay ahead of him at the Justice Department.

Chairman Hyde and I were fortunate to have the benefit of his services on our Committee, and I think the Attorney General and your Committee also will benefit from his considerable knowledge and expertise in his service at the Justice Department.

Fortunately, if this confirmation is agreed to by this committee and the Senate, it will not mean that we are losing him. We will be getting him back in a higher and more valued position. So, with that thought in mind, all of my earlier reluctances have disappeared, and I am as enthusiastic as everybody else at this table in urging that this nomination be confirmed.

Thank you very much.

The CHAIRMAN. Thank you.

We will turn to Senator Schumer, I assume, who would like to comment.

Senator SCHUMER. Thank you, Mr. Chairman. I wanted to wait until my colleagues from the House had made their statements, but I just want to add my statement on behalf of both of our nominees, and it is great to see Chairman Hyde and Ranking Member Conyers, as well as my colleague, Bob Graham, here. It is a pleasure to welcome to the Senate, Robert Raben, a pleasant reminder of my 18-year career in the House, who has been nominated, of course, for the Assistant Attorney General for the Office of Legislative Affairs. I am quite familiar with the position, as his predecessor was my chief of staff and served well, Andy Fois, who has now gone on to the private sector.

So I can tell you that the experience that Robert has had is just exactly the right experience for assuming this job. I know him well, in addition to knowing the job well, because he sat behind me during Judiciary Committee meetings for the last 3 years because Robert worked for Congressman Frank and Barney and we sat next to each other in committee. When I turned around, to one shoulder I had my staff person and the other was Robert. So I had an opportunity to see him work up close, and I can tell you that working for Barney Frank is not easy. He is quick and he is impulsive and unpredictable.

The CHAIRMAN. Working with him is not always easy.

Senator SCHUMER. But he is remarkably insightful.

The CHAIRMAN. Yes, he is.

Senator SCHUMER. It takes a great deal of intelligence and nimble thinking and facile writing to keep up with him. Bob Raben was one of the best and most respected staff members that Barney ever had, and that is saying quite a bit. He also had the respect, as was noted, of the Majority staff and Chairman Hyde. So I think he will be an outstanding addition, and I hope that he will be quickly approved.

Mr. Chairman, I want to say—and I think I say this on behalf of the whole Democratic side—we appreciate your moving this nominee and Mr. Ogden, who I will talk about in a minute. Despite your misgivings about some of the things that are going on with the Justice Department, I think that shows a commitment to making sure that our Government works despite our disagreements.

I also want to introduce David Ogden, nominated to be the Assistant Attorney General for the Civil Division. His qualifications are also outstanding. He served in the leadership offices of Justice more than 5 years, Associate Deputy Attorney General, then counselor, then chief of staff. He recently has been serving as Assistant Attorney General for the Civil Division in an acting capacity, but that is not all. He has held two other positions that make him well suited for this post, private practice at Jenner and Block which requires him to work both with and against the Government, and second as Deputy General Counsel for the Department of Defense, an agency which is often represented in its litigation by DOJ Civil Division. So, therefore, he has worked for DOJ, against DOJ, with DOJ, and as a client of DOJ. What better experience than that could be. So I think he, too, will be a terrific addition and support fully his nomination.

I thank you, Mr. Chairman, and apologize to our witnesses. My new job in the Senate—my House colleagues will appreciate—this brings me to the floor. I have to go to the floor to defend the dairy compact. That is something I did not do that much in the House.

So I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I am really grateful to all of you being here.

Chairman Hyde, I know that you need to leave to chair a hearing on the important issue of hate crimes, and I want to commend you for your leadership on this issue. As you may know, I have introduced legislation over here on the subject, and my proposal has passed the Senate, along with Senator Kennedy's, as an amendment to the C-J-S appropriations bill. I would have appeared as a witness in front of your committee this morning except for this hearing, so if you will forgive me for not being there, but I hope that you will be willing to put my statement into the record in your hearing.

I just want to thank all three of you for being here. You have helped us here before the committee, and I believe you have helped both of these nominees. We appreciate your coming.

Representative HYDE. Thank you.

Representative CONYERS. Thank you.

I am glad to hear you mention your work on hate crimes because it is my bill that is going to be heard this morning. I thank you very much for your cooperation.

The CHAIRMAN. Let's see if we can work together to come to an effective conclusion on that.

Representative CONYERS. I would be delighted.

The CHAIRMAN. I would like to see something pass this year.

Thanks, my friend.

All right. If we can have the two nominees step forward. Please raise your right hands. Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RABEN. I do.

Mr. OGDEN. I do.

The CHAIRMAN. Mr. Raben, do you have a statement? First, maybe you could introduce your friends and members of your family who are here, and any statement you would care to make we would love to have at this time.

TESTIMONY OF ROBERT RABEN, OF FLORIDA, TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE

Mr. RABEN. Thank you. I appreciate that, sir. I am delighted to have some of my family. I have a very large family, and they did not all come up from Miami, but I have my daughter, Madeline—

The CHAIRMAN. Hi, Madeline.

Mr. RABEN [continuing]. Who is 8 and 11, 12th, her mother, Carol, and my parents, June and Murray Raben who are celebrating their 15th anniversary this year.

The CHAIRMAN. Well, congratulations. We are happy to welcome both of you here.

Mr. RABEN. And a cadre of friends and coworkers.

The CHAIRMAN. OK; well, you friends all stand up. I want to see you, just for a minute.

[Persons stood.]

The CHAIRMAN. That is great. We are delighted to have all of you here. We welcome you.

Mr. RABEN. Can we divide the questions? [Laughter.]

The CHAIRMAN. Mr. Raben.

Mr. RABEN. Thank you, sir.

Chairman Hatch, Senator Sessions, staff that I have worked with and look forward to working with, I begin most emotionally by expressing what an enormous honor it is for me to appear before you today for your consideration toward confirming me as an Assistant Attorney General at the Department of Justice.

The professional honor, made more special by the presence and support of colleagues and friends from both sides of the aisle, is compounded further by the support today from my family and friends. I have introduced my family, and I am pleased that they have been able to come up to join me on this special day.

I do want to say publicly that in both prayer and in practice, I am profoundly grateful to them for their unrequited love and support.

I am honored to have been selected by Attorney General Reno and President Clinton for this position, to have the strong support of so many Members and Senators from both sides of the aisle, and to be poised with your approval to act in an official capacity as a

responsible and respectful ambassador between you and the Department of Justice.

My nearly 7 years as counsel in the House of Representatives provided an excellent opportunity to work on difficult and sometimes emotional issues with people all along the political spectrum, and to do so, I feel, with respect, a sense of humor, and mutual admiration.

I feel and I hope that I have earned the trust of many elected officials and staff as someone who does what he says he will do, provide straightforward answers in a timely fashion, and has a deep and abiding respect for the law and particularly the legislative branch.

I hope to, and pledge that I will, continue manifesting those qualities as the confirmed Assistant Attorney General for Legislative Affairs. I am very eager to work with you in that capacity.

