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CONFIRMATION HEARING ON THE NOMINATION OF TIMOTHY ELLIOTT FLANIGAN TO BE DEPUTY ATTORNEY GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

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NOMINATION OF TIMOTHY ELLIOTT FLANIGAN, OF VIRGINIA, TO BE DEPUTY ATTORNEY GENERAL

TUESDAY, JULY 26, 2005

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

The Committee met, pursuant to notice, at 4:04 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Hatch, Leahy, Feingold, and Durbin.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Good afternoon, ladies and gentlemen. We are convened for the confirmation hearing of Hon. Timothy E. Flanigan. I note the presence of the entire Virginia Senatorial delegation, and we will begin momentarily. Senator Leahy is en route, but it is just a minute or two after 4:00, our starting time.

[Pause.]

Chairman SPECTER. I have just had word that Senator Leahy is going to be slightly delayed, so we are going to proceed at this time at his request.

We are proceeding now with the confirmation hearing of Hon. Timothy E. Flanigan, who comes to the nomination by President Bush to be Deputy Attorney General with a very distinguished record. He has an excellent academic record, having received his bachelor's degree from Brigham Young University in 1976 and his law degree from the University of Virginia. He was senior law clerk to Chief Justice Warren Burger. He has been associated with the Who's Who of law firms in the area: Shearman & Sterling; Jones, Day; Mayer, Brown & Platt; McGuire, Woods; White & Case. He has served as Deputy Counsel to President George W. Bush, and since 2002 has been Senior Vice President at Tyco International. He has a very distinguished record in the community field, and without objection, his full record will be made a part of the record.

Let me yield at this time to my distinguished Ranking Member whom we had expected to be late, but he is right on queue. Senator Leahy?

Senator LEAHY. Have Senator Warner and Senator Allen spoken?

Chairman SPECTER. No, but the practice of the Committee is to yield to the Ranking Member first.

Senator LEAHY. I have to stay. They do not have to. If you want, I would be happy to go after them. It is up to you.

Chairman SPECTER. Are you suggesting a formal waiver?

[Laughter.]

Chairman SPECTER. Senator Warner, in an era of waivers right and left—

Senator LEAHY. I do want to be here long enough. I understand that the White House is going to do, in lieu of substance, a symbolic drop of documents outside. I love watching symbolic things, and I want to be here for that, but then I want to come back to do the substantive ones. So I would just as soon wait.

Chairman SPECTER. Senator Warner, your presence has been rewarded by a waiver. The senior Senator from Virginia, we are delighted to recognize you for introduction.

PRESENTATION OF TIMOTHY ELLIOTT FLANIGAN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I accept that, Mr. Chairman, and distinguished Ranking Member, my long-time friend, and temporary resident of Virginia on weekdays, and our distinguished beloved and former Chairman, Senator Hatch.

This is the real thing, I say to Senator Leahy, not a symbolic nomination, because this is the President's nomination of an outstanding, able individual to become the important Deputy Attorney General of the United States. And I think at this time, with the permission of the Chair and other members, I would like to have his wife, Katie, as we say in the Marine Corps, hold muster for some 14 children. I think 13 of them have reported for duty today. So at this time, I yield the floor to Mrs. Flanigan.

Mrs. FLANIGAN. I am Katie Flanigan, and let me introduce my children and their spouses, if that is all right: our oldest daughter Rebecca and her husband, Peter; our son Patrick, and his wife, Lupita, and our two granddaughters, Samantha and Jessica; our son James and his wife, Rochelle; our son Timothy; our daughter Elizabeth, and her husband, Dan; our daughter Maureen and her husband, Marc; and her twin sister is the one who is not available. She is in Las Vegas—

Senator WARNER. That is most impressive. I thank you.

Mrs. FLANIGAN. We are not finished yet.

Senator WARNER. Oh.

[Laughter.]

Mrs. FLANIGAN. Our son Kevin; our son Mark; our son John; our daughter Rachel; our daughter Molly; and our twins Sarah and Melanie Flanigan.

Senator WARNER. I repeat, that is most impressive.

[Laughter.]

Senator WARNER. Is there anyone else who would like to claim kinship?

[Laughter.]

Senator WARNER. If not, forever hold your peace.

Thank you, Mr. Chairman and members of the Committee, and the distinguished Chairman has given a number of the accomplishments of this nominee in terms of his legal career. I would just ad-

dress the importance, as this Committee knows, of the tasks of the Deputy and the tremendous amount of responsibility.

As we all know, the Deputy Attorney General is second in charge at the Department of Justice, and as the second in charge, the Deputy plays an indispensable role in advising the Attorney General and helping him implement Department of Justice policies. While always a challenges task, this position has taken on added importance since September the 11th, as this country has faced and continues to face these new problems associated with the war on terror. Given this reality, it is paramount that America have someone of the highest qualifications to fill this role.

Nearly 2 years ago, I came before this Committee to introduce and recommend Jim Comey for this job. Soon afterwards, his nomination was reported favorably from this Committee, and he was confirmed by the full Senate by voice vote. Undoubtedly, Jim has served this country with distinction as the Deputy Attorney General. And while Tim Flanigan certainly has big shoes to fill, I know that Tim is eminently qualified, and I am confident he is up to the task.

I would yield now to my colleague and ask that the balance of my statement be placed into the record.

Chairman SPECTER. Without objection, your full statement will be made a part of the record, Senator Warner, and we are delighted to have your colleague Senator Allen with us.

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

PRESENTATION OF TIMOTHY ELLIOTT FLANIGAN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman and Ranking Member Senator Leahy and Senator Hatch. Thank you all for allowing me to present to you and introduce a gentleman I very much support as Deputy Attorney General for the United States. As my colleague John Warner has stated, Tim Flanigan—and you have stated, in fact, Mr. Chairman—is eminently qualified to serve as Deputy Attorney General for the United States. He is a consummate professional, brilliant, diligent, evenhanded, wise, and principled. And he is not just an outstanding lawyer, he is a strong leader, a skilled manager who is respected by his peers, his bosses, and subordinates alike. He has worked at the highest levels of Government at some of the most prestigious law firms. He was actually a partner with me for a short while at McGuire, Woods. And he is conversant in criminal law, appellate law, international law, national security matters, administrative law, corporate law, and litigation. It is no wonder that the President has selected this outstanding gentleman, Tim Flanigan, to be Deputy Attorney General.

I am confident that he will serve the people of this Nation as well as the Department of Justice very well. He did go to the University of Virginia after going out West to Brigham Young and completed law school at the University of Virginia. I will not repeat all the aspects that you have mentioned, and my colleague, but he has served in a variety of roles in Government, out of Government, even for Chief Justice Warren Burger on the Supreme Court and,

in fact, was even asked to collect the papers and begin the preparation of Chief Justice Warren Burger's biography.

He also served in the private sector with Tyco, and while some people say, gosh, he was with Tyco as senior vice president and general counsel, what he did—and it was no easy task—he spearheaded the introduction of vigorous legal compliance programs to change the underlying culture at Tyco. He also oversaw the restructuring of a very large corporate law department and was a part of seniors leaders of a $40 billion company, and that is big even for Federal Government standards.

In addition to his stellar legal career and service in and out of Government, he is involved in a variety of community and religious activities, the Church of Latter Day Saints, the Boy Scouts, and Brigham Young University. His wonderful family, his wife of 31 years, and 14 kids and spouses and grandchildren, is otherwise known, will be known hereafter as "the Flanigan precinct of Great Falls, Virginia."

So, Mr. Chairman, let me just say this in conclusion: Thank you for holding this hearing. I believe Tim Flanigan truly is an outstanding nominee, great experience, impeccable credentials, the right philosophy, but most importantly, the integrity that we would want to have a Deputy Attorney General for the United States. And I am proud to say he does live in Virginia, and I hope that this Committee will be able to move as expeditiously as possible to get this nomination to the floor so that Mr. Flanigan can start serving the United States of America.

I thank you, Mr. Chairman, Senator Hatch, and Senator Leahy.

Chairman SPECTER. Thank you very much, Senator Allen, and we know how busy each of you is, and you are, of course, free to take leave at this time and we will carry forward.

I want to thank Senator Leahy for agreeing to a 4 o'clock hearing. This is not a customary time for the Judiciary Committee to hold its hearings, but as may be noted, we have a jammed agenda, and Senator Leahy was gracious in consenting working overtime, really, with all his other duties, to be present for this late afternoon hearing. Senator Leahy?

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

Senator LEAHY. Thank you, Mr. Chairman. We are all working overtime, and no one more than yourself.

As Senator Warner said, the Deputy Attorney General is a key player in the Department of Justice. He serves in the number two position, advises and assists the Attorney General in developing and implementing departmental policies and programs, provides supervision and direction to all the departments. He is authorized to exercise nearly all the power and authority of the Attorney General, and in the absence of the Attorney General, he acts as the Attorney General.

Now, I list all these responsibilities because it illustrates the importance of the position. He can be called upon in certain circumstances to be the Nation's top law enforcement officer. The current Deputy, James Comey, and his predecessor, Larry Thompson, both had extensive experience serving as prosecutors, and both

were called upon on occasion to serve as our top law enforcement officer.

Mr. Flanigan does not have any such prosecutorial experience. He worked in the Office of Legal Counsel in the first Bush administration. He spent some years in a white-collar criminal law practice. Normally I would not find that so troubling, but the current Attorney General had no prosecutorial experience before being named to his position. But even that might not be as troubling, but they are not alone. Alice Fisher, who has been named to serve as the head of the Criminal Division, also never worked as a prosecutor. So if Mr. Flanigan and Ms. Fisher are both confirmed by the Senate, then none of the top three leaders of the Department with the responsibility for criminal law enforcement will have this kind of critical experience in this area. They are top law enforcement officers of the country, and I suppose one can start out at the top without experience. But I think most Americans would expect one of the three to have had some experience in this area.

I am also concerned at the reports that say that Mr. Flanigan played a key role in developing the administration's policies regarding the interrogation and prosecution of terrorist suspects after September 11th. These were horrific acts. We expected the administration to move aggressively to protect the security of the Nation. But they took many steps that many in the Congress and even some in the executive branch believed went too far.

In November 2001, the President signed a military order to authorize military commissions. The administration argued that it did not need the authorization of Congress to establish the tribunals, which one conservative Republican columnist, William Safire, called "kangaroo courts," because they fell vastly short of the procedural protections either in our criminal courts or in military courts-martial. News reports suggest that Mr. Flanigan, along with one other, wrote the orders, drafted them.

According to press accounts, he rejected the idea of using criminal courts to try terrorist suspects, believing that access to defense lawyers and due process rights would hamper information collection. According to Newsweek, heated debates occurred between the White House and the Justice Department, based upon the fact that the Solicitor General's office feared the complete denial of counsel to enemy combatants would not withstand Supreme Court review. These accounts say that Mr. Flanigan "argued against any modification, urging that more suspects be designated as enemy combatants."

And then we understand from public comments he himself has made that Mr. Flanigan was involved in reviewing proposed interrogation techniques for terrorist suspects. He reportedly reviewed and discussed with DOJ lawyers the infamous "torture memo" signed by Jay Bybee, then the head of the Office of Legal Counsel. He was involved in discussions of specific interrogation techniques such as suffocation, simulated drowning—"waterboarding"—and so on.

So I think we have to ask him, Did he agree with the Department's interpretation of the torture statute at the time the memo was issued in August 2002? Did he argue against what the Department eventually determined itself to be flawed reasoning? What

did he think of the memo's assertion of unchecked executive authority, the so-called commander in chief override?

Now, when I questioned the Attorney General at length on this point in his confirmation hearing, he would not state whether he disagreed with the memo's legal analysis on this topic? I hope that Mr. Flanigan will be more forthcoming.

I was interested in a statement he made before the Judiciary Committee on another area, the subject of judicial activism. He said, "First among these"—speaking of judicial activism—"in my view, is [the] need for the Judiciary Committee and the full Senate to be extraordinarily diligent in examining the judicial philosophy of potential nominees. In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory that it could find no fault with the nominee. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well thought out judicial philosophy, one that recognizes the limited role of Federal judges. Such a burden is appropriately borne by one seeking life tenure to wield the awesome judicial power of the United States."

I want you to know, Mr. Flanigan, I totally agree with you on that statement.

Thank you, Mr. Chairman.

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

Chairman SPECTER. Thank you very much, Senator Leahy.

We are joined by the distinguished former Chairman of the Committee, who likes your Brigham Young affiliation. He said to me, when your nomination had been sent up, "Arlen, provide a prompt hearing for this very good man," and here we are.

Senator Hatch, you are recognized.

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

Senator HATCH. Well, thank you, Senator Specter. So nice of you to recognize me. Normally it is just the Chairman and the Ranking Member, but he knows how deeply I feel about this nomination, having worked with you in a variety of positions and knowing the tremendous talents that you have. But, most importantly, you have a capacity for decency and honor that cannot be excelled. And to me that is more important than anything else. You have all of the intellectual credentials. You have all of the legal credentials. You have served in the highest levels of this administration and others as well. And you are a person of great moral integrity, and proud of your family. It is good to see them all again and see them all here and this wonderful wife of yours. She is a great companion to you.

So I look forward to supporting you with everything I can, and I know that once you get there, you will do as good a job as anybody possibly can. And I just wish you well and will do everything in my power to make sure that this gets done as expeditiously as possible because it is important. I think Mr. Comey is an excellent

Deputy, and I believe you will make an excellent successor to Mr. Comey.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Hatch.

Mr. Flanigan, would you stand for administration of the oath? Raise your right hand. Do you solemnly swear that the testimony you give before this Senate Judiciary Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FLANIGAN. I do.

Chairman SPECTER. Mr. Flanigan, I compliment you on your outstanding record, both professionally and family-wise. It is very impressive to see your wife introduce your children, and with your family background is a very, very good start.

You were in the White House, Mr. Flanigan, on September 11, 2001, and I am sure you followed the President's reorganization plan to better cope with the issues of terrorism. What are your plans to implement what the President has proposed if confirmed?

STATEMENT OF TIMOTHY ELLIOTT FLANIGAN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL

Mr. FLANIGAN. Thank you, Senator. I have followed with interest the President's proposals. I think we have gone through an evolution in the days since 9/11 in our approach to matters of national security as they related to the war on terror. I think that the recommendations of the Commission were right on the money, that we need a different focus within the Justice Department. I think the creation of the National Security Division is a step that the time has come for it.

I think it also presents a management opportunity with respect to both the Criminal Division and the FBI to focus the parts of the Criminal Division and the FBI that are not terrorism focused, to make sure that they maintain the focus on their important missions with respect to violent crime, drugs, and the other issues that they face.

So my hope going forward would be—I am speaking, of course, as an outsider at this point in time, but my hope, if I am confirmed, would be to be there to be intimately involved in the reorganization. I know there are many complex issues that need to be sorted out in connection with that. Just sitting here, I don't know whether those are legislative issues in addition to management issues within the Department. But I do plan to make that one of my focuses.

Chairman SPECTER. Considering the very high priority on the war against terrorism, Mr. Flanigan, would you commit to spending a considerable portion of your time—we cannot micromanage what you are going to do, but to make the war on terrorism a top priority as you assist the Attorney General as the chief operating officer of the Department of Justice?

Mr. FLANIGAN. Yes, Mr. Chairman, I will. And I believe that one of the Deputy Attorney General's most important roles is to ensure that the priorities that the Attorney General has laid out for the Department are carried into action. And Attorney General Gonzales has identified continuing the fight against terrorism as

the number one priority of the Department of Justice—not the only priority but its top priority.

Chairman SPECTER. Will it be your number one priority as well?

Mr. FLANIGAN. Yes, sir, it will be.

Chairman SPECTER. Senator Leahy has accurately described the issue of prosecutorial experience in the Department of Justice, and it is something that he would be especially cognizant of, having been a prosecuting attorney himself, as was I. And there are a great many nuts and bolts to all the things we lawyers do. What would your approach be in your supervisory capacity over the Criminal Division to compensate for the lack of hands-on criminal law practice that you yourself have not had the opportunity to follow?

Mr. FLANIGAN. Mr. Chairman, I have the benefit of having served in the Department of Justice as the head of the Office of Legal Counsel in the President's father's administration at a time when the Deputy Attorney General was first Bill Barr, later Attorney General of the United States, and then George Terwilliger, and I saw how that office functioned well, particularly under Attorney General Barr with his—he, like me, had not been a prosecutor before coming to that office, and he made sure that he surrounded himself with able Associate Deputies who were skilled prosecutors. One of them, I believe—one of them, I know, came from Senator Leahy's home State, George Terwilliger, later my law partner. But I think that that is one key, being sure that we have in the Deputy's office a staff that reflects the prosecutorial expertise.

Another point would be for me to be cognizant of the role of the professional prosecutors within the Department of Justice. I have great respect for the men and women who give their professional careers over to this element of the pursuit of justice. I listen to them. I believe that I can understand them. And I believe that I can take their advice.

Chairman SPECTER. May I make a suggestion to you? Pat, my red light is on, but when only three of us are here, when we have a panel full, we meticulously observe the time. But this is a very important position, and I am going to extend a little.

Noting Senator Leahy's assent and Senator Hatch's lack of objection, my suggestion is to work with some of the career professionals, perhaps two or three, get to know them, find out what they are doing, what their analysis is, and spend a little time with them, because you have some great career professionals in the Department of Justice. And you can learn a lot by talking to them and following them through on case management, case preparation, case analysis. But it really is important that in the Criminal Division there be some real experience.

I would make the same suggestion to you in other fields. Obviously you have to make an allocation of your time, but antitrust, again, is a very complex subject, and at least from my review of your resume, you have not been involved there. No reason for you to be involved in every line. Also on the Civil Rights Division, and I would apply that generally as you take a look at the very, very major responsibilities that you will have as Deputy Attorney General.

Senator Leahy has noted the issue of interrogation tactics. I think it is important for the Committee and the full Senate to know what role you had in the formulation of those interrogation practices. So would you tell us just exactly what participation you had?

Mr. FLANIGAN. Certainly, Mr. Chairman. And I will preface this by giving the Committee some background concerning this issue.

Sometime, I believe, in the summer of 2002, the Department of Justice Office of Legal Counsel contacted the Office of the Counsel to the President and indicated that they would like to come brief us on a legal opinion, legal analysis that they were preparing for another Government agency. The question that had been posed by the Government agency fell into the—was a question regarding the reach—

Chairman SPECTER. Let's be specific about the other Government agency—CIA.

Mr. FLANIGAN. Sorry, Mr. Chairman. Of course, CIA. The question posed by the CIA was whether the reach of the torture statute—they wanted to understand what the words of the torture statute meant and how it would be applied. The background, as I understand it from the contact that we had with the Department of Justice, was that the CIA believed that it either had or shortly would have in its custody some senior al Qaeda leadership—al Qaeda leadership that the CIA reasonably believed would have knowledge concerning al Qaeda operations, both past and future al Qaeda security procedures, and al Qaeda recruiting procedures as well as the identity perhaps of al Qaeda cell members.

In that context, and in the context of the value of that information, the potential value of that information to the Nation's fight against terrorism, and the need to avoid, prevent if possible a future planned attack, the Agency asked basically what it could do beyond sort of a normal Q&A approach to questioning the senior al Qaeda leaders.

That contact resulted in two briefings. As I recall, both briefings focused largely on the issue of the legal—

Chairman SPECTER. Briefings by whom?

Mr. FLANIGAN. By the Office of Legal Counsel to us.

Chairman SPECTER. To the White House Counsel?

Mr. FLANIGAN. Yes, Mr. Chairman, to then White House Counsel Gonzales, to myself, and to some others that were involved.

Chairman SPECTER. Was the CIA briefed as well?

Mr. FLANIGAN. No, Senator, it was not. The CIA was not present for those briefings, as I recall.

Chairman SPECTER. What was the purpose of the briefings? White House Counsel was not going to undertake any of the interrogation.

Mr. FLANIGAN. Senator, the White House Counsel was neither going to undertake the interrogation nor was it his role, or my role, for that matter, to pass on legal analysis. That issue—that role is committed by statute and by tradition to the Attorney General and to the—

Chairman SPECTER. So then what was the purpose of the briefing?

Mr. FLANIGAN. The purpose of the briefing, as I understood it, was to keep the counsel to the President informed regarding this issue, presumably in case it should be raised in one of the national security-related committees that the counsel of the President sat on.

Chairman SPECTER. And you were one of those briefed?

Mr. FLANIGAN. Yes, Mr. Chairman, I was.

Chairman SPECTER. Did you have a speaking part?

Mr. FLANIGAN. I believe my—the events are far enough in the past that my memory is not perfect. I probably asked some questions about the analysis. I don't recall specific questions that I asked. I think I may have asked questions about the statutory analysis to be sure that I understood what it was they were after. As a former head of the Office of Legal Counsel, my principal concern would have been to be sure that they had the statutory analysis correct, that it sounded correct. I obviously didn't have the time or the resources or the role to redo the research that they were doing, but I just needed to hear them talk about the statute to be clear that this was something that made sense.

Chairman SPECTER. Was White House Counsel Gonzales present at that briefing?

Mr. FLANIGAN. Yes, sir.

Chairman SPECTER. Those briefings?

Mr. FLANIGAN. Yes.

Chairman SPECTER. Anybody else from the White House Counsel's office?

Mr. FLANIGAN. Not that I recall, Mr. Chairman.

Chairman SPECTER. Did you have any further participation in the issue of interrogation tactics?

Mr. FLANIGAN. No, Mr. Chairman, not that I recall. Those two briefings are the extent of my involvement, as I recall it.

Chairman SPECTER. Mr. Flanigan, this Committee is going to be hearing from FBI Director Mueller tomorrow about the activities of the FBI and high-tech purchases. It has been widely noted about very substantial expenditures by the Bureau without getting the kind of products that they were looking for. What kind of activity and supervision would you anticipate to direct at Deputy Attorney General, if confirmed, to the FBI on matters such as those?

Mr. FLANIGAN. Mr. Chairman, I think a rigorous process is necessary for procurements of this magnitude. I am not familiar with the process that the FBI has gone through to this point. I would anticipate that as Deputy Attorney General that I would work with Director Mueller to be sure that the procurement process was one that was based on real world considerations, that took into account the availability of various options for the type of secure, effective system that the FBI needs.

Chairman SPECTER. Does your experience with Tyco give you any special expertise on these kind of procurement matters?

Mr. FLANIGAN. It gives me some expertise in the area of procuring systems, yes, and it gives me a healthy skepticism for the initial picture that you might get in a procurement setting. You have to really drill down. We have had, at Tyco, in the law department, have had to drill down considerably into our needs and the capabilities of software vendors, and have occasionally been a little

disappointed in what we have received, but I think the lesson that I have learned is that you need to be careful and conscientious in going about a procurement like that.

Chairman SPECTER. Mr. Flanigan, when you came in to see me on the so-called courtesy visit, I raised with you the question of Congressional oversight. And this has been a matter of some understandable tension between the Legislative and Executive Branch, and I referenced a letter which I had sent to Judge Gonzales back on December 27, 2004, after his courtesy call in anticipation of his confirmation proceedings as Attorney General.

I want to read this to you so that it is emphatic on the record, and so that others can hear it as well, because we are going to be engaging in very active oversight and have already started it. I have gotten the Attorney General's acquiescence, but I want your acquiescence as well, that is, if you can do so in good conscience. No coerced acquiescence here, Mr. Flanigan, but I want to be on same wavelength with you. It will take a couple of minutes, but will save us a lot of time.

The broad Congressional authority was summarized as follows in a 1995 Congressional research analysis to this effect, quote: "On review of Congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer Raids and Teapot Dome to Watergate, and through Iran Contra and Rocky Flats demonstrates that DOJ has been consistently obliged to submit to Congressional oversight regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide a legal foundation for the broad Congressional power of inquiry. All were contentious and involved executive claims that Committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy. In the majority of instances reviewed, the testimony of subordinate DOJ employees such as line attorneys and FBI field agents were informally taken, and included detail testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda, correspondence prepared during the pendency of cases, confidential instructions outlining the procedures to be followed or undercover operations and the surveillance and arrest of suspects, and documents presented to grand juries, not protected from disclosure by Rule 6(a) of the Federal Rules of Criminal procedures, among other similar sensitive materials."

That is a fair-sized statement, but it is an abbreviation. Are you prepared to make a commitment in your job as Deputy Attorney General that you would respect and abide by those standards as set forth on Congressional oversight?

Mr. FLANIGAN. Mr. Chairman, I am aware of the Congressional Research Service material that you were kind enough to provide me, and I have reviewed it. I believe that I can commit without any restraint or without any compulsion, that I will work with you in

good faith and work with the Committee in good faith to resolve any requests that the Committee has for information.

The Congressional Research Service memo represents a view of the Congress Research Service with respect to a particular interbranch topic with respect to oversight. The Department of Justice has long articulated its own view of that. I think, frankly, Senator, in the real world these things get worked out and they should be worked out. There are a couple of things that I know you would be cautious of, members of the Committee would be cautious of with respect to prosecutorial and investigative decisionmaking. We don't want prosecutors or investigators to be completely free of oversight, and yet that is a very delicate activity that they are engaged in, and to provide oversight, to conduct oversight runs the risk of putting too heavy a hand or thumb on the scale of the issue.

But as I said, I think real world, in my experience, these things are always worked out. I think they can be worked out with acrimony and with bickering, or they can be worked out in good faith. I like to count myself on the side of good faith.

Chairman SPECTER. Well, Mr. Flanigan, I do not agree with you that this is the view of CRS. I believe that this is an accurate statement of the law. And when you talk about being cautious, that is in the eye of the beholder, and the Committee is not insensitive to what law enforcement means or what investigations mean. But I do not want any misunderstanding when we come in and we want to know about pending investigations—and we have had these battles with the Department of Justice before about line attorneys and about pending investigations—I am looking for this commitment. Good faith is something which we do not have to talk about.