The CHAIRMAN. Thank you very much. We appreciate having you here and look forward to working with you, and listening to our colleagues from the House, it is apparent that you could break through a lot of problems that we have. We are looking forward to seeing that happen.

Mr. RABEN. Thank you.

The CHAIRMAN. Mr. Ogden, we have an equally high opinion of you.

Mr. OGDEN. I appreciate that, Mr. Chairman.

The CHAIRMAN. We are happy to have you introduce your family and make any statement you care to make.

Mr. OGDEN. Thank you very much, Mr. Chairman.

I have a pretty substantial contingent here today. In the front row is my wife, Wannette Smith Ogden, my son, Jonathan, my daughter, Elaine. Right behind them is my uncle, Bill Condrell, my sister, Jessica, my sister, Connie, Connie's husband, Bill Graham, and behind them, my cousin, Alex, and my cousin Bill Condrell, and my brother-in-law, Don Smith.

The CHAIRMAN. We are happy to welcome all of you here. Thank you very much.

Mr. OGDEN. Mr. Chairman—

The CHAIRMAN. Could I interrupt to allow Senator Warner to make a statement?

**STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR
FROM THE STATE OF VIRGINIA**

Senator WARNER. I think you are doing quite well, and I will submit my statement for the record, Mr. Chairman.

The CHAIRMAN. We will be happy to place it in the record, and there is no question, we are honored to have you here.

Senator WARNER. I have had extensive consultations with this fine nominee. I commend the President, Attorney General, and he is just going to do a splendid job. He has my support, and having said that, you are on your own. Good luck.

The CHAIRMAN. That is what I call a real helpful statement. [Laughter.]

Senator WARNER. Do you want to hear it?

The CHAIRMAN. Oh, no. I thought it was more helpful the way you delivered it, to be honest.

You are great. Thanks, John.
[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE
OF VIRGINIA

Chairman Hatch, and my other distinguished colleagues on the Senate's Judiciary Committee, I am pleased to support the nomination of David W. Ogden, a longtime Virginia resident, to serve as Assistant Attorney General for the Civil Division in the Department of Justice. Mr. Ogden has a strong history of serving the public interest and impeccable credentials.

Mr. Ogden has an impressive record of public service in his legal career. Currently, Mr. Ogden is acting Assistant Attorney General for the Civil Division in the Department of Justice.

Prior to this position, Mr. Ogden served as the Chief of Staff to the United States' Attorney General. He has also served as counselor to the attorney general and deputy attorney general/legal counsel to the United States Department of Defense. While at the Department of Defense, Mr. Ogden was awarded the Department of Defense Medal for Distinguished Public Service.

Prior to serving in the public sector, Mr. Ogden engaged in the private practice of law for over eleven years. Mr. Ogden's had a diverse practice of law in complex civil litigation. He represented clients before a number of courts, including the United States Supreme Court and other appellate courts, and represented those clients in a number of areas of law, including the First Amendment, antitrust law, the law of professional ethics and education, and the law of non-profit and professional associations.

In addition to his impressive career in the private and public sector, Mr. Ogden's educational achievements indicate that he is an extremely bright man who will serve the Department of Justice well. In 1976, he graduated from the University of Pennsylvania with a B.A., summa cum laude, Phi Beta Kappa. In 1981, he earned his J.D., magna cum laude, from Harvard Law School. After graduation from law school, Mr. Ogden served as a law clerk to the Honorable Abraham D. Sofaer, United States District Court judge for the southern district of New York. Mr. Ogden then had the honor to serve as a law clerk to the late Honorable Harry A. Blackmun on the United States Supreme Court.

Mr. Ogden is obviously a very accomplished American who has dedicated a large portion of his professional career to public service. He is well qualified to serve as Assistant Attorney General for the Civil Division in the Department of Justice, and I am certain that he will in this position with honor, integrity, and distinction. Mr. Ogden would be a strong asset for our Department of Justice.

Again, I am pleased to indicate my support for Mr. Ogden. I look forward to the Committee reporting his nomination favorably and for a confirmation vote before the fall Senate.

The CHAIRMAN. All right. Mr. Ogden, we will turn to you for any statement that you have. We welcome your family here and your friends, both nominees' families and friends.

Go ahead.

TESTIMONY OF DAVID W. OGDEN, OF VIRGINIA, TO BE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. OGDEN. Thank you very much, Mr. Chairman, Senator Sessions. Senator Warner, thank you very much for your comments in my support.

I am very honored to come before you today as the nominee to be Assistant Attorney General for the Civil Division of the U.S. Department of Justice.

I thank the President for having nominated me and the Attorney General for her confidence in me.

I am very thankful to you, Mr. Chairman, for holding this hearing and considering my qualifications. I am thankful to Senator Warner and Senator Robb for their statements of support for me.

I would like to recognize a few people to whom I owe a particular debt of gratitude. I am deeply grateful to my wife, Wannette, for her unfailing support and encouragement. Without her love, generosity, and faith in me over the past 16 years, I would not be sitting before you today. I am also grateful to my children, Jonathan and Elaine. I need look no further than their love, friendship, and strength as people, as inspiration to continue working for the future of our country and to believe in that future. I am grateful to my uncle, Bill Condrell, for his guidance and great generosity of heart and spirit.

I wish so much that my father, Hod Ogden, were here and alive to see this day. Dad taught me many important things, including how to think and the great virtues of public service.

For medical reasons, my mother, Elaine Ogden, cannot be here today, but every day for more than 45 years, my mother has taught me by her constant example about love, strength, and integrity.

Finally, I want to mention Justice Harry A. Blackmun, who died late this winter. He gave me the opportunity as a very young lawyer to clerk for him at the U.S. Supreme Court. I will always remember Justice Blackmun for his faith, that dedication to the craft and the tools of the law is the best path for discovering justice.

Mr. Chairman, I want to serve as Assistant Attorney General for the Civil Division because few jobs afford as great an opportunity to use a litigator's skills in the services of our country, its Constitution, and the American people.

I have had the privilege of working closely with the Division in different capacities, as Senator Schumer mentioned. For more than a decade in private practice, I represented parties in litigation with the United States, sometimes adverse to the Civil Division and other times aligned with it. When I was at the Department of Defense as the Deputy General Counsel, I was responsible for coordinating and overseeing litigation Departmentwide.

In that role, I worked closely with the Civil Division as its client on the most important litigation matters facing the Department, the Defense Department, and together with the senior military and civilian leaders at DOD, I worked with the Civil Division to develop strategies that vindicated DOD policies and to marshal DOD resources in support of those strategies. And when I served for 3½ years in leadership offices at the Department, among my most important duties was helping the Attorney General and the Deputy Attorney General oversee the work of the Civil Division. Since February, I had had the privilege of directing the division as its acting head. From all of those vantage points, I have learned that the great strength of the Civil Division is the extraordinary talent and dedication of its career attorneys, who work tirelessly to see that the interests of the American people and their Government are served in the courts.

The division has a proud tradition of protecting the public fisc and the integrity of the Nation's laws, and of seeking justice under law for the Government and those litigating against it. I commit, without reservation, that if the Senate confirms my appointment, I will do everything I can to live up to those high standards.