As ranking Federal officials, no doubt, the Deputy Attorney General functions with good faith, as do members of the Judiciary Committee. But when you talk about a heavy hand, that depends on who is monitoring the scale. I want to be sure when we come in that you are committed to these principles. Are you?

Mr. FLANIGAN. Senator, I am committed to the principles that I have outlined to you.

Chairman SPECTER. Not the ones you have outlined. I am concerned about the principles I have outlined to you.

Mr. FLANIGAN. Senator, I can't brush away two centuries of experience in the Executive Branch. I mean President George Washington took a view with respect to oversight concerning, Congressional oversight concerning the Jay Treaty. There are—the Executive Branch has a view here. I think I have represented that view and defended it vigorously while I was head of the Office of Legal Counsel, and yet I still return, Mr. Chairman, to the point that if we are—as you say, if as senior Federal officials we can behave reasonably and trust in each other's good faith that we can get you everything you need, everything you require in the oversight context.

Chairman SPECTER. I will come back to this. I have overstayed my welcome. This is the longest I have questioned anybody.

Senator LEAHY. I found it fascinating because Mr. Flanigan said they have been trying to get us information, and the remarkable change over the last 4½ years, because many of us, Republicans

and Democrats on this Committee, have asked for information along the lines of what the Chairman has talked about, and the Department of Justice has just stonewalled, they have not responded, not responded.

Mr. FLANIGAN. Senator Leahy, I commit to you that I will respond.

Senator LEAHY. I should say there has been some response, but basically the response is, go take a flying leap, but want something a little bit more than that.

Chairman Specter talked about the FBI and how you would be involved, What responsibility does the Attorney General and Department of Justice have for the FBI in your view?

Mr. FLANIGAN. Senator, the organization of the Department places the Director of the FBI in a reporting relationship with the Deputy Attorney General, who reports to the Attorney General. The FBI has always operated with some degree of independence and flexibility within that structure, but I think it is fair to say that as a matter of organization and as a matter of supervision and responsibility, the FBI falls under the Deputy Attorney General's jurisdiction.

Senator LEAHY. You do not think that—I recall once at a meeting with J. Edgar Hoover when I was a young prosecutor, seeing the organization which basically was the Director of the FBI here, lines going down to the President and down to the Attorney General. I would assume that without trying to resurrect the ghost of—you do not agree with that?

Mr. FLANIGAN. I don't agree with that characterization. Director Mueller is a former colleague of mine in the Department of Justice. We were both Assistant Attorneys General at the same time. I have great respect for him. I think it's reciprocated. I have—I don't think one gets very far by necessarily command and control tactics with the FBI, but I think you do have to establish the, for lack of a better term, Senator Leahy, the civilian control over the FBI.

Senator LEAHY. So if the FBI is still lagging behind in the ability of translating information that may be vital to the security of the United States, the Justice Department bears some of the responsibility for that?

Mr. FLANIGAN. Yes, Senator. The Justice Department is the ultimate—holds the ultimate responsibility.

Senator LEAHY. And the same with the—I realize this was not on your watch, nor on the current Attorney General's watch, so I can ask you these questions objectively, I would hope—on the virtual case file, the fiasco, the millions upon millions upon millions of dollars wasted in that computer fiasco that the Justice Department bears some responsibility there.

Mr. FLANIGAN. I intend to work very hard to make sure that that is corrected.

Senator LEAHY. I think everybody in the FBI would like to have it corrected I think.

Mr. FLANIGAN. I'm sure they would.

Senator LEAHY. I do not think there is anybody there from the Director on down that takes much joy in knowing that there are things they did not translate that might have saved us from 9/11 or things that—or computers that are so far behind. I recall shortly

after 9/11 with the FBI explaining how they were sending out flying squads of agents to find out who might have lived along—preliminary thing, who lived on certain streets and whatnot, very proud of that. I suggested, "Well, did you just at least Google the addresses first?" And I got this blank stare back. We also found they had to fly, charter planes and fly pictures of the suspected hijackers to their various offices. They could not e-mail them. I told them I would be happy to bring it home and e-mail it from the computer in our kitchen if that would make it any easier for them.

One of the most troubling features I mentioned earlier, the August 1st, 2002 Office of Legal Counsel memo, the so-called Bybee memo, was a section that asserted unfettered Executive power. The memo argues that the President, acting under his Commander in Chief authority, could override the torture statute, could immunize from prosecution Federal officials who commit torture on his order.

Now, this came up during Attorney General Gonzales' hearing last winter, and he said, and I am quoting him now, "I don't recall today whether or not I was in agreement with all of the analysis. I don't have a disagreement with the conclusions then reached by the Department."

So let me ask you your view. Does the President, acting under his Commander in Chief authority, have the power to override the laws passed by Congress and immunize from prosecution Federal officials who violate those laws under his order?

Mr. FLANIGAN. Thank you, Senator Leahy, for giving me the opportunity to clarify how I believe on that.

Senator LEAHY. Sure. I thought you might like that.

Mr. FLANIGAN. But I have—I think I'd like to start by responding in this way. The specific use of that argument in the Office of Legal Counsel memorandum from August 2002 was, in my view, inappropriate in a sort of sophomorish way. It was a kitchen sink argument that was thrown in. As I read the memo now, it looks like a kitchen sink argument that was thrown in to basically be a belt and suspenders argument. It was unnecessary, it was useless. The President had already said that we would not torture, and if the President says we're not going to use torture, it is inappropriate for the Office of Legal Counsel to gratuitously insert an argument into a memorandum that says, well, we could if you told us to, if the President told us to.

Now, more generally—I'm sorry, Senator.

Senator LEAHY. Well, I was going to say now that you have answered it your way, go back to my original question: does the President, acting under his Commander in Chief authority, have the power to override the laws passed by Congress and immunize from prosecution Federal officials who violate the laws in his order? Does he or does he not?

Mr. FLANIGAN. You know, Senator, that's a question where—in the first place, I don't think we get there under the current circumstances.

Senator LEAHY. I do not care whether we get there in the current circumstances. Does he have that power? Is he above the law, in other words?

Mr. FLANIGAN. The President is never above the law.

Senator LEAHY. Can he place other people above the law by immunizing them if they violate the laws under his order?

Mr. FLANIGAN. No.

Senator LEAHY. I—

Mr. FLANIGAN. Happy to elaborate on that if you'd like.

Senator LEAHY. Feel free. You are more direct on it than the Attorney General was in his confirmation hearing. Go ahead.

Mr. FLANIGAN. Senator, there are certain aspects of the President's Commander in Chief power, which are, I think, uniquely entrusted under the Constitution to the President. If the Congress, for example—obviously this is a somewhat ridiculous example, but if the Congress told the President that he can only roll tanks right and never left, or if the Congress told the President they could only attack at night, couldn't attack during the day, I think that intrudes upon the President's core Commander in Chief power, and that law would be unconstitutional as applied to the President's orders as Commander in Chief.

With respect to this particular statute—

Senator LEAHY. There are specific things Congress has under the Constitution, only the Congress can declare a war.

Mr. FLANIGAN. I'm sorry, Senator. Could you repeat that?

Senator LEAHY. I mean the Congress has certain powers under the Constitution, for example, to declare war.

Mr. FLANIGAN. Yes. Congress certainly does have a very important role in the declaration of war, and in the days following 9/11 it was my privilege to be up here in this locale talking I believe with members of your staff—

Senator LEAHY. I think I recall.

Mr. FLANIGAN.—as well as members of other staff in Congress about the authorization for the use of military force.

Senator LEAHY. And I recall we were having the final conference on the PATRIOT Act.

Mr. FLANIGAN. I recall that very well, Senator.

Senator LEAHY. Where Republican leader Armey and I wanted sunset provisions, and you made a very strong case why we should not have them, but guess what? We got them.

Mr. FLANIGAN. Senator, if I lost that one, I'll still make the argument that sunsetting—

Senator LEAHY. No, you were very strong in your argument.

Mr. FLANIGAN. Sunsetting powers given to Federal law enforcement officials, is a signal to those Federal law enforcement officials that maybe we're not really serious about—

Senator LEAHY. No, no, not at all. That was—I think Speaker Hastert, Congressman Armey and I, not normal political bedfellows, made it very clear we were not sending anybody a signal that we were not serious, we were sending a very strong signal that we expected the administration to be responsive to real oversight, and also very clear signals to both the House and the Senate that we fully expected them to do the oversight necessary, because if you have a sunset it kind of puts pressure on everybody to prove that the law is not working. I remember those times very, very well. I was very involved with the PATRIOT Act and the drafting of it, just as Senator Specter and I and others were in the drafting

a new PATRIOT Act which actually passed a very diverse Committee unanimously last week.

But as one who had his first career in law enforcement, I take law enforcement matters very, very seriously, and this was to also make sure that we in the Congress, both parties, took our responsibility very seriously.

Mr. FLANIGAN. And, Senator, I take oversight very seriously and the need for us to have an accountability with respect to the use of those powers. I think we've now completely replayed the argument that we had at the time.

Senator LEAHY. Let me ask you a couple things just from the press accounts—and I am quite over my time too, I apologize—but press accounts suggest you discussed specific techniques that might be used by members of the military or intelligence agencies in interrogating prisoners. Did you advocate for or against any of the more severe techniques such as pain, suffocation?

Mr. FLANIGAN. I did not, Senator. That was not my role. As I responded to Senator Specter, to Chairman Specter, I knew the difference between the role of the White House Counsel's Office and the Office of the Counsel of the President. It was not part of the discussion. I was not called upon to make—to urge any particular view with respect to any particular method of questioning.

Senator LEAHY. Do you think that water boarding, in which the prisoner is made to believe he is drowning, is that an acceptable interrogation technique?

Mr. FLANIGAN. Senator, I am at a disadvantage here because I understand that the discussion of methods that took place in that meeting is still classified, and I can't discuss it.

Senator LEAHY. I am not asking you about that meeting, I am just asking you is water boarding a acceptable interrogation technique?

Mr. FLANIGAN. I don't know—

Senator LEAHY. For people operating under the—people operating as agents of the United States?

Mr. FLANIGAN. I don't know enough about the technique, Senator.

Senator LEAHY. You never described water boarding to a reporter, as to what it was?

Mr. FLANIGAN. I have, I have a basic understanding as to what water boarding is, but I don't know the effects of it, I don't know the physiological of psychological impact that water boarding may have long term.

Senator LEAHY. Based on the description you made of water boarding to a reporter, do you think it is an acceptable technique to be used by an agent of the United States?

Mr. FLANIGAN. I don't know, Senator. I need to know more about the effects of water boarding. And it was not part of that discussion for us to make that decision. That was not what was at stake in those two briefings that I described for the Chairman.

Senator LEAHY. If I submit other questions for the record, will you answer them?

Mr. FLANIGAN. Yes, Senator.

Senator LEAHY. Anybody can work with you on the answers, but I want you to review the answers, so when they come here we

know that they are your answers, and not as we have now found, that some within the Justice Department at the highest levels say when under oath in deposition that the answers they submit to us do not come from them.

Mr. FLANIGAN. Senator, anything that goes in over my name will be reviewed and—

Senator LEAHY. I appreciate that and I admire you for it. Thank you.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Leahy.

Senator Hatch.

Senator HATCH. Mr. Flanigan, you recognize the role of the Congress, vis-a-vis the role of the Justice Department?

Mr. FLANIGAN. Yes, Senator.

Senator HATCH. You realize that we do have to do oversight up here, and that you, as I understand it, have fully said that you will cooperate fully as long as it is within the law and within the constitutional constraints of the law.

Mr. FLANIGAN. Yes. I will do that. And I recognize the value of oversight also in keeping us on mission, us, assuming I am confirmed to this role, keeping the Department on its mission, keeping it doing the things that it's supposed to do, and doing them well.

Senator HATCH. With regard to these memoranda that have caused such an uproar, you did not prepare them?

Mr. FLANIGAN. No, Senator, I did not.

Senator HATCH. You did not advise on them?

Mr. FLANIGAN. No.

Senator HATCH. You did not really ask for them, did you, or did you—

Mr. FLANIGAN. No, I did not make a request for that legal advice at all.

Senator HATCH. Is that part of your responsibility, to—

Mr. FLANIGAN. It was part of my responsibility from time to time to request legal advice from the Department of Justice. That is not what happened in this case. As I think I mentioned to Chairman Specter, the request for this advice came from—directly to the Office of Legal Counsel from the CIA. The first that I heard that the question had been asked was when we were called by the Office of Legal Counsel and a briefing was proposed.

Senator HATCH. When you served in these respective positions, did you do your very best to be honest and decent and honorable in every way?

Mr. FLANIGAN. Yes, I did.

Senator HATCH. I think everybody who knows you knows that that is a hallmark of your life.

Mr. FLANIGAN. I hope so, Senator. It's what I strive for.

Senator HATCH. That is all we can ask of you up here as well. Now, the Justice Department has a wide variety of responsibilities and authorities, right?

Mr. FLANIGAN. Yes.

Senator HATCH. One of the most important, of course, I criminal justice. You have been involved in some criminal cases, mainly white collar cases?