Should I be confirmed, I will be mindful that the interests of the United States are defined by the Congress as reflected in the laws

it passes and by the President, and that representing the United States requires respect for the policy choices reflected in Federal legislation and the implementing regulations and policies at the executive branch. When Congress has passed a law, the Civil Division should defend it against constitutional challenge whenever reasonable arguments can be made in support of its constitutionality, except in the rarest instances, and those are defined by the Department's practices.

In the 6 months I have served as Acting Assistant Attorney General, my commitment to that principle has been reflected in the defense of a number of Federal statutes that have come under attack in the Federal courts.

If confirmed, I will also devote my primary attention to the interests of American taxpayers who foot the bill for the many important activities of their Government. Every prudent and effective step consistent with the law must be taken to defeat nonmeritorious claims against the public fisc and to recover funds wrongfully obtained from or denied to the Treasury through false claims or other wrongs.

If confirmed, I will also be mindful of the Department's unique obligations, to the judicial branch and to the Department's adversaries in litigation, obligations of absolute candor to the court, respect for its precedence, and due regard for judicial economy.

Finally, Mr. Chairman, I recognize the importance of working with you and your colleagues in Congress on the policy issues within the jurisdiction of the Civil Division and in connection with your oversight responsibilities. If confirmed, I will do everything I can to ensure a productive and cooperative relationship.

I thank you again for considering my nomination and would be very happy to respond to any questions you may have.

[The prepared statement of Mr. Ogden follows:]

PREPARED STATEMENT OF DAVID W. OGDEN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I am very honored to come before you today as the nominee to be Assistant Attorney General for the Civil Division of the United States Department of Justice. I thank the President for having nominated me and the Attorney General for having confidence in me. I am very thankful to you, Mr. Chairman and Senator Leahy, for holding this hearing and considering my qualifications.

If I may, I would like to introduce the members of my family who are here today. I am grateful to all of them, and to my friends who have come today, for being here and for their support.

I would like to recognize a few people to whom I owe a particular debt of gratitude. I am deeply grateful to my wife, Wannett Smith Ogden, for her unfailing support and encouragement. Without her love, generosity, and faith in me over the past sixteen years, I would not be sitting where I am today. I am also grateful to my children, Jonathan and Elaine. I need look no farther than their love, friendship and great strengths as people for inspiration to continue working for and believing in our country's future. I am grateful to my Uncle, Bill Condrell, for his guidance and great generosity of heart and spirit.

I wish so much that my father, Hod Ogden, were alive to see this day. Dad taught me many important things, including how to think and about the great virtues of public service. For medical reasons, my mother, Elaine Ogden, cannot be here today. Every day for more than forty-five years, my mother has taught me by her constant example about love, strength and integrity.

Finally, I want to mention Justice Harry A. Blackmun, who died late last winter. He gave me the opportunity as a very young lawyer to clerk for him at the United States Supreme Court. I will always remember Justice Blackmun for his faith that dedication to the craft and tools of the law is the best path to discovering justice.

Mr. Chairman, I want to serve as the Assistant Attorney General for the Civil Division because few jobs afford as great an opportunity to use a litigator's skills in the service of our country, its Constitution, and the American people. The Civil Division represents the United States, its agencies, and its employees in general civil litigation in the trial and appellate courts. The subject matter of this litigation is as varied as the activities of the Division's client: cases worth billions of dollars in areas such as fraud, contracts, international trade, patents, and bankruptcy; suits challenging the constitutionality of federal statutes and the lawfulness of regulations or official actions; general tort claims, including those that involve toxic substances, aviation, admiralty, and so-called *Bivens* actions against federal officials in their individual capacities; and litigation to enforce various federal laws, including the Nation's consumer and immigration laws. The Division also administers two very important compensation programs for the victims of radiation exposure and for individuals, primarily children, who suffer extreme adverse reactions to certain vaccines.

I have had the privilege of working closely with the Division in different capacities. For more than a decade in private practice, I represented parties in litigation with the United States sometimes adverse to the Civil Division, and other times aligned with it, as when I represented the National Association of Broadcasters and, together with the Civil Division, worked successfully to uphold certain provisions of the 1992 Cable Television Act. When I was at the Department of Defense as Deputy General Counsel, I was responsible for coordinating and overseeing litigation Department-wide. In that role, I worked closely with the Civil Division as its client on the most important litigation matters facing the Defense Department. Together with the senior military and civilian lawyers at DOD, I worked with the Civil Division to develop strategies that vindicated DOD policies, and to marshal DOD resources in support of those strategies. When I served for three and one-half years in the leadership offices at the Justice Department, among my most important duties was helping the Attorney General and Deputy Attorney General oversee the work of the Civil Division. And since February, I have had the privilege of directing the Division as its acting head.

From all of those vantage points, I have learned that the great strength of the Civil Division is the extraordinary talent and dedication of its career attorneys, who work tirelessly to see that the interests of the American people and their government are served in the courts. The Division has a proud tradition of protecting the public fisc and the integrity of the Nation's laws, and of seeking justice under law for the government and those litigating against it. I commit without reservation that, if the Senate confirms my appointment, I will do everything I can to live up to those high standards.

Should I be confirmed, I will remain mindful that the interests of the United States are defined by the Congress, as reflected in the laws it passes, and by the President, and that representing the United States requires respect for the policy choices reflected in federal legislation and the implementing regulations and policies of the Executive Branch. When Congress has passed a law, the Civil Division should defend it against constitutional challenge whenever reasonable arguments can be made in support of its constitutionality, except in the rarest instances, such as where the statute violates the constitutional separation of powers or directly conflicts with a Supreme Court ruling of constitutional dimension. In the six months I have served as Acting Assistant Attorney General, my commitment to that principle has been reflected, for example, in our defense of the Child Online Protection Act, which was enacted to protect children from harmful materials on the Internet; our defense of a statute that caps attorneys fees in cases brought in the District of Columbia under the Individuals with Disabilities in Education Act; our defense of regulations implementing the Federal Credit Union Membership Access Act, passed by Congress in 1998; and our continued defense of the constitutionality of the Violence Against Women Act. If confirmed, I will also devote my primary attention to the interests of American taxpayers, who foot the bill for the many important activities of their government. Every prudent and effective step, consistent with the law, must be taken to defeat non-meritorious claims against the public fisc, and to recover funds wrongfully obtained from or denied to the Treasury through false claims or other wrongs.

If confirmed, I will also remain mindful of the Justice Department's unique obligations to the judicial branch and to the Department's adversaries in litigation—obligations of absolute candor to the court, respect for its precedents, and due regard for judicial economy. And because the delay and expense of litigation can be wasteful, inefficient, and themselves can deny justice—particularly for those with limited resources—I will look for better alternatives where possible, including the appropriate use of Alternative Dispute Resolution techniques.

Finally, Mr. Chairman, I recognize the importance of working with you and your colleagues in Congress on the policy issues within the jurisdiction of the Civil Division, and in connection with your oversight responsibilities. If confirmed, I will do everything I can to ensure a productive and cooperative relationship.

I thank you again for considering my nomination, and would be very happy to respond to any questions you may have.

QUESTIONING BY SENATOR HATCH

The CHAIRMAN. Thank you. We are glad to have both of you here. We are going to ask some tough questions here today because I have set the stage with my opening remarks, and we will start with you, Mr. Raben.

The position of Assistant Attorney General for Legislative Affairs is one of great importance from the standpoint of an oversight committee, such as the one before which you are appearing right now.

Please provide me with your views on the state of affairs between this committee and the Department at the present time, and tell me in what direction you wish to move relations between the committee and the Department in the event that you are confirmed.

Mr. RABEN. Thank you very much. I appreciate that question.

I don't have a great sense of the state of affairs between this committee and the Department of Justice, apart from what I know from my years in—

The CHAIRMAN. I will just define it for you. It is a little bit pathetic, and it could be improved, greatly improved.

Mr. RABEN. I think your characterization of it is extremely important to me, and it sounds like I have a lot of work to do to prove it.

The CHAIRMAN. I understand that some of my colleagues have asked you about an article you wrote in January 1997 for "Roll Call," and I want to give you an opportunity to address this matter here because it should be addressed by you and in an open forum so that people will know.

In that article, you argued against a drug testing rule adopted by the House and wrote,

Many things are illegal, but we don't try to root out behavior for scrutiny and retribution because it is illegal. My guess is that a fair number of employees of the House, like anywhere else, may not report all their cash income from weekend waitering jobs.

Then you went on to note that the practice was "illegal," but "largely unenforced." You then concluded that,

The fact that certain acts are illegal and employees or members engage in them doesn't in other context mean we will lose our jobs.

Now, I would like you to please clarify the following for me. Was it, and if so, does it continue to be your position that a person may intentionally under-report their income to the IRS, the practice commonly known as tax fraud, yet should be eligible for continued employment as a public servant at the highest level of Federal Government?

Mr. RABEN. Absolutely not. I appreciate you raising that article and the specific question that you raised. The article in question, I wrote several years ago, and was intended as satire. And I won't be doing that again. It apparently is satire fallen flat, and I take full responsibility—

The CHAIRMAN. I have had some of those experiences myself.

Mr. RABEN. I take full responsibility for that.

The broad context that I intended was that we have a terrible problem with drugs in this country and other illegal behavior, and that the attack, the war, if you will, ought to be holistic and it ought to include drug testing, education, treatment, rehabilitation, and very strong enforcement with respect to the laws. I strongly believe that. The intention of that article through satire was to point out that drug testing alone is not going to be the beginning, middle, and end of solving the drug problem. It is an important part of it.

With respect to the paragraph you read me, and I wrote, if I can recall correctly what was in my mind at the time, the point was to show that there are other—that there are underenforced laws, and that is a mistake; that all of our laws should be enforced.

To answer your question directly, if someone under-reports his or her income, I think that is a very serious problem and it ought to be sanctioned.

The CHAIRMAN. Thank you.

As somebody who has kind of a quiet sense of humor that is sometimes misinterpreted as talking about factual matters, I fully understand that can happen.

You also wrote in that article that, "Those who lose sleep knowing that someone else has taken a hit from a joint on a Saturday night or on a roll with this drug-testing program and for entertainment's sake, I hope this is just a first step." You need to tell us what you meant by that statement.

Mr. RABEN. It's a very poor choice of words. Again, it's satire meant to point out as a broad policy matter we ought to be enforcing our laws. We ought to be taking them seriously, and with respect to drugs in particular, we ought to be strongly enforcing the laws, drug testing, treatment, rehabilitation.

The CHAIRMAN. Thank you.

Mr. Ogden, let me ask a few questions of you. Did you assist the Attorney General in any of her considerations whether to appoint an independent counsel, and if so, what were your recommendations in those matters?

Mr. OGDEN. Mr. Chairman, I did have some role, a relatively minor one, during the 8 months in which I served as the Attorney General's Chief of Staff with respect to the campaign finance task force and with respect to certain of the decisions that she made in the Independent Counsel area.

I would like to explain, if I might, what my role as Chief of Staff was—

The CHAIRMAN. Sure.

Mr. OGDEN [continuing]. So that it might better explain what my responsibilities were in that area.

As Chief of Staff, I was Chief of Staff of the Attorney General's personal staff, not Chief of Staff of the Department as a whole.

There are six or seven lawyers on her staff, and there were other responsibilities in the office as well, correspondence and scheduling. My responsibility was to run that staff and to try to be sure that the Attorney General's needs were met with respect to the issues she looked to us for in that area.

She had—prior to the time I became Chief of Staff, her previous Chief of Staff was a former prosecutor, and his responsibilities for advising her were in the area of criminal law. My expertise is in the area of civil law, and my role in the civil law area was in the civil law area, substantively, and I had no role whatever in the Independent Counsel process or the campaign finance process with respect to any decisions made in that area prior to becoming Chief of Staff.

When I became Chief of Staff, the Attorney General went out and got another senior counselor to serve as her principal advisor on criminal matters on our personal staff, and her senior counselor had primary responsibility in that area.

What I tried to do outside the civil area as Chief of Staff was to be the one other person in the office who had familiarity with a spectrum of important issues that were before the Attorney General, and I did sit in on meetings of the campaign finance task force for that 8-month period in order to remain familiar with those issues.

On a few of those issues, she did ask for my views, along with those of the other people who were submitting those views, and that included some of the decisions she made with respect to appointment of an Independent Counsel. Whenever I made those—gave her that advice, I gave her it based on my own best evaluation of the facts and the law that was presented. I tried to give it as independent advice, without regard to the political consequences and without regard to the recommendations that were being made by others.

You have asked me specifically what my recommendations to the Attorney General were. She feels strongly, and it is the Department's policy, that the advice that her senior advisors give her not be reported outside the Department. She makes the final decision. She makes that decision independently, and it's the Department's policy not to report specifically what those recommendations were.

The CHAIRMAN. Well, my time is up, but could I ask one other question, Senator Sessions? I do not want to intrude on your time.

What steps did you take as both counselor and Chief of Staff to the Attorney General to ensure that she was not conflicted from participating in the campaign finance probe? For instance, I would like for you to address with specificity those actions you took to establish compliance with the Department's regulations that forbade anyone from "participating in a criminal investigation or prosecution" if he or she is "closely identified with an elected official" who is "substantially involved in the context that is the subject of the investigation."

Mr. OGDEN. As I said before, Senator, as counselor to the Attorney General, I simply didn't have responsibilities in the area of the Independent Counsel law and the decisions that were made under it.

As her Chief of Staff, we did discuss that issue because it was raised by Members of Congress, and it was an issue that—obviously, that process was well underway by the time I became involved in it. It was analyzed. It was looked at quite closely by Criminal Division people, by people who are responsible for ethics issues, and their conclusions were that the decisions she made were decisions that was appropriate for her to make.

The CHAIRMAN. Reported recently was an article stating that the chief judge of the District of Columbia District Court bypassed that court's random case assignment procedures by taking the unusual step of handpicking those judges to whom the *Trie* case and also the *Webb Hubbell* case were assigned, oddly enough two Clinton appointees. Had you at any time heard in any fashion, directly, indirectly, or by rumor how these two matters were assigned? And if so, please describe when and how.