Mr. FLANIGAN. I have, Senator. When I was—let me say that my involvement goes back to—in criminal matters goes back to my time as Assistant Attorney General, when I served as a member of Attorney General Barr's senior management or senior leadership team for the Department as a whole, a group in which we frequently had discussions concerning the various matters, the criminal matters that were pending in the Department. I also served in what I would say is an adjunct role as counsel to the Deputy Attorney General, and in that regard, in that role came into frequent discussion about matters involving criminal prosecutions in the Department.

Senator HATCH. So—go ahead.

Mr. FLANIGAN. Later as a white collar practitioner, white collar criminal practitioner, as it's called, I was involved in both criminal investigative and other matters. And then in the—when I was in the White House Counsel's Office, of course, I had a pretty thorough exposure to national security law, a refresher course in national security law. And then I would just point out that my experience at Tyco International has largely been in implementing compliance programs in cooperating extensively with the Manhattan District Attorney's Office in their prosecution of Tyco's former leadership. It's been a real good opportunity to get exposure to the criminal law in the white collar area.

Senator HATCH. How many years did you serve in the Federal Government in these respective positions in the Justice Department and the White House?

Mr. FLANIGAN. I believe five, Senator.

Senator HATCH. Five years. So you served in the Justice Department as an Assistant Attorney General?

Mr. FLANIGAN. Yes.

Senator HATCH. Among other things. Then you served in the White House as Associate White House Counsel, Deputy Associate White House Counsel.

Mr. FLANIGAN. Deputy White House Counsel.

Senator HATCH. I see. I am very impressed by you and your family. You are leaving a very prestigious private sector general counselship in one of the large corporations of America, where I am sure you make a considerable amount of money compared to what you will make in this job as Deputy Assistant Attorney General of the United States. I would just like to know why would you leave a job like that, where you can support this tremendous family of yours a lot better than you can down there at Justice? Why would you do that, to come to work for the U.S. Government, at really what is a disadvantageous pay rate?

Mr. FLANIGAN. Senator Hatch, I note that my wife is not sworn, so the tears that she's crying right now over our departure from Tyco are not on the record, but I really believe—and I have taught, I have taught my own children, I've taught—when I've had a chance to speak to other groups of young people, I've tried to consistently deliver the message that people need to be ready to do what you do, what Chairman Specter does, and what many other members—the other members of the Committee do, and that is to be willing to serve. And for better or for worse, I believe it's my time to serve again.

The Attorney General asked me if I would do this. The President has nominated me to do this, and if confirmed by this Committee, I hope to do a good job, to render a good account of myself, and to provide the service, and hopefully then I'll return to the private sector and continue my other primary obligation of supporting my family.

Senator HATCH. Part of it is you love the country.

Mr. FLANIGAN. Yes, Senator, I do.

Senator HATCH. I see my time is up, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Hatch.

Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman.

Mr. Flanigan, thank you for being here today, and I have a few questions to ask.

News reports have suggested that you, along with an aide to Vice President Cheney, drafted the order authorizing military commissions. It was signed by the President in November of 2001. And according to news reports, the drafting process was conducted primarily in secret, and a variety of Government experts were actually frozen out of that process, including military lawyers and State Department officials who had years of expertise.

In many instances it said those experts disagreed with the ultimate decision to go forward with the military commission process that failed to provide defendants with basic due process rights.

Setting aside any disagreements we may have about the military commission process itself, please explain if you would, why as a decisionmaker, you did not listen to experts from the military and from other agencies in the process of making this very significant decision?

Mr. FLANIGAN. Senator, thank you for that opportunity to explain my role here. I think we did have the benefit of experts in the military, in the State Department. There was a process that was going on through the National Security Council focused on the development of a military commission approach, and the process was just taking too much time for the purposes of my clients in the White House.

And I was asked to participate in this process. I tried to draw on the materials that had been pulled together by this group of people from the military and from other areas that had been working under the National Security Council. I believe that we accomplished in the end something which was in accordance with their views largely in terms of what we would see as a military commission process.

Now, there's no doubt that the military commission approach is something that's well established in our Nation's history. Presidents from George Washington and many in between George Washington and Franklin Roosevelt, used the military commission process in various settings.

I think that the military—the President's military commission order that establishes the commission, together with the implementing regulations for that order that are contained—that were promulgated by Secretary Rumsfeld, create a system which is both balanced and fair, one that takes into account the serious national security concerns that would arise if, for example, Osama bin

Laden were tried in a United States Federal District Correct, and it balances those along with the rights of the defendant. The military commissions specify a fair trial, access to counsel, both military and civilian counsel. I think there's a lot—

Senator FEINGOLD. I tell you as I recall, if I recall correctly, that the initial product that apparently your—as you said, your client asked you to come up with very quickly was deeply flawed, and led to an enormous amount of criticism, including by many members of this Committee, and that subsequently there were changes made. I understand the needs of providing something in a timely manner to a client, but I think the fact that the concerns of those people that I mentioned were not considered at the beginning, actually made the whole process probably take a little bit longer.

Let me move on to another question. I understand in 2001, as we have already talked about, you were heavily involved in the development and drafting of the USA PATRIOT Act. The 9/11 Commission report noted the controversy over many of the provisions of the PATRIOT Act, and indicated that there should be full and informed debate over the Act.

In fact, the report made the following recommendation. Quote: "The burden of proof for retaining a particular Government power should be on the Executive to explain (A) that the power actually materially enhances security; and (B) that there is adequate supervision of the Executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use."

Do you agree with the Commission's recommendation, and as Deputy Attorney General will you pledge to do everything you can do to facilitate a full and informed debate by cooperating with Congress when it asks for information to perform its oversight, and will you work with us to develop adequate guidelines to properly confine the Executive's use of its new powers?

Mr. FLANIGAN. Senator, I agree in large measure with everything you have said. I would—I think that ongoing oversight of the use of the authorities that are conveyed or that are covered in the PATRIOT Act is a very important role for this Committee, for the Congress to play.

Obviously, the PATRIOT Act deals with the collection in part of national security information, and so we have to be careful about how we handle that information, how we share it. As an outsider, I confess I really don't, am not completely conversant with all the issues regarding sharing that information, but I pledge that I will work with the Committee to make sure that you have the information you need to make informed decisions regrading the future of those powers.

Senator FEINGOLD. Thank you, Mr. Flanigan.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Feingold.

Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman.

Mr. Flanigan, thank you for meeting with me earlier in my office. I am sorry that I was not here to see if you were successful in recalling the names of all of your children and family. You told me that it would be a challenge for you and—

Mr. FLANIGAN. Mrs. Flanigan spared me that embarrassment.

Senator DURBIN. That is great. Thank you for that.

Let me say right off the bat there is one thing that Mr. Flanigan has said before this Committee which I think we ought to take to heart. When he testified in 1977 this is what he said—1997. He said, extraordinarily diligent—this Committee should be extraordinarily diligent in examining the judicial philosophy of potential nominees. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well thought out judicial philosophy. Such a burden is appropriately borne by one seeking life tenure to wield the awesome judicial power of the United States.

I think that is a very profound statement and I think it is a good guidance for this Committee in considering judicial nominees. And though we may disagree on a few things I think—I hope you are not going to recant, but I think that was very good guidance for this Committee when it considers judicial nominees.

Mr. FLANIGAN. Thank you, Senator. I will not recant that. I think that inquiry into judicial philosophy, by which I mean inquiry into how a judge discovers law, where he or she looks for the substance of law, is very important and I think it is a key functions that this Committee has. I have been privileged to be on the periphery of two Supreme Court confirmations involving this committee. I have seen how this Committee discharges its duties and I am confident that my good friend and former colleague in the Department of Justice, John Roberts, will not suffer under the analysis that I laid out.

Senator DURBIN. Thank you very much. Let me go directly to the issue we talked about the most in my office and that was the whole torture memos at the Department of Justice, the change in the interrogation techniques of prisoners and detainees. I think I came to a better understanding of the role that you played, but I want to ask again and for the record, is it your belief that it is the policy of the United States not to use torture, cruel, degrading or inhumane treatment in the interrogation and treatment of any prisoners in our control, regardless of their status?

Mr. FLANIGAN. Senator, with respect to torture, let me take that in order. I am completely in agreement that torture cannot be the policy of the United States. It is an abhorrent practice and it is not something that we should do, and our President has been very clear about that.

With respect to the other elements of your statement which I think are drawn from the Geneva Convention, as a lawyer, Senator, I am not sure what all of those means. There are perhaps international lawyers who believe they are certain what those mean. But I think I have some hesitancy in signing on without understanding what a particular phrase means to some of the phrases.

I would say that we have—let me say this,. the President has said that we will not treat people inhumanely. That is part of his determination at the time that—I believe in February of 2001. So I guess I would take very seriously any allegation or suggestion that we were treating anyone inhumanely.

Senator DURBIN. I would like you to get back to me, if you could fill in some of the answer that you have given, after you have had time for reflection. I would like to ask you specifically, in your personal point of view, do you consider mock executions to be inhumane treatment?

Mr. FLANIGAN. Senator, I am hesitant to comment on specific methods of questioning, in part because IO am burdened with some knowledge that is classified information and I do not want to inadvertently step over that line.

Senator DURBIN. Let me spare you then, because I do not want you to step over it either. Let me send you written questions and as far as you can, tell me your personal point of view. I will refer to several interrogation techniques which have been controversial, and without disclosing any classified information, I am looking for your personal point of view as to whether you consider them to be cruel, degrading and inhumane. I will give you the time to reflect on that, if you would like to. I do not want to put you on the spot on that.

Mr. FLANIGAN. Thank you, Senator.

Senator DURBIN. I would also like to ask you about some testimony before this Committee that goes back a few years as well, about how we should view and treat judges. I asked you about this in my office, and so the record is clear, in Congressional testimony before a Subcommittee of Judiciary you suggested "a frank discussion in the political sphere about impeaching judges might have a salutary effect of prompting judges to put aside their own policy preferences and adhere to the law." You commented on it in my office. I would like to give you a chance to comment on that here.

Mr. FLANIGAN. Thank you, Senator. That sentence certainly taken in isolation is one that I cannot subscribe to. I believe—after our meeting, Senator, I went back and looked at that testimony. I believe the sentence before that was an attempt to develop context, and I have to say that even after reading it in context that I still would say that that was an overstatement, to be sure, and inappropriate to suggest that we should threaten Federal judges as a general matter with impeachment. The sentence before that, I believe,. talks about judges who—and I cannot remember the language offhand.

Senator DURBIN. I want to read it for the record so that you do have benefit of putting it in context, if you believe this helps.

It is, of course, possible that a judge could so abuse the judicial power through willful misconstruction of the law that the judicial oath would be violated. Then you went to say, a frank discussion in the political sphere of the possibility of removal in such cases may have the salutary effect of prompting judges to put aside their own policy preferences and adhere to the law.

Mr. FLANIGAN. Senator, I have to, as I believe very sincerely in the role of Federal judges and the need that we have. As you and I discussed in your office today, Federal judges are defenseless. They cannot defend themselves against criticism because they cannot generally speak out on issues. At the same time, they have life tenure so they should be immune to a little bit of criticism. But I do not believe that we should use impeachment as a threat, generally, to have judges toe the line. I tried in that comment, I think.

inartfully to say that in those most egregious cases where a judge willfully violates an oath of office, then—and that is my—

Senator DURBIN. Thank you.

Mr. Chairman, would you spare me time for one more question?

Chairman SPECTER. Yes. Proceed, Senator Durbin.

Senator DURBIN. Thank you.

There was a press report this morning that I would like you to clear up, in the Chicago Tribune, and it relates to your role as general counsel of Tyco, and the fact that—the article, which may or may not be accurate—I want to give you your chance to tell you story on this—suggested that your had some supervisory authority over the Greenberg, Traurig law firm, and particularly Jack Abramoff, who has been a very controversial figure in Washington. Could you tell us what your relationship was to him and his lobbying activities?

Mr. FLANIGAN. Thank you, Senator, I appreciate the chance to clarify that. When we arrived at Tyco International as part of the new management team, I arrived in December 2002, there was very little in the way of infrastructure of any kind at the corporate level. Most of the corporate functions needed to be rebuilt and one of those was the government relations functions. One of the responsibilities that I received early on was to drill down into the government relations function and see what was there, what could be salvaged, and what our challenges were as a company.

As you might suspect, Senator, we had some reputational issues at the time with our former chairman, and former CFO, and former general counsel all being under indictment at the time. So I took stock with the then head of our government affairs function of who was it that we had out there that was doing government affairs work for us, and who could step into the breach quickly to help us try to turn this awful image that we had around, to start to reflect the positive story of this new management team committed to ethics, committed to compliance that we had.

So I met with several who had been providing services for Tyco. One of the lobbyists that Tyco had hired previously was the Greenberg, Traurig firm. I met with the firm. As you might imagine, we are a big account so they did a dog and pony show and they brought in the person that they said should be in charge of the account, Jack Abramoff. I had not met Jack Abramoff before then, had never run across—

Senator DURBIN. When was this? What was the approximate date when that meeting took place?

Mr. FLANIGAN. Senator, I would have to check on that and get back to you.

Senator DURBIN. Was it a year ago or—

Mr. FLANIGAN. No, it would be in the spring of 2003. So basically we decided, for a variety of reasons including considerations of changing horses in midstream and the amount that Greenberg had already invested in learning about Tyco, to continue on with that relationship.

We ultimately let the Greenberg, Traurig firm go, as they say, following the revelations concerning Jack Abramoff's conduct, and we have issues in the nature of claims involving the Greenberg firm which are pending which are, I believe, covered by an attor-

ney-client privilege that is not mine to waive. But that is our relationship.

Senator DURBIN. Did you supervise his activities during the period he worked for Tyco?

Mr. FLANIGAN. For a period of time after our then head of government affairs left the company and before we hired our new head of government affairs, Regina Harsani, I was the one the who was responsible on a day to day basis for supervising his activities.

Senator DURBIN. Thank you very much, and thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Durbin.

Mr. Flanigan, I want to pursue our understanding of oversight. Candidly, I am not satisfied with your answer. I do not think it was useful to talk about executive-legislative conflict going back to George Washington. I want to have an understanding as to where we are going. I think I have that understanding with the Attorney General, and I have already commented to you about the exchange I had with him at his confirmation hearing.

But I want to come to agreement—I want to know what you are understanding is of the law. I do not believe that there are variable views of it. I think oversight has been articulated by the Supreme Court, and that is the determinative, as between the Department of Justice and the executive branch and the Senate. So I am going to direct our staffers to talk to you and I am going to want a response in writing, because this is an important question as to my vote on your nomination.

Let me pursue one more question with you, and that is the question of procedures at Guantanamo. The hour is growing late and we have a lot of people who have been here for a long time, more than an hour and a half at this point. This Committee has prepared legislation on procedures. We have stayed away from the issue of interrogation. We have stayed away from the issue of rendition. We have stayed away from matters, except those within the purview of the Judiciary Committee, on procedures, representation of counsel, determination of status, that sort of thing. And I would like you to take a look at the legislation which we have prepared and give me your view on it.

I know that in conversations with the Department of Defense the matter has been bucked to the White House. We have talked to ranking officials in the White House. I would be interested to know your views as to whether you think the Judiciary Committee has a role here, and whether it would be useful to have some standards set forth. We are trying to be helpful to the Administration. The Constitution is explicit in saying that the Congress has the authority to set these rules. But we are very cognizant of the difficulties of Congress speaking while the country it at war. But if you take a look at that legislation and comment on it, I would appreciate it.

Mr. FLANIGAN. I will be happy to do that, Mr. Chairman.

Chairman SPECTER. Thank you.

Senator Hatch, anything further?

Senator HATCH. No, Mr. Chairman. I am fully supportive of this man. I know him very well. I know he is an honorable, decent, hard-working man just like we should have in our Government and certainly at the Justice Department, so I fully support him.

Chairman SPECTER. Thank you very much, Senator Hatch.
And thank you, Mr. Flanigan.
Mr. FLANIGAN. Thank you.
[The biographical information of Mr. Flanigan follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Timothy Elliott Flanigan

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

   Residence:

   Great Falls, VA

   Corolla, NC (vacation home)

   Office:
   Tyco International
   9 Roszel Road
   Princeton, NJ 08540

   Tyco International
   607 14th Street, N.W.
   Washington, DC 20005

3. Date and place of birth.

   May 16, 1953. Fort Belvoir, VA.

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

   I am married to Katherine B. Flanigan (nee Berntsen). She is a homemaker and volunteer church worker.

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

9/78 – 5/81	University of Virginia Law School, J.D., May, 1981.
9/71 – 5/72 and 9/74 – 4/78	Brigham Young University. B.A. December 1976. Graduate study in history 1977-1978.

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

partner, proprietor, or employee since graduation from college.

12/02 – Present	Senior Vice President and General Counsel – Corporate and International Law, Tyco International (US), Inc.
12/02 – present	I have also served in the director and officer positions with certain wholly-owned subsidiaries of Tyco International Ltd as set forth in the attachment to my nominee financial disclosure filing on form SF-278 as provided herewith to the Committee. I serve in these positions without additional compensation. My duties consist of reviewing and executing written consents for routine corporate actions such as the annual election of directors, opening new bank accounts and similar corporate "housekeeping" matters.
4/01 – present	Member, National Advisory Council, College of Family, Home and Social Science, Brigham Young University.
1/01 – 12/02	Deputy Assistant and Deputy Counsel to the President, the White House.
5/00 – 1/01	Partner, White & Case LLP.
9/93 – 1/01	Member, Church Relations Committee, U.S. Holocaust Memorial Council.
7/99 – 5/00	Partner, McGuire Woods LLP.
11/97 – 11/99	Member, National Practioners Advisory Council, the Federalist Society.
10/96 – Present	Director, Warren E. Burger Biography Project (full-time from 11/96 to 7/99) (not yet published).
1/96 – 11/96	Of Counsel, Mayer Brown & Platt.
6/96 – 7/99	Member Board of Advisors, Project on the Judiciary.
7/95 – 5/01	President, Dulles (South East Asian) Branch, a local congregation of the Church of Jesus Christ of Latter-day Saints focusing on the needs of South East Asian refugees.
2/93 – 1/96	Of Counsel, Jones, Day, Reavis & Pogue
1/89 – 9/94	Member Board of Visitors, J. Reuben Clark Law School, Brigham Young University.
8/92 – 1/93	Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice.
7/90 – 8/92	Principal Deputy (then Acting) Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice.
1988 – 7/90	Associate, Milbank Tweed Hadley & McCloy.
1986 – 1988	Associate, Shearman & Sterling.
1985 – 1986	Special assistant and senior law clerk to the Chief Justice of the United States.
1981 – 1985	Associate, Shearman & Sterling.
1980	Summer associate, Shearman & Sterling.
1979 – 1981	Intermittent employment as a student research assistant, University

	of Virginia School of Law.
1974 – 1978	Intermittent employment as a student research assistant, Brigham Young University.
1972-1974	Volunteer missionary for the Church of Jesus Christ of Latter-day Saints in Germany.

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

None.

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

Phi Kappa Phi.

Warren E. Burger award from the National Center for State Courts (2004).

Edmund J. Randolph Award for Outstanding Service to the Department of Justice (1992).

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

1987 to present DC Bar Association.

1981 – 1985, 2005 to present American Bar Association.

1987 – 1994 Federal Bar Association.

1988 – 1990 Co-Chairperson, Young Banking Lawyers Committee, Federal Bar Association.

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

Member, the Church of Jesus Christ of Latter-day Saints.

Member troop committee, Troop 878, National Capital Area Council, Boy Scouts of America.

Member, Board of Advisors, College of Family, Home and Social Sciences, Brigham Young University.

Member, Parents/Teachers/Students Associations, Langley High School, Cooper Middle

School and Forestville Elementary School, Fairfax County, VA

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

State bar admissions: New York (1982), New Jersey (1983), Washington, DC (1987).

Federal Court admissions: United States District Courts for the Southern District of New York (1982), New Jersey (1983), and the District of Columbia (1987). Supreme Court of the United States (1986).

I have been late in submitting biennial registrations for the New York State bar. I am now current and in good standing in that bar. I have also been late in completing my required continuing legal education for the New York bar. I am now current in meeting my CLE requirements. I attach a current good standing certificate from the New York bar.

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

Publications:

(1) Gruson and Flanigan, The Breaux Amendment: A Severe Limitation on Foreign Investments, 6 Banking Expansion Reporter, May 4, 1987, at 1.

(2) Flanigan, Thickening the Thicket Through Functional Regulation, 6 Banking Expansion Reporter, Dec. 7, 1987, at 1.

(3) Flanigan, Less Than Full Credit for FSLIC'S Notes?, 7 Banking Expansion Reporter, Sept 5, 1988, at 1.

(4) Case Comment, Califano v. Aznavorian, 19 Va J. Int'L. 707 (1979).

(5) Flanigan, Weimar on the Wasatch, J. Reuben Clark Memorandum at page 25 (copy enclosed).

(6) Flanigan, Letter to the Editor, The Legal Times at page 26 (February 20, 1995) (copy enclosed).

(7) ABC News Interview transcript from August 6, 1994 (copy enclosed).

(8) Flanigan, The Line Item Veto Act and the Limits of Executive Power. Newsletter of the Federalism & Separation of Powers Practice Group of the Federalist Society (copy enclosed).

(9) Flanigan, Smith and Lemon: Carried About with Every Wind of Doctrine, [1994] Public Interest Law Review 75 (1994) (copy enclosed).

(10) Flanigan, Book Review: Robert Bork's Slouching Towards Gomorrah, Modern Liberalism and American Decline, The Federalist Paper, February 1997, at 21.

Published Opinions from Office of Legal Counsel:

Memorandum Opinion For The Legal Advisor Department Of State, Legal Obligations of the United States Under Article 33 of the Refugee Convention, December 12, 1991

Memorandum Opinion For The Deputy Counsel To The President, Permissibility of Recess Appointments of Directors of the Federal Housing Finance Board, December 13, 1991

Memorandum Opinion For The Deputy Counsel To The President, Recess Appointments During an Intrasession Recess, January 14, 1992

Memorandum Opinion For The Counsel To The President, Issues Raised by Provisions Directing Issuance of official or Diplomatic Passports, January 17, 1992

Memorandum Opinion For The General Counsel Department Of Defense, Fourth Amendment Implications of Military Use of Forward Looking Infrared Radars Technology for Civilian Law Enforcement, March 4, 1992

Memorandum Opinion For The Director Federal Bureau Of Prisons, Statutory Authority to Contract With the Private Sector for Secure Facilities, March 25, 1992

Memorandum Opinion For The Acting General Counsel Office Of Management And Budget, Funding for the Critical Technologies Institute, May 12, 1992

Memorandum Opinion For The General Counsel Department Of The Navy, Enforcement Jurisdiction of the Special Counsel for Immigration Related Unfair Employment Practices, August 17, 1992

Memorandum Opinion For The General Counsel Department of the Treasury,

Legal Authority of the Department of the Treasury to Issue Regulations Indexing Capital Gains for Inflation, September 1, 1992

Memorandum Opinion For The Counsel To The President, November 2, 1992

Memorandum Opinion For The Attorney General, December 4, 1992

Memorandum Opinion For The General Counsel Department Of The Treasury, Authority of the Secretary of the Treasury Regarding Postal Service Bond Offering, January 19, 1993

Speeches:

I have not been a frequent speaker. When I do speak, I generally speak extemporaneously. When I have used notes, I have generally not retained them.

I have given essentially the same speech on several occasions while at Tyco, mostly to in-house groups. The theme of the speech is the importance of legal compliance and the interdependence of ethics in a corporation. I enclose a copy of the basic slides I have used in connection with some of those speeches.

While at Tyco, I have also spoken on several occasions to outside groups regarding my experience at Tyco and the difficulty of rebuilding a company's reputation once it has been damaged by the conduct of senior executives. I do not have a copy of those remarks.

In October 2004, I participated in a panel discussion at a seminar organized by the Corporations and Antitrust Practice Group of the Federalist Society on the topic of "Corporate Complaince and Ethics Controls." My remarks focused on the complexity of implementing section 404 of Sarbannes-Oxley. I do not have copy of my remarks from that panel presentation.

In October 2003, I gave a speech at a conference organized by the Corporations and Antitrust Practice Group of the Federalist Society generally on my experiences at Tyco and the difficulty in rebuilding a company's reputation following a major breakdown in corporate governance. I do not have copy of those remarks.

I gave a speech entitled "Ten Mistakes I Have Made in Government Service" in connection with receiving a distinguished alumni award from Brigham Young University in 2002. I have not been able to locate a copy of that speech.

In 1997 or 1998, I appeared on the Free Congress Foundation network and participated in one of six debates between lawyers about the federal courts. That network no longer exists. A check has been made with the Free Congress Foundation and there is

no list or catalog of whether any tapes of these programs exist.

While serving as Deputy Counsel to the President, I gave essentially the same speech to several groups of students and once to a group organized by the U.S. Chamber of Commerce. The speech described generally the work of the Office of the Counsel to the President. I have not been able to locate a copy of that speech.

In November 2002, while serving as Deputy Counsel to the President, I gave a speech at a symposium entitled Crisis in the West Wing in which I described some of the events of 9/11 and the following days from the standpoint of a federal employee in the West Wing. I do not have copy of my remarks, but I enclose a copy of a video recording of that symposium.

In April 2003, I participated in a debate sponsored by the Section on Individual Rights and Responsibilities of the American Bar Association on the question of whether in time of war the laws should "speak with a different voice." I do not a have copy of my remarks made at that debate.

I gave several speeches focusing on my experience while principal deputy in the Office of Legal Counsel in connection the confirmation hearings of Justice Souter and Justice Thomas. I do not have copies of those speeches.