Mr. OGDEN. No, sir, I don't have any information about that.

The CHAIRMAN. OK; well, I have other questions, but I may submit them.

Senator Sessions, we will turn to you.

QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Thank you, Mr. Chairman.

The CHAIRMAN. I am going to leave for a minute. I will be right back. So you go right ahead.

Senator SESSIONS. I want to thank you for your opening remarks and raising a number of important issues, and I am concerned as a longtime practitioner in Federal court, the case assignment policies of the judge in Arkansas on some of these cases. That is stunning to me that the idea of equal justice can be tarnished when a judge assigns cases as they see fit, and maybe we are going to have to look at that. I hate to. I know we do not want to and you do not want to. That is a really serious matter.

And the questions of these plea bargains in which there appear to be little or no sentence and little or no cooperation is also dangerous, and maybe—I appreciate your willingness to confront the issues.

The CHAIRMAN. If you would yield.

One other thing I have to tell both of you that bothers me a great deal is the number of media presentations which indicate that a number of these people wanted to tell more of the story, and they would not even listen to them at the Justice Department. Now, if that is true, that is abysmal. I mean, we will all lose confidence in the Justice Department if that is true. I am not saying it is, but we sure had a lot of reports on that, and it bothers me greatly because we ought to be interested in getting at the bottom of illegal conduct, regardless of who it is. So, naturally, I am very concerned.

Senator SESSIONS. Well, that is the point, Mr. Chairman. If the Department is going to undertake these cases, they have got to do them aggressively and with the highest degree of professionalism. If they are not, they are best given an Independent Counsel, as you requested from the beginning, and it is a high burden.

Mr. Ogden, I want to ask you a number of questions. In your questionnaire, you were asked to list all other organizations to which you belonged that are active in lobbying before public bodies.

That is a standard question that has been asked of many nominees, and you failed to answer the question. Everybody else, to my knowledge, has, and you stated, "In the past, I have given contributions to organizations that by virtue of my donation conferred on me the status of member. I did not consider myself to be a member of any such organization by virtue of a donation," and then you declined to answer further.

It seems to me if you give money to an organization that declares you a member and you know that when you make the contribution, then you clearly meet the definition of the statement. Would you provide me and the Members of this Committee a complete list of the organizations of which you are a member?

Mr. OGDEN. I certainly would be pleased, Senator, to provide you with a list of those organizations, to the best of my ability, that falls in the category I identified.

I consulted with the folks in the Department who are responsible for these things and who told me that that was an appropriate way to answer the question, but if you want that information, I will do my best to provide it.

Senator SESSIONS. Well, that is very troubling to me. It seems to me that the Department ought not to so advise. If you are a member of an organization that you have given money to, you ought to disclose that, and it is too typical of this tendency in modern thought and even within this Department, I must say, to define words to mean as they wish. The question was were you a member, not whether you considered yourself to be, but did you know you were a member and receive, I guess, statements and membership brochures and material from them. So would you respond completely?

Mr. OGDEN. Yes, Senator. I would be happy to do that.

I will say I don't believe there are any such organizations that would say I am a member presently, but I will provide whatever information I can on that.

Senator SESSIONS. I think you should, and we will perhaps follow up with a written question on that.

Mr. OGDEN. That is fine, Senator.

Senator SESSIONS. You mentioned earlier about advising the Attorney General and not advising on criminal matters and that there was someone on the staff that did that. Who was that person?

Mr. OGDEN. She received advice from a number of people. On her personal staff, while I was the Chief of Staff, her counselor, Gary Grindler, was responsible for criminal matters. In addition to that, of course, she received primary support from the Deputy Attorney General and his staff on criminal matters.

Senator SESSIONS. Mr. Ogden, I have no desire and interest in defending the tobacco industry. I have not taken contributions from them, and I do not think it is a healthy activity to smoke and I oppose it. I think it is detrimental to the health and well-being of America, but I am a person that for a number of years have had some concern about utilization of lawsuits. For public policy reasons, it ought to be established through the political forum where people are elected if they want to change health policy, for example.

I would like to ask you a few questions about that. With regard to the development of the tobacco litigation strategy, have you been involved in that, and do you expect to be a key player in that process?

Mr. OGDEN. Yes, sir, I have, and I certainly will be.

Senator SESSIONS. I noticed in a news briefing on July 29, the Attorney General's weekly news briefing, she was asked: There is some speculation that the selection of David Ogden to be made the head of, the acting head of Civil Division was based on his support for proceeding with tobacco lawsuit and that perhaps some of the other individuals under consideration were more skeptical of the Federal tobacco lawsuit. Can you comment on that?

And her answer was: No; I think the White House would have to comment on the reasons for the selection of Mr. Ogden, but Mr. Ogden having served as my Chief of Staff, has been a fine lawyer, and I have seen him operate and he is qualified, et cetera.

Were you selected by the White House, and was your position on tobacco litigation a factor in that selection?

Mr. OGDEN. I was—well, I certainly was nominated by the President, of course. The Attorney General recommended me for this position. I hope that the reason that she recommended me and the reason that the President nominated me was that they considered me qualified based on the many experiences that I have had and the talents that I have.

Senator SESSIONS. Were there discussions within the Department about this litigation, and did you express your opinion on it to members of the White House before being nominated?

Mr. OGDEN. I didn't have—the answer to that is yes. There certainly were discussions within the Department. Of course, we were looking at the question. The Civil Division in particular was looking at the question, and as I said, part of my responsibilities in the oversight offices was on the civil side of the house, and there were extensive discussions about the potential for tobacco litigation, particularly in the wake of the \$200-billion settlement that the States entered into with the tobacco companies.

There were discussions for a protracted period of time with the White House concerning their interest in the possibility of tobacco litigation if it would be supported by the facts in the law.

Senator SESSIONS. Well, it is quite well known that the contributions of plaintiff lawyers and tobacco lawyers have been huge to this administration, and that the Department of Justice had declined at least and the Attorney General had indicated her lack of belief in the legality of the sound legal basis for action against tobacco. Now we are beginning to see that change.

Isn't it true that there are professional members of the Civil Division of the Department of Justice who have opposed this litigation?

Mr. OGDEN. No, sir. I'm not aware that that's the case. The Attorney General addressed herself in testimony to the question of whether the Justice Department could file a lawsuit based on Medicaid claims, which were the claims that the States were pursuing, and she said, and it is certainly the case, that there is no basis in law for the Federal Government to bring a lawsuit respecting Medicaid claims because the statute, the Medicaid statute specifically,

identifies the States as their own agent and the agent for the Federal Government for that type of litigation.

Senator SESSIONS. Under Medicare, what theory of law is it that the tobacco companies would be liable to the United States?