Testimony:

(1) Testimony before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary concerning H.R. 25, March 4, 1992 (copy enclosed).
(2) Testimony before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary concerning H.R. 5840, September 10, 1992 (copy enclosed).
(3) Testimony before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary concerning reauthorization of the Independent Counsel Act, March 10, 1999 (copy enclosed).
(4) Testimony before the Subcommittee on the Constitution, Federalism and Property Rights of the Senate Judiciary Committee concerning judicial activisim, July 29, 1997 (copy enclosed).
(5) Testimony before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight concerning the constitutionality of statutory limitations on federal funding of political advocacy, August 2, 1995 (copy enclosed).
(6) Testimony before the Subcommittee on Crime of the House Committee on the Judiciary concerning H.R. 1678, June 30, 1995 (copy enclosed).
(7) Testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee concerning proposals for a line-item veto, January 17, 1995 (copy enclosed).

(8) While I was in private practice, I wrote a legal memorandum for a client that was subsequently made part of a committee record of the House Judiciary Committee. The opinion was entitled "Stranded Costs in the Electric Utility Industry"(copy enclosed).

(9) Testimony before the Senate Judiciary on the Nomination of Timothy E. Flanigan to be an Assistant Attorney General, July 22, 1992 (copy enclosed).

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

Excellent. My last physical exam was in November 2004.

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

1990-1991	Principal Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice (appointed).
1991- 1992	Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice (appointed).
1992- 1993	Assistant Attorney General, Office of Legal Counsel, Department of Justice (appointed).
2001 – 2002	Deputy Assistant and Deputy Counsel to the President (appointed).

I have never been a candidate for elective public office.

15. Legal Career:

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

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

From June, 1985 to September, 1986 I served as special assistant and senior law clerk to the Honorable Warren E. Burger, Chief Justice of the United States.

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

I have not practiced law alone.

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

1981- 1985	Associate Shearman & Sterling 53 Wall Street (Now at 599 Lexington Avenue) New York, NY 10022
1985 – 1986	Special Assistant and Senior Law Clerk to the Chief Justice Supreme Court of the United States Washington, DC
1986 – 1987	Associate Shearman & Sterling 599 Lexington Avenue New York, NY 10022
1987-1988	Associate Shearman & Sterling 1001 30th Street, N.W. (now at 801 Pennsylvania Avenue) Washington, DC 20004
1988-1990	Associate Milbank, Tweed, Hadley & McCloy 1825 Eye Street, NW Washington, DC 20006
1990-1991	Principal Deputy Assistant Attorney General Office of Legal Counsel Department of Justice Washington, DC 20530
1991- 1993	Assistant Attorney General (acting and then Senate confirmed) Office of Legal Counsel Department of Justice Washington, DC 20530
1993 – 1996	Of Counsel Jones Day

51 Louisiana Avenue, N.W.
Washington, DC 20001

1996 Of Counsel
Mayer Brown & Platt
1909 K Street, N.W.
Washington, DC 20006

1996 – present Director
Warren E. Burger Biography Project
Great Falls, VA 22066

1999 – 2000 Partner
McGuire Woods
1050 Connecticut Avenue, N.W.
Washington, DC 20036

2000 – 2001 Partner
White & Case
701 13th Street, N.W.
Washington, DC 20005

2001 – 2002 Deputy Assistant and Deputy Counsel to the President
The White House
Washington, DC

2002 – present Senior Vice President and General Counsel
Corporate and International Law
Tyco International (U.S.) Inc.
9 Roszel Road
Princeton, NJ 08540

2002 – present I have also served in the director and officer positions with certain wholly-owned subsidiaries of Tyco International Ltd as set forth in the attachment to my nominee financial disclosure filing on form SF-278 as provided herewith to the Committee. I have served in these positions without additional compensation. My duties consisted of reviewing and executing written consents for routine corporate actions such as the annual election of directors, opening new bank accounts and similar corporate "housekeeping" matters.

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

From 1981 to 1982, I practiced as a litigator with the New York firm of

Shearman & Sterling. My typical clients during this period were Fortune 500 U.S. and large foreign corporations.

From 1982 to 1985, I practiced mainly corporate banking law. Typical clients from this period were foreign banks and foreign and domestic securities firms. I also represented foreign industrial firms in connection with financings and acquisitions. Toward the end of this period, I also practiced antitrust law, representing primarily foreign and domestic manufacturing companies.

From 1985 to 1986, I served as special assistant and senior law clerk to the Honorable Warren E. Burger, Chief Justice of the United State. My duties included typical law clerk duties as well as general supervisory responsibilities for the Court-related work in the chambers of the Chief Justice.

From 1986 to 1990, I practiced banking law, representing foreign and domestic banks in connection with financings and acquisitions.

From 1990 to 1993, I was the Principal Deputy, then acting Assistant Attorney General then Senate confirmed as Assistant Attorney General in charge of the Office of Legal Counsel of the Department of Justice. My practice in during this period focused on constitutional and administrative law. My Clients included the Attorney General, the Deputy Attorney General, the Counsel to the President, and the heads and general counsels of the other Executive Branch agencies. I supervised a staff of 33. My role included acting as an advisor and adjunct staff member to the Office of the Deputy Attorney General on criminal law and national security matters, including the civil disturbances in Los Angeles.

From 1993 to 1996, I was in private practice. I focused on appellate litigation and administrative law matters. My clients were U.S. and non-U.S. corporations.

From 1996 to 1999, I was engaged full time in the direction of a project to organize the collected papers of the late Chief Justice Warren E. Burger and to begin preparation of his biography. I supervised a staff of up to three research assistants. That project, although no longer conducted on a full-time basis, is ongoing.

From 1999 to 2001, I was engaged in a white-collar criminal law practice. My clients were U.S. companies, including financial institutions.

From 2001 to 2002, I served as deputy to the Counsel to the President. The practice focused on day-to-day legal matters arising in the course of

the business of the White House. After September 11, 2001, the focus became more oriented toward national security issues.

From 2002 to the present, I have been engaged as in-house counsel to Tyco International (U.S.) Inc. My principal role has been to clean up the financial and reputational problems created by Tyco's former senior management. I have participated in extensive cooperation with various state and federal prosecutorial authorities investigating Tyco's corporate wrongdoing. I have developed and implemented a compliance program for Tyco's 250,000 employees. I have also provided leadership to a law department of over 200 persons, with offices around the world.

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

My typical clients have been U.S. and foreign corporations. My areas of specialty have evolved over the years. At the beginning of my career (1981-1983), I was a corporate litigator. From 1984 to mid-1985, I focused on financing transactions and antitrust matters. In 1985 and 1986, I was a law clerk. From 1986 to 1990, I was a banking lawyer. From 1991 to early 1993, I concentrated on administrative and constitutional law. Beginning in 1993, I added a focus on white collar criminal work. From late 1996 to mid 1999, I was not engaged in the practice of law but was engaged in researching and writing a judicial biography of Warren E. Burger. From 1999 to 2001, I was engaged full time in a white collar criminal practice. From early 2001 to late 2003, I focused on administrative, constitutional and national security law. From 2003 to the present, I have practiced in house, and my practice has covered all of the issues facing a large international company.

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

Although I have appeared as a counsel of record in cases (primarily appellate matters), my practice has not focused on courtroom litigation. In the first two years of my practice (1981 – 1982), I argued civil motions a few times, with roughly 30% of my appearances in federal court. After that time and up until about 1993, I appeared in court only occasionally. Since 1993, I have "appeared" in the sense that I have been listed as counsel on appellate briefs, including several briefs filed with the United States Supreme Court.

2. What percentage of these appearances was in:

(a) federal court; 80 percent
(b) state courts of record; 20 percent
(c) other courts.

3. What percentage of your litigation was:

(a) civil: 80 percent
(b) criminal 20 percent.

3. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

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

Not applicable.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) NationsBank, NationsSecurities Grand Jury Matter. I served as co-counsel to NationsBank (now Bank of America) and NationsSecurities in this extended investigation into the operations of a business unit that had been acquired by NationsBank from Dean Witter. The investigation was run by the United States Attorney for the Middle District of Florida. The criminal investigation was resolved through a civil settlement agreement with the United States Attorney and represented a favorable outcome for my client. The case never progressed to indictment and active litigation, but did involve extensive submissions concerning issues of fact and law to the

United States Attorney and to the Criminal Division of the Department of Justice and was therefore much like litigation.

My principal co-counsel were:

George Terwilliger
White & Case, LLP
701 13th Street, NW
Washington, DC 20005
(202) 626-3628

Paul J. Polking
EVP and General Counsel
Bank of America Corporation
100 North Tyron Street
Charlotte, NC 28255
(704) 386-5687

Opposing counsel was:

Hon. Donna A. Bucella
then-United States Attorney
Michael Runyon
Assistant United States Attorney
Middle District of Florida
400 North Tampa Street
Suite 3200
Tampa, FL 33602
(813) 274-6000

(2) US ex rel. Krahel et al. v. The Regents of the University of California, United States District Court for the Northern District of California. The case was assigned to Judge William H. Orrick. This was a qui tam action relating to Medicare reimbursement practices of the University of California medical schools. I served as co-counsel to the defendant and participated in the negotiation of a settlement of the case with the U.S. Attorney who intervened in the case.

My co-counsel included:

George Terwilliger
White & Case, LLP
701 13th Street, NW
Washington, DC 20005
(202) 626-3628

Opposing counsel included:

Hon. Robert Mueller
(then-U.S. Attorney)
Patricia Kenney
Assistant U.S. Attorney
Northern District of California
San Francisco, CA
450 Golden Gate Avenue
San Francisco, CA 94102
(415) 436-7200

(3) Guthrie Clinic v. Robert Packer Hospital, Commonwealth Court of Pennsylvania. In this case, I served as co-counsel for a major regional healthcare organization in a dispute over control of a local hospital. I negotiated a settlement to this protracted and bitter litigation.

My principal co-counsel was:

Greg M. Luce
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
(202) 879-4378

Opposing counsel included:

John M. Elliott
925 Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
Phone: (215) 977-1000

(4) In re Tyco Securities Litigation, U.S. District Court for the District of New Hampshire. This ongoing multi-district litigation consolidated before Judge Barbadaro brings together various claims, including securities fraud claims, based on the conduct of Tyco's former management. While I have not entered an appearance in this case in which Tyco is represented by outside counsel, I have been involved from the beginning of the case with the oversight of this significant litigation for the company.

Co-counsel include:

William B. Lytton
EVP and General Counsel
Tyco International Ltd.
9 Roszel Road
Princeton, NJ 08540
(609) 720-4225

David Boies
Ann Galvani
Boies Schiller & Flexner
570 Lexington Avenue
New York, NY
(914) 749-8201

Frank Barron
Cravath, Swaine & Moore
825 8th Avenue
New York, NY 10019
(212) 474-1506

Opposing counsel include:

Paul D. Young, Esq.
Millberg Weiss Bershad
Hynes & Lerach LLP
One Pennsylvania Plaza
New York, NY 10119

(5) People of New York v. Kozoloski; Swartz
People of New York v. Belnick These are the criminal cases against Tyco's former senior management. My role in these cases has been to actively support the prosecution by providing documents and making available witnesses. The trial of Mr. Belnick (Tyco's former general counsel) ended in an acquittal. The trial of Messrs Kozlowski and Swartz ended recently in guilty verdicts. Given Tyco's role as a victim of the crimes alleged in the indictment, I had no co- or opposing counsel as such. But William B. Lytton, David Boies and Ann Galvani (contact information listed above in item (4)) have knowledge of my role in this matter.

(6) Florida Recount Litigation. After the presidential election of 2000, I was a member of the legal team in the litigation surrounding the tallying of the votes cast in the State of Florida. The litigation was carried on at all levels of the Florida state court system and the U.S. Supreme Court. I was involved in every significant phase of the litigation as a senior member of

the litigation team focused on appellate proceedings and had primary responsibility for coordinating the team of lawyers writing appellate briefs for the Florida State Court cases.

Principal co-counsel included:

Theodore Olson
Gibson, Dunn & Crutcher
1050 Connecticut Avenue
Washington, DC 20036
(202) 955-8500

George J. Terwilliger
White & Case
701 13th Street
Washington, DC 20005
(202) 626-3628

Principal opposing counsel included:

David Boies
Boies Schiller & Flexner
570 Lexington Avenue
New York, NY
(914) 749-8201

(7) Bradford Securities v. Citibank, et al., Docket No. 95662/82, Supreme Court of the State of New York, County of New York. Shortly after I began my legal career with Shearman & Sterling (1981-1982), I was assigned as lead counsel representing my law firm in a suit brought in New York Supreme Court by Bradford Securities. Bradford alleged that Shearman & Sterling had negligently made certain payments out of an escrow account. I appeared to argue motions and drafted responsive pleadings as well as a motion for summary judgment that was eventually granted.

I do not recall that the case was assigned to a particular judge while I had responsibility for it.

My principal co-counsel was:

W. Foster Wollen, Esq.
Shearman & Sterling
801 Pennsylvania Ave., NW
Washington, DC 20004

(202) 508-8000

Opposing counsel varied over time but the principal opposing counsel was:

Louis J. Maione, Esq.
26 Verdin Dr.
New York, NY 10956
(212) 661-7100

(8) In re Bleached Sulphate and Soda Wood Pulp, Commission of the European Communities Case IV/29.725 --. From 1982 to 1984, I represented the Pulp, Paper and Paperboard Export Association (formerly the Kraft Export Association or "KEA") in an antitrust proceeding brought in the Commission of the European Communities. The KEA was a export trade association organized under the Webb-Pomerane Act for the purpose of coordinating export policy among various U.S. makers of pulp paper. The complaint alleged violations of European Communities' antitrust laws. I was substantially involved in the preparation of the brief submitted on behalf of the KEA to the Commission. The case was resolved against the KEA. My primary co-counsel was:

Lucian Jones ((910) 962-7137)
Kenneth S. Prince, Esq.
Shearman & Sterling
Citicorp Center
New York, NY 10022
(212) 848-4000

Because of the nature of the proceedings, there were no opposing counsel as that term is normally understood. The member of the Commission most involved with the prosecution and resolution of this case was:

F.H.J.J. Andriessen
Commission of the European Communities
Brussels, Belgium

(9) In re Amoxicillin Patent and Antitrust Litigations, Multidistrict Litigation Docket No. 328. From 1981 to 1983, I represented Beecham Group Limited in connection with this multidistrict litigation consolidated before Judge Richey of the United States District Court for the District of Columbia. The case involved claims of patent infringement brought by Beecham against various manufactures of amoxicillin, a semi-synthetic penicillin used, inter alia, to treat inner ear infections. The other manufacturers counterclaimed against Beecham alleging antitrust

violations. I drafted various pleadings in the case and participated in taking and defending depositions. I believe the case settled sometime at the end of my involvement with it.

My co-counsel on the case included:

Dennis Orr, Esq. ((212) 506-2690)
Shearman & Sterling
Citicorp Center
New York, NY, 10022
(212) 848- 4000

And

Sharon R. Kimball
Formerly of Shearman & Sterling, now
Assistant U.S. Attorney
Northern District of Texas
P.O. Box 13236
Amarillo, TX 79101
(806) 376- 2356

Principal opposing counsel were:

Alan H. McLean, Esq.
Hughes, Hubbard & reed
One Battery Park Plaza
New York, NY 10004
(212) 837-6000

Gerald J. Flintoft, Esq.
Pennie & Edmonds
1155 Avenue of the Americas
New York, NY 10036

(10) Fordham v. City of New York, Supreme Court of the State of New York, Docket No. 10272-80. I represented the City of New York pro bono in this slip-and-fall case. My research uncovered significant information that resulted in a favorable settlement just before we were to begin jury selection. I believe that no judge had been assigned to the case at the time of settlement. My co-counsel was:

Vincent J. LaGreca
Shearman & Sterling
Citicorp Center

New York, NY, 10022
(212) 762-5865

Opposing counsel was:

Bernard Newman, Esq.
401 Broadway
New York, NY 10013
(212) 966-3955

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

The most significant experience of my career was the opportunity to serve as Deputy Counsel to the President during the period that included the terror attacks on the United States on September 11, 2001. In the months following those attacks, I worked on a wide range of matters relating to the War on Terror. I also served as the lead for the administration in working with Members of Congress and their staffs to craft the Use of Force Resolution for Afghanistan and later the USA Patriot Act.

As Assistant Attorney General for the Office of Legal Counsel in the administration of President George H.W. Bush, I was a member of then-Attorney General Barr's senior leadership team that set overall policy direction for the Department. I also served as an adjunct member of the Deputy Attorney General's staff, providing legal and policy analysis and advice on a wide range of prosecutorial and other matters that came out of such events as the civil unrest in Los Angeles following the Rodney King incident.

In my present position at Tyco International, I have supervised the introduction of a vigorous legal compliance program to change the underlying culture of the company and build upon the strong ethics of the vast majority of Tyco's 250,000 employees. In that role, I have implemented a policy of full-disclosure, pursuant to which I have met on several occasions with U.S law enforcement authorities to discuss instances of wrongdoing we identified as the compliance program was introduced. I have also met with law enforcement officials outside the United States to assure them of Tyco's commitment to abide by the laws of the jurisdictions in which Tyco does business. In addition, I have overseen the restructuring of a large corporate law department and participated as part of the team of senior leaders in a $40 billion business.

My year as senior law clerk and special assistant to the late Chief Justice Warren Burger had a profound impact on my career and professional development. Among other things, he impressed on me the importance of public service and the power of determined men and women to improve the administration of justice in our society.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   I currently hold 188,000 Tyco options and 14,460 restricted shares. I intend to sell all of my Tyco holdings and exercise all vested stock options prior to taking office. At current share values, the sale of those vested securities could realize approximately $977,000.00. I also anticipate that I will receive approximately $50,000 in deferred compensation and approximately $71,000 in vested retirement benefits upon termination of my Tyco employment.

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

   As issues arise presenting potential conflicts of interest, I will consult with the Department's ethics officials and follow the advice of those officials.

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

   No.

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

   Please refer to my financial disclosures on form SF-278.

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

   Please see the attached net worth statement.

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

In 1984, I served as a volunteer surrogate speaker for the Reagan/Bush Campaign.

In 1986, I served briefly as a volunteer for the campaign of Jeff Bell for U.S. Senate in New Jersey.

In 1988, I served as a volunteer for Lawyers for Bush drafting legal policy position papers.

In 1996, I served as a member of a legal policy advisory group for the Dole for President campaign.

In 2000, I served as member of the Florida Recount Litigation team for the Bush-Cheney campaign.

Appellate Division of the Supreme Court of the State of New York First Judicial Department

I, Catherine O'Hagan Wolfe, Clerk of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, certify that

TIMOTHY ELLIOTT FLANIGAN

was duly licensed and admitted to practice as an Attorney and Counsellor at Law in all the courts of the State of New York on the 22nd day of March, 1982 has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counsellors at Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an attorney and counsellor at law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this court on

June 20, 2005

Catherine O'Hagan Wolfe

Clerk

6464

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	114,300.00	Notes payable to banks-secured	39,855.00
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	51,593.00
Listed securities-add schedule	1,059,384.00	Notes payable to relatives	0
Unlisted securities--add schedule		Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	1,623,070.00
Real estate owned-add schedule	2,560,000.00	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	300,000.00		
Cash value-life insurance	0		
Other assets itemize:	0		
		Total liabilities	1,714,518.00
		Net Worth	2,319,166.00
Total Assets	4,033,684.00	Total liabilities and net worth	4,033684.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	

As endorser, comaker or guarantor On leases or contracts	Co-signor on apt lease in monthly rent amount of			Are any assets pledged? (Add schedule)	No .		
	1,200.00			Are you a defendant in any suits or legal actions?	No		
Legal Claims	None			Have you ever taken bankruptcy?	No.		
Provision for Federal Income Tax	0						
Other special debt	0						

Listed Securities Schedule	
Tyco International common shares	$24,790.00
Tyco International vested options	$952,666.56
AIM Basic Value Fund Class A	$545.39
American Funds Washington Mutual Investors FD CL F	$1,014.14
American Funds Frowth Fund of America Class F	$448.98
Ariel Appreciation Fund	$740.39
Calamos Growth Fund Class A	$707.79
Excelsior Value Restructuring Fund	$1,030.55
Oak Associates White Oak Growth Stock Fund	$1,990.46
Oppenheimer Global Fund Class A	$1,430.19
Fidelity Spartan US Equity Index Fund Class 2	$37,000.00
Fidelity Growth Company Fund	$35,000.00
TCW Group Galileo Aggressive Gwth FD Equities CL N	$698.83
Thornburg International Value Fund Class A	$1,320.93
	$1,059,384.21

Real Estate Owned Schedule	
Great Falls, VA 22066	$1,600,000.00
(Personal residence)	
Corolla, NC 27927	$860,000.00
(Second home)	
Unimproved land Shenandoah Farms, VA (value of 1/2 interest)	$100,000.00
Total	$2,560,000.00

Notes Payable to Banks - Secured - Schedule	
Chase Bank	$39,855.00

Real Estate Mortages Payable Schedule	
Chevy Chase Bank	$850,000.00
Volkswagon Bank	$148,300.00
Aurora Loan Services	$525,350.00
RBC Centura Bank	$99,420.00
Total	$1,623,070.00

U.S. Department of Justice

Washington, D.C. 20530

JUN 2 4 2005

Marilyn Glynn
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Timothy E. Flanigan, who has been nominated by the President to serve as Deputy Attorney General, Department of Justice. We have conducted a thorough review of the enclosed report.

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

Mr. Flanigan will resign from Tyco International, Inc., and from the positions he holds with Tyco's subsidiaries as reported on Schedule D Part I of his public financial disclosure report, upon confirmation as Deputy Attorney General. Mr. Flanigan will receive his final salary, bonus and deferred compensation payments, upon his resignation from the corporation. Mr. Flanigan will retain ownership of common stock and options in Tyco International. He has been counseled and agrees that he will not participate personally and substantially in a particular matter that would have a direct and predictable effect on the financial interests of Tyco International, Inc., unless he receives a written waiver.

We have advised Mr. Flanigan that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party. In the event that Mr. Flanigan divests himself of all financial interests in Tyco International, Inc., he will be recused from participating in any particular matter in which Tyco International, Inc., is or represents a party, unless he receives a

written waiver to participate, for a minimum of two years from the date of his resignation from Tyco. In the event Mr. Flanigan no longer has a financial interest in Tyco, he will have a covered relationship with the subsidiaries of Tyco International reported on Schedule D, Part I of his public financial disclosure report. He agrees that he will be recused from participating in any particular matter involving specific parties in which any of the subsidiaries is or represents a party, for a minimum of one year from the date of his resignation from the subsidiary, unless he is authorized to participate.

Mr. Flanigan agrees that he will not perform any work on the book he is writing as part of the Warren E. Burger Biography Project, while serving as Deputy Attorney General.

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

Sincerely,

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

Enclosure

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

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☒	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ / Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Flanigan			First Name and Middle Initial: Timothy E.	
Position for Which Filing	Title of Position: Deputy Attorney General			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 8 Roszel Road, Princeton, NJ 08540			Telephone No. *(Include Area Code)*: 609 720 4343	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: June 22, 2005	
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]			Date *(Month, Day, Year)*: 6/23/05	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]			Date *(Month, Day, Year)*: 6-24-05	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

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

Annotations "DMR" by Janice Rodgers, DEO, per conversation with filer. *(Check box if filing extension granted & indicate number of days ———)* ☐

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

Fee for Late Filing

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

Agency Use Only

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

Reporting Individual's Name: Flanigan, Timothy E.

SCHEDULE A

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

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

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

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State																															Law Partnership Income $130,000	
	Kempstone Equity Fund													x										x									
	IRA: Heartland $00 Index Fund																								x								
1	Tyco International (USA), Inc																															Salary and bonus of approx $1,431,434	
2	Tyco International, Ltd Options (vested)							X													X												
3	33,333 Tyco International Ltd Options (not vested) strike price of $17.51/sh Expire 12/3/12																				X											Value not determinable at this time	
4	50,000 Tyco International Ltd Options (not vested) strike price of $27.60/sh Expires 3/25/14																				X											Value not determinable at this time	
5	38,000 Tyco International Ltd. Options (not vested) strike price of $35.80/sh Expires 3/9/15																				X											Value not determinable at this time	
6	14460 Tyco International Restricted Shares (not vested)						X														X											Value based on current mid price of $29/sh	

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

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

Reporting Individual's Name: Flanigan, Timothy E.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000*	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Oak Associates White Oak Select Growth Stock Fund		X											X					X		X												
2	1/2 interest in 2 unimproved lots in Shenandoah Farms, Virginia					X															X												
3	Ariel Appreciation Fund	X												X					X		X												
4	Excelsior Value Restructuring Fund		X											X					X		X												
5	America Funds Growth Fund of America Class F	X												X					X		X												
6	AIM Basic Value Fund Class A	X												X					X		X												
7	Thornburg International Value Fund Class A		X											X					X		X												
8	UBS Paca Money Market Investment Fund Class P	X												X					X		X												
9	UBS Money Market Investment Fund (Spouse IRA)	X												X					X		X												

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

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Reporting Individual's Name: Timothy E. Flanigan

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Tyco International Common Stock			X													X				X												
2	BB&T Checking Account			X																	X												
3	Bank of America Money Market Account (IRA)		X																X		X												
4	Tyco International (U.S.) Deferred Compensation (cash account)				X																X												
5	Fidelity Spartan US Equity Index Fund Class 2			X										X							X												
6	Fidelity Growth Company Fund			X										X							X												
7	Oppenheimer Global Fund Class A		X											X							X												
8	TWC Group Galileo Aggressive Growth Fund	X												X							X												
9	American Funds Washington Mutual Investors Fund Class F		X											X							X												

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

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Reporting Individual's Name: Timothy E. Flanigan

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

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

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Tyco International (US) Inc Bonus for 2005					X															X												
2																																	
3																																	
4																																	
5																																	
6																																	
7																																	
8																																	
9																																	

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

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U.S. Office of Government Ethics

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

Reporting Individual's Name: Flanigan, Timothy E.

SCHEDULE B

Part I: Transactions

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

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

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99												
1																	
2																	
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*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

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

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name
Flanigan, Timothy E.