Mr. OGDEN. Well, the potential programs that would be—that could be looked at here include Medicare. They include the Veterans Administration. They include the Department of Defense health expenditures, and we are looking at all of the potential claim, the potential theories that the States pursued and that might be available to the Federal Government, and no final decision has been made at this time as to—

Senator SESSIONS. Well, I think you need to be careful about it because this is very important. It is not a matter of polling data. I know you are familiar with the power of that, but under the *Standard Oil* case, it makes clear that the United States must have a legal basis for a cause of action in this kind of lawsuit. Would you not agree?

Mr. OGDEN. I would agree completely, sir.

Senator SESSIONS. I think we ought not to decide this matter on politics. We ought not to decide it on polling data, and I would ask you, are you prepared to tell the President of the United States, if there is no legal basis for this suit, that it ought not to be pursued?

Mr. OGDEN. I am absolutely prepared to do that, Senator.

Senator SESSIONS. Senator McConnell has asked that internal memorandum concerning this issue, some of which he believes are negative to the filing of the lawsuit, from a legal point of view, where there is a legal basis to file it, and I do not believe the Department of Justice has produced that. Will you produce that in response to a specific inquiry from me?

Mr. OGDEN. Senator, we will produce whatever we can produce consistent with the Department's practice. The difficulty, of course, is that legal memoranda, as you know, that is prepared in anticipation and preparation for litigation and in contemplation for litigation is not subject to discovery and in legal cases because the disclosure of it can be very damaging to the interest of the litigant. We would not want to disclose any memorandum that would reflect the internal deliberations of the Department on a case we haven't even decide—

Senator SESSIONS. Well, the problem is—let me just tell you what the problem is. This is not a normal litigation. This is a matter of national public policy that many highly paid, enriched attorneys and people who have very strong views about tobacco are not satisfied with the way the public elected officials have conducted that policy, and they would like to do it through the legal system, it seems to me.

I have seen that. I have wrestled with the legal questions, and I have asked at various times as Attorney General of Alabama what are the theories, legal justification for these causes of action. Fundamentally, I have some doubts about it. I think others do, and within the Department. We have been there a long time. We have no political axe to grind and have doubts. I hope that you will be objective.

Mr. Chairman, I had a few more questions, but I would be glad to—my time is up now, and if I could have a few more later, I would appreciate it.

The CHAIRMAN. I think what we are going to do, we have a vote on right now, and I think we should finish with these witnesses. We have got this other hearing that starts at 10 o'clock. So we will keep the record open for written questions.

Senator SESSIONS. Could I ask a few more, or do you want to ask some more?

The CHAIRMAN. I would like to ask a couple, if you do not mind.

Senator SESSIONS. You go ahead.

The CHAIRMAN. I think they will be along the same lines as you have.

Senator SESSIONS. All right.

The CHAIRMAN. I was concerned about this tobacco litigation as well for both of you. Let me just turn to some of the issues arising out of the Department's expected suit against the tobacco companies.

As you know, I do not have any love for the tobacco companies, but I do want to see the rule of law upheld. I have various questions and requests for documents, and I will submit those to save time here. Let me just ask a couple of short questions.

As I understand it, you are taking the lead in supervising the projected suit against the tobacco companies. Am I wrong on that, or am I right?

Mr. OGDEN. No, Senator. That is correct.

The CHAIRMAN. Indeed, you have requested that the Congress appropriate an additional \$20 million to fund personnel and document production, and I am aware of your estimation of how the money will be spent.

In order to ascertain the validity of the projected suit, could you please explain the causes of action and legal theories underlying the suit? It is my understanding that recently you have taken the position that revealing this information violates either the work product privilege or the attorney-client privilege. Now, that, to me, presents a problem. How can the Congress discern the legitimacy of the lawsuit without knowing more about the underlying or underpinning legal theories underpinning the lawsuit?

It is my recollection that in the past, the Department has agreed to let a small number of staffers review litigation documents that were claimed to be privileged. Now, could you agree to that approach?

Mr. OGDEN. Mr. Chairman, I think that at the present time when we have not yet even decided what theories we are focussed upon and what theories we are prepared to pursue or indeed whether we would file a lawsuit in this situation, it would not be something that we would be prepared to pursue.

I am very sympathetic, Mr. Chairman, with your concerns, particularly in conjunction with the budget request for the funds, for more information, and it is simply at this point, when we haven't focused or made a decision about—

The CHAIRMAN. As soon as you do, will you work with the committee to explain the causes of action and the legal theories underlying or underpinning the—

Mr. OGDEN. Yes, Mr. Chairman.

The CHAIRMAN. I do not see any reason why you would not, especially if you are asking for additional funds. We would certainly want to know that the rule of law is being abided by. If it is there, fine. If it is not there, that is something that we have got to abide by as well.

Mr. OGDEN. And I agree with you entirely in your comments about the rule of law and with those that Senator Sessions stated in his final statement in his questioning. We will work with you to provide as much information as we can once we have made some decisions.

The CHAIRMAN. OK; now, let me ask you this. What role, if any, did you play in the approval by the Department of the plea agreements concerning Johnny Chung, Yah Lin "Charlie" Trie, and John Huang?

Mr. OGDEN. No role whatsoever, Mr. Chairman. I had left the—

The CHAIRMAN. But you are aware of the Department's efforts in those cases?

Mr. OGDEN. I am aware, but only really from news accounts.

The CHAIRMAN. OK.

Mr. OGDEN. I am not involved in that at all at this point.

The CHAIRMAN. Well, don't those news accounts disturb you as much as they disturb me?

Mr. OGDEN. Senator, because I know sometimes there is a distinction between what's in the news and what is the reality, I withhold judgment. I really don't have any information with which to evaluate those situations.

The CHAIRMAN. That is not my question. If those news accounts are true, wouldn't that be disturbing to you?

Mr. OGDEN. Certainly, they—

The CHAIRMAN. Certainly with regard to special treatment that these people appear to be getting and the allegations that the Justice Department will not even listen to the stories they want to tell?

Mr. OGDEN. Mr. Chairman—

The CHAIRMAN. I have never heard of that before, and if that is true, wouldn't that disturb you?

Mr. OGDEN. It certainly would be of concern to me. Yes, Mr. Chairman.

The CHAIRMAN. It is of great concern to me.

Now, an article published in The Washington Post, 2 days ago, asserts that the Department continues to consider its investigations into Representative Dan Burton and Haley Barbour to be "active." Assuming that that article is accurate in this respect, how can you justify that position for these longstanding investigations, particularly when they are contrasted with the dispatch with which the investigations and prosecutions of Johnny Chung, Charlie Trie, and John Huang all seem to have been treated?

Mr. OGDEN. Mr. Chairman, I have had no involvement in any of these matters since February 1. So I am not in a position to comment.

The CHAIRMAN. If you understand why I am driving at this, because it looks as though the Department is again playing politics,

to hold a hammer of one Member of Congress and one a former national Republican chairman, where I do not see any reason at all to have the hammer, and yet are entering into these plea bargains and plea agreements with people who literally are admitting that they did wrong and who gave millions of dollars to the Democratic National Committee that had to be given back, clearly in violation of the campaign laws.

Mr. OGDEN. I do understand what you are saying, Mr. Chairman, and I will convey your concerns to the Attorney General.

The CHAIRMAN. I hope you will, but you can see why I am upset. That is why I gave that rather lengthy statement at the beginning.

I do not relish or enjoy jumping all over the Justice Department. I have always worked closely with you folks down there. I want to continue to do so. I want to be fair, but there are some things here that look just awful. We have got to clear them up.

I think both of you could play a significant role in helping to clear them up, and I think if you do, you are going to have a lot of support up here on Capitol Hill because we have not had much in the way of cooperation down there.

And this business of redacting all that they did out of the general statement in our private hearing in S-407, it is an insult to the committee and I think to the country to redact stuff that clearly is not subject to classification. In fact, I do not think there was hardly anything in that whole hearing that should have been subject to classification.

We have got to rely on you folks to maybe set some standards of integrity that we are starting to think have eroded down there.

Mr. OGDEN. Mr. Chairman, I will convey your concerns to the Attorney General. That is another subject on which I have had no involvement, and certainly in the area of the Civil Division's responsibilities, I will do, if I am confirmed, everything I possibly can to promote them.

The CHAIRMAN. All right. Are you aware of and did you have any involvement in the reported actions by the Department in holding the probe that a former Federal prosecutor in California had begun in 1996 into fundraising improprieties involving the Vice President? Did you have anything to do with that?

Mr. OGDEN. I am—there were issues—there was an Independent Counsel decision that was made pertaining to the Vice President while I was Chief of Staff, and my previous remarks about my involvement attending those meetings applied to that decision. I am not sure if that is the case that you refer to there.

The CHAIRMAN. Well, I still would like to have your comments about what was done, why it was done. If you would like to submit those in writing, that would be fine with me, why the decision was made or the decisions were made.

Mr. OGDEN. I—again, if it was a decision that I had any involvement with, I'll do my best to provide that information.

The CHAIRMAN. All right. We will expect that.

Mr. OGDEN. Yes, Mr. Chairman.

The CHAIRMAN. Now, were you aware of and did you have any involvement in the reported actions by the Department in ordering the immediate return to Washington of an FBI agent and prosecu-

tor sent to Little Rock, AR, to stop documents from being shredded by Mr. Trie's secretary?

Mr. OGDEN. No, Mr. Chairman. I don't believe I did.

The CHAIRMAN. You don't know anything about that.

Well, I had to ask these questions because they are questions that are bothering Members of the Committee and questions that are of great concern to me.

As you can see, Mr. Raben, we are very concerned about cooperation from the Justice Department which we think has been sorely lacking with this committee, and you can see Chairman Hyde feels the same thing, that we are just getting stiffed. We personally want to tell you, I believe that Woodward's comments in *Shadow* are absolutely accurate, and I think it is abysmal to have that kind of lack of cooperation between this committee and/or the House Judiciary Committee and the Department of Justice. So you are going to have your hands full, and I just want you to be aware of that.

I am going to recess until Senator Sessions gets back. I will allow him to ask some questions, but we are going to start the next hearing as soon as I get back. So I will just recess, and then he can restart it when he gets back. So, with that, we will just recess for a few minutes.

[Recess taken from 10 a.m. to 10:08 a.m.]

Senator SESSIONS. Maybe we can get started. I know Senator Hatch will be back very shortly, and I just had a few questions that I would like to ask.

Mr. Raben, you and I have discussed your article you referred to as satire. I was troubled by it. You described the congressional initiative that allowed for drug testing of Members and staff as silly and "another salvo in the wrong-headed war that passes for this Nation's drug policy."

What I wanted to say to you—and you also mocked, I think smugly, that "those who lose sleep knowing that someone else is taking a hit from a joint on a Saturday night are on a roll with this drug-testing program." I think it may be fair to say that I did lose sleep over young people using drugs on Saturday night and any other night, and when I became a part of this Department of Justice as U.S. attorney in 1981, we did commence a war on drugs, and some said it failed, but it did not fail. It was a success.

A University of Michigan study in 1979 showed that 50 percent of young people, high school seniors, used drugs within the last 30 days, I believe the date was, and that number dropped by 50 percent, dropped every single year that Presidents Reagan and Bush conducted a war on drugs.

I believe one of the greatest failures of this administration has been too little comment on, when they allowed this to get away from them, this progress, and it was because we adopted, I think, this kind of attitude, this "Well, I wish I had inhaled" on MTV and the drug czar's office is cut and we don't have a clear message again and drug use started going up dramatically. It is up 50 percent or more since the President has taken office among those same high school seniors.

So I ask you, how do you feel about that? You are going to be the spokesman, the representative of the Department of Justice. It

is against the law to utilize drugs. How can you be effective if this is your view about this matter?

Mr. RABEN. I deeply appreciate you raising this and asking me about this. I know it is a very important matter.

When we visited in your office recently, you described the article as arrogant and flip, and today, smug. I say candidly to you, I agree with you that it was all of that, and it was a mistake to try to have a serious conversation in any forum through that type of satire.

On policy, I don't know exactly how you feel on every aspect of the drug war, but I generally agree with your characterization that we have an enormous problem in this country and that it should be attacked on a number of fronts, including strong enforcement, testing, treatment.

Senator SESSIONS. I was with the Attorney General in Houston on Monday for a weed-and-seed conference, and I met a young police officer who drove me to the airport. We discussed this very issue, and he is in the classrooms a lot talking with children, young people, about drugs. He said the critical thing is an unequivocal clear message that drug use is bad. If the adults of this country cannot do that, how can we expect children not to be confused when they are tempted? I think that was an unclear and ambivalent message at best. In fact, I think it was demeaning to those, like that police officer, who are out every day trying to do that.

I want to ask you one more thing. In June 1997 in "Roll Call," you indicated you thought this was a satire in your article, but you did say, You would absolutely consider taking legal action if you were subjected to testing and therefore had standing to bring suit. If I don't have standing, I will help someone who does.

Does that indicate that you have a constitutional objection to drug testing in the workplace?

Mr. RABEN. I must—no. I took a drug test my first day at the Department of Justice and predictably passed the drug test. So I have no problem in appropriate circumstances both for myself and other people being subjected to drug tests. It is not for me, nor or at any point I presume, to say exactly what the constitutional requirements are on the fourth amendment, and I think I strongly support the fourth amendment, but I personally subjected myself to it voluntarily, complied with it, and would again.

Senator SESSIONS. Well, you indicated in this article that you would take legal action if you were subjected to testing, and you would represent somebody else apparently pro bono because you are so hostile to it.

Mr. RABEN. I did neither of those—I wrote that as part of a satirical piece to point out that there are—

Senator SESSIONS. Well, I am quoting now from an interview of you in "Roll Call" in June 9, 1997. It said Robert Raben, minority counsel to the House Judiciary Committee, said he "would absolutely consider taking legal action" if he were subjected to testing and therefore had standing to bring a suit. "If I don't have standing, I will help someone who does."

Mr. RABEN. Thank you. I appreciate that. I was confused. I also referenced standing I believe in the satirical piece. You are right,

I did say that, but I did not take legal action or any steps to pursue it.

Senator SESSIONS. I spent a lot of time, 12 years, actively involved in coalitions against drugs and Partnership for Youth and focussed on drugs. I would just say to you, drug testing in the workplace is a very healthy act. It sends a message that you care about employees, that this company, this business is not going to allow its efficiency and safety to be diminished, and that I think it helps create a climate of rejection of drugs in America. Anyway, that can be studied, and I think it can be proven. Businesses have proven that to be worthwhile.

Mr. Ogden, I was concerned about your comments on judicial activism or the meaning of our Constitution and how it ought to be interpreted in an article you wrote back in July 1986 concerning the *Bowers* case in Georgia, and actually, we have had a lot of judges come forward for nominations and I usually ask them about how they view and how their degree of commitment to the Constitution as written. You know the Preamble says, We the people of the United States, in order to form a more perfect union, establish justice, domestic tranquility and so forth, and then it says do, ordain, and establish this Constitution. We have adopted a Constitution, and I think it is pretty plain in most instances, but, anyway, this is what you said.

Constitutional interpretation cannot be limited to ascertain the way a particular law would have been viewed by the Framers. While constitutional principles do not change, the society and individuals in whom they are applied do, and our knowledge about that society and those individuals improves with time.

Then you noted the changing social context is as much a part of the constitutional issues to be decided as the statute itself because to ignore it is to fail in the court's basic task, adapting the great outlines of the Constitution to the particular problems of each generation, and then you went on to make some other comments.

The CHAIRMAN. Senator, I think we have got to wrap this up.

Senator SESSIONS. All right.

The CHAIRMAN. What I would like to do is keep the record open until Friday for questions to be submitted by any Member of the committee, including yourself and myself, and we would appreciate the answers back as quickly as you can.

Senator SESSIONS. I will have some more questions, and I would also, Mr. Chairman, just like to express my concern I was going to get into next about the bringing-in of plaintiff tobacco lawyers within the Department of Justice to apparently provide the advice to justify this lawsuit. I think that lacks an objectivity. It demeans the professional staff and raises questions about the true independence of the Department of Justice and their legal integrity as they make those decisions, but I can ask that with written questions.

The CHAIRMAN. I do not nearly have that much of a problem with that because the Department of Justice has used experts in various fields to help them with various litigation, but I am concerned whether there is a correct legal theory followed. I am concerned whether this is just to punish an industry and to use the awesome

power of the Federal Government against an industry with no good justification or reason or predicate. So we all find fault with the tobacco industry, but they still are a legitimate industry in this country and they ought to be treated as such. So I am concerned about that.

Mr. OGDEN. Mr. Chairman, would it be possible for me to comment on those? I know you are hurrying for the next hearing—

The CHAIRMAN. I am.

Mr. OGDEN [continuing]. But Senator Sessions had put a question—

The CHAIRMAN. Sure.

Mr. OGDEN [continuing]. And if it would be possible for me to respond to it?

The CHAIRMAN. Let me first just say the record will remain open until the close of business on Friday to submit additional questions, and that way Senators can ask whatever they care.

I will put Senator Robb's statement in the record. He went to the bother of creating statement here, and we would like to have it in the record for you.

[The prepared statement of Senator Robb follows:]

PREPARED STATEMENT OF HON. CHARLES S. ROBB, A U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I regret that I cannot be present to introduce David W. Ogden, a fellow Virginian, to the Committee on the Judiciary. Mr. Ogden is the President's nominee for the position of Assistant Attorney General for the Civil Division at the U.S. Department of Justice.

Mr. Ogden has been a resident of Virginia for sixteen years, and a member of the Virginia State Bar for thirteen years. He has a solid academic record and varied legal experience, including judicial clerkships with the U.S. District Court for the Southern District of New York and the Supreme Court of the United States, more than a decade in private practice as a litigator, and five years of public service with the U.S. Departments of Defense and Justice. His qualifications are impressive.

Specifically, I would call to the Committee's attention the support Mr. Ogden has received from the Judge Advocate General of the Army who served with Mr. Ogden at the Department of Defense. According to Major General (retired) Michael J. Nardotti, Jr., Mr. Ogden

gained the trust and confidence of leaders and members of all the Services, and those responsible for critical litigation routinely looked to him for guidance and assistance in their most demanding cases. Without question, during his tenure as Deputy General Counsel and Legal Counsel for DoD, Mr. Ogden was essential to the success the Department enjoyed in this crucial mission. * * * He clearly is the right person to assume the awesome responsibilities of the Assistant Attorney General, Civil Division, Department of Justice.

David W. Ogden is a talented attorney and dedicated public servant. I'm pleased to offer my support and urge the Committee to act on his nomination with dispatch.

Mr. OGDEN. I appreciate that very much, Mr. Chairman, and thank you for giving me just a minute and I will be brief.

As far as the tobacco litigation, I agree completely that any lawsuit we bring needs to be supported as a matter of law in that it needs to be decided on the law and only on the law and not on politics. I do pledge that if I am confirmed, that is the way I will approach the issue.

With respect to my article, Senator Sessions, back in 1986, the most important thing I think that I can say about that article is that as the Assistant Attorney General for the Civil Division, if I

am confirmed, my job will be to defend the laws of the United States, the statutes that are passed by the Congress, by advancing any reasonable argument that can be advanced in their defense, and I will do that without regard to my own personal views of the Constitution as they were in 1986 or as they may be today.

I certainly strongly agree with one thing that was in the article that you have read and that I think is consistent with your own views, I hope, that the principles that are established in the Constitution do not change and that those are the principles that were established by the Framers. I do believe that is very important, and I hope we can agree on that at least.

Senator SESSIONS. I think so.

Mr. Chairman, both of these individuals appear to be good people. They have got good friends and people I know and respect that have supported them, and I thank you for the hearing.

The CHAIRMAN. I feel exactly the same way, and I do believe this Justice Department needs good people at this time. There are a lot of good people working at Justice, but you have got to admit, I raised a lot of issues this morning that are matters that would concern anybody, regardless of political background, and I think I have a reputation for fairness at the Department. I intend to continue to have a reputation for fairness.

I respect both of you, and I personally believe that you will add to a better atmosphere down there and hopefully help to clarify some of these things and stop some of the things that I think are wrong, but there is a lot of demoralization down there because of what they view, people that I know view, as partisan politics, and I suspect that—I hate to say it, but both sides sometimes get too partisan. We have got to do something about that, and I am counting on you two gentlemen, once you get there, being able to add some dimensions that there will get this out of politics and let's do what is best for the American people.

With that, we will try and move your nominations as quickly as we can. We clearly will not be able to before the recess, but we will try to do so as soon as the recess is over. I just want both of you to know that we appreciate your appearance before the committee, and I particularly appreciate these young people you have brought with you. They have been really, really good. I am not kidding. So we are really respectful of you young people. So keep being that way, and you are going to grow up as good as your parents, OK?

Thanks so much.

[The questionnaires are retained in committee files.]

The CHAIRMAN. We will recess until further notice. We have to clear the room for the next hearing.

Mr. RABEN. Thank you, sir.

Mr. OGDEN. Thank you very much.

[Whereupon, at 10:23 a.m., the committee was adjourned.]