SCHEDULE B continued
(Use only if needed)

Part I: Transactions

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)											
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
1																	
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*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

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Reporting Individual's Name: Flanigan, Timothy E.

SCHEDULE C

Part I: Liabilities

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

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.											
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand											
1	Sallie Mae, Wilkes Barre, PA	Education loans	2004	4.22%	10 yrs		X									
2	EnerBank USA	Home improvement loan	2005	12%	10 yrs	X										
3																
4																
5																

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

Part II: Agreements or Arrangements

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

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Will exercise vested Tyco stock options prior to federal service; unvested options will be forfeited prior to federal service	& restricted shares will vest or be forfeited prior to federal service.	Tyco 12/04 JME
2	All Tyco deferred compensation and bonus will be paid out upon termination of employment with Tyco.		Tyco 12/04 JME
3	Will retain interest in mutual fund investments held through Tyco 401K plan (funds reported on Schedule A); no further	contributions will be made by Tyco after my resignation.	
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Reporting Individual's Name	SCHEDULE D	Page Number
Flanigan, Timothy E.		4 of 4

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Tyco International (USA), Inc, Princeton, NJ	Corporation	SVP and General Counsel*	12/2002	present
2	*Other positions with Tyco International, Ltd. subsidiaries listed on the attached pa	ges. No additional compensation received for t	hese positions. Where no end date		
3	is listed, I am presently serving in the position.				
4	Warren E. Burger Biography Project, Great Falls, VA	unincorporated association	Author	11/1996	present
5	Ronald Hinckley Childrens' Trust, Great Falls, VA	Trustee	Trustee	01/1990	present
6	*Filer will resign upon confirmation.				

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

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

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

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Tyco International (USA), Inc.	Legal services
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Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
A&E Construction Products, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/12/2003	
A&E GP Holding, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
A&E Hangers, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
A&E Products Group LP		
Vice President	2/12/2003	
A&E Products Group, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
A-G Holding, Inc. I		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
ADT General Holdings, Inc.		
Director	5/13/2004	
Vice President	2/3/2003	
ADT Holdings, Inc.		
Director	2/3/2003	
Vice President	2/3/2003	
ADT Investments II, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
ADT Investments, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
ADT Maintenance Services, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
ADT Operations, Inc.		
Director	2/3/2003	
Vice President	2/3/2003	
ADT Property Holdings, Inc.		
Director	2/3/2003	5/14/2004
Vice President	2/3/2003	
ADT Security Services, Inc.		
Director	2/3/2003	
Vice President	2/3/2003	
ADT Security Systems, West, Inc		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
ADT Services, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
ADT Title Holding Company I		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
ADT Title Holding Company II		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
AEPG, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
AFC Cable Systems, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
AMP International Enterprises Limited		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
AMP Investments, Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
AMP Services, Ltd.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
API Security, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
APS Group Holding, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
ARR, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
ATC Sales Company		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
AWZ Inc.		
Vice President	2/12/2003	
Director	2/12/2003	5/13/2004
Activation Technologies, LLC		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Adhesive Technologies, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	-

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Allegheny Corp.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Alliance Integrated Systems, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Allied Tube & Conduit Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
American Electrical Terminal Co., Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Anderson, Greenwood & Co.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Ansul Canada Limited		
Vice President	4/22/2003	7/7/2004
Ansul, Incorporated		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Atcor, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Auto Suture Company, Australia		
Director	4/1/2003	
Vice President	4/1/2003	
Vice President	5/14/2004	
Auto Suture Company, Canada		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture Company, Netherlands		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture Company, U.K.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture Eastern Europe, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture International, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture Norden Co.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Auto Suture Puerto Rico, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Auto Suture Russia, Inc.		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
Automated Security Corp.		
Director	2/3/2003	5/19/2005
Vice President	2/3/2003	
Automated Security Holdings, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
BCKD, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Batts Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Batts, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Beta Acquisition Corp.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Burton, Adams, Kemp & King, Inc.		
Director		5/14/2004
Vice President	3/1/2003	
CASS Water Engineering, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
CCTC International, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
CEM Access Systems, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
CV Holding Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
CVG Holding Corp.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Carlisle Plastics Holding LLC		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Central CPVC Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Central Castings Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Central Sprinkler Company		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Central Sprinkler Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Central Sprinkler Holdings, Inc.		
Director	2/10/2003	5/19/2005
Vice President	2/10/2003	
Century Tube Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Chagrin Highlands Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Chemgene Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
CoEv, Inc.		
Director	4/8/2003	9/17/2003
Coated Products GP, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Coated Products Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Confab International, L.P.		
Vice President	2/7/2003	
Connect 24 Wireless Communications Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
Critchley Group, Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Crosby GP Holding, Inc.		
Director	3/1/2003	5/13/2004
Director	5/19/2005	
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Crosby Holding, Inc. I		
Director	3/1/2003	5/13/2004
Director	5/19/2005	
Vice President	3/1/2003	
Crosby Valve International Ltd.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Crosby Valve Sales & Services Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Crosby Valve, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
D.A.S. International, Ltd.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
Descote, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Digital Security Controls, Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
Earth Tech (Infrastructure) Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Earth Tech Architects & Engineers, Inc.		
Vice President	3/1/2003	
Earth Tech Architecture Inc.		
Vice President	3/1/2003	
Earth Tech EMS Holdings, Inc.		
Director		5/13/2004
Vice President	3/1/2003	
Earth Tech Environment & Infrastructure Inc.		
Director	3/1/2003	5/19/2005
Vice President	3/1/2003	
Earth Tech Holdings TAC, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Earth Tech Holdings, Inc.		
Director		5/13/2004
Vice President	3/1/2003	
Earth Tech Northeast, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Earth Tech WE Holding Inc.		
Director		5/13/2004
Vice President	3/1/2003	
Earth Tech Water Engineering LP		
Vice President		
Earth Tech of North Carolina, Inc.		
Director		5/14/2004
Vice President	3/1/2003	
Earth Tech of Ohio Inc.		
Vice President	3/1/2003	
Earth Tech, Inc.		
Director		
Vice President		
Earth Technology Corporation (USA), The		
Director	3/1/2003	
Vice President		
Electro Signal Lab, Inc.		
Director	2/3/2003	5/13/2004
Vice President	5/14/2004	
Electro-Trace Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Elkay Services LLC		
Vice President	8/8/2003	5/14/2004
Vice President	8/8/2003	
Elo TouchSystems, Inc.		
Director	4/10/2003	5/13/2004
Vice President	8/8/2003	
F.A.I. Technology Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
FAI Tech Link Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
FAI Technology (Holding), Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
FCI Liquidations, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
FRM Services, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Figgie Leasing Corporation		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Fire Products GP Holding, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
First Lafayette Holdings, Inc.		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	
Firth Cleveland Steels, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	11/12/2004
Fisk Corporation		
Director	3/3/2003	5/13/2004
Vice President	3/3/2003	
Fisk Electric Company		
Director	3/3/2003	9/10/2004
Vice President	3/3/2003	9/10/2004
Fisk Electric Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
Fisk International, Ltd.		
Director	3/3/2003	5/13/2004
Vice President	3/3/2003	9/10/2004
Forever Hangers, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
GC Holding, Inc. I		
Director	2/7/2003	
Vice President	2/7/2003	
GC Holdings, Inc.		
Director	2/7/2003	
Vice President	2/7/2003	
GF&S Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
General Sub Acquisition Corp.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
General Surgical Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
General Surgical Innovations, Inc.		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
Georgia Packaging, Inc.		
Vice President	2/12/2003	
Director	2/12/2003	5/13/2004

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Georgia Pipe Company		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Glynwed Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Goyen Valve Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Graphic Holdings, Inc.		
Director	2/7/2003	
Vice President	2/7/2003	
Grinnell Building Services Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Grinnell Corporation		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
IMB, A Simplex Company, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
IMC Exploration Company		
Vice President	6/27/2003	
Image Scan, Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Infrasonics Technologies, Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
InnerDyne Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
InnerDyne, Inc.		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
International Financing, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
International Quality and Environmental Services, LLC		
Director		
Vice President		
J. Muller International (USA)		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
J.B. & S. Lees Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	11/12/2004
J.R. Clarkson Company, The		
Director	3/1/2003	
Vice President	3/1/2003	
J.R. Clarkson Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
JMI Engineers, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Keystone France Holdings Corp.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Keystone Germany Holdings Corp.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Keystone Kuwait, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Keystone Saudi, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Kilovac Corporation		
Director	1/27/2004	5/13/2004
Vice President	1/27/2004	
Kilovac International Inc.		
Director	1/27/2004	5/13/2004
Vice President	1/27/2004	
King Packaging Co., Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
LCP, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Lafayette Pharmaceuticals, Incorporated		
Director	2/27/2003	5/13/2004
Vice President	5/14/2004	
Laser Diode Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
Laser Diode Incorporated		
Director	4/7/2003	
Vice President	4/7/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Liebel-Flarsheim Company		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Life Design Systems, Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Ludlow Coated Products LP		
Vice President	2/12/2003	
Ludlow Company LP, The		
Vice President	4/9/2003	
Ludlow Corporation		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Ludlow Jute Company Limited		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Ludlow Services LLC		
Vice President	2/7/2003	
Ludlow Technical Products Corporation		
Director	2/7/2003	5/13/2004
Vice President	2/7/2003	
M/A-COM Food Share, Inc.		
Director	2/26/2003	4/23/2004
Vice President	2/26/2003	4/23/2004
M/A-COM Tech Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
M/A-COM, INC.		
Director	2/26/2003	
Vice President	2/26/2003	
MCS Communication Products Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
MMHC, Inc.		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	
MMI, LLC		
Vice President	2/27/2003	
MSCH Company		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	
Mallinckrodt Athlone Holdings, Inc.		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Mallinckrodt Baker International, Inc.		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	
Mallinckrodt Baker, Inc.		
Director	3/10/2003	5/13/2004
Vice President	3/31/2003	
Mallinckrodt Caribe, Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Mallinckrodt Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Mallinckrodt Inc. (Delaware)		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
Mallinckrodt Inc. (New York)		
Director	3/10/2003	5/13/2004
Vice President	3/31/2003	
Mallinckrodt International Corporation		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
Mallinckrodt Medical PMC		
Director	2/27/2003	5/13/2004
Mallinckrodt Respiratory Acquisition I, Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Mallinckrodt TMH		
Director	2/27/2003	5/14/2004
Mallinckrodt Veterinary, Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Master Protection Corporation		
Director	3/12/2003	5/13/2004
Director	5/13/2004	
Vice President	3/12/2003	
Master Protection Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Mid-Atlantic Security, Inc.		
Director	2/3/2003	3/26/2004
Vice President	2/3/2003	3/26/2004
Mode Plastics, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Municipal Emergency Services, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	12/29/2004
National Alarm Computer Center, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	11/19/2004
National Catheter Corporation		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
National Integration Services, Inc.		
Director	3/9/2004	5/13/2004
Vice President	3/9/2004	
National Tape Corporation		
Vice President	2/12/2003	
Director	2/12/2003	5/13/2004
National Tape Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Nellcor Puritan Bennett Export Inc.		
Director	2/27/2003	5/13/2004
Vice President	3/31/2003	
Nellcor Puritan Bennett Incorporated		
Director	3/14/2003	5/13/2004
Vice President	3/31/2003	
Nellcor Puritan Bennett International Corporation		
Director	3/31/2003	5/13/2004
Vice President	4/1/2003	
OneSource Building Technologies, Inc.		
Director	3/3/2003	5/13/2004
Vice President	3/3/2003	9/10/2004
PTB Acquisition Sub, Inc.		
Director	2/7/2003	
Vice President	2/7/2003	
PTB Holdings, Inc.		
Director	2/7/2003	
Vice President	2/7/2003	
PTB International, Inc.		
Director	2/7/2003	
Vice President	2/7/2003	
Palomar Precision Tubes, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Paragon Trade Brands, Inc.		
Director	2/7/2003	5/13/2004
Vice President	2/7/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Paul Scott Security Systems, Inc.		
Director	2/3/2003	5/13/2004
Vice President	5/14/2004	
Paul Scott Security Systems, LLC		
Vice President	5/14/2004	
Pinacl Communications, Inc.		
Vice President	5/14/2004	
Plastics Holding Corporation		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Polyken Technologies Europe, Inc.		
Director	3/1/2004	
Vice President	3/1/2004	
Power Systems Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Precision Interconnect, Inc.		
Director	2/17/2003	5/13/2004
Vice President	2/17/2003	
Primary Display Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Printed Circuits, Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Private Products, Inc.		
Director	2/7/2003	5/13/2004
Vice President	2/7/2003	
Professional Registrar Organization, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
RI Mergersub, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
RI Corporation		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
RS Holdings LLC		
Director	8/8/2003	5/19/2005
Vice President	1/22/2004	
Raychem (Delaware) Ltd.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raychem Corporation of Arizona		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Raychem Gulf Coast, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raychem International Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raychem International Manufacturing Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raychem Radiation Technologies, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raychem Ventures, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Rayshrink Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Raythene Systems Corporation		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Remtek International, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Robinson Services, Inc.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Rochester Corporation, The		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
S2 Mergersub Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
STI Licensing Corporation		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
STI Properties, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
STI Properties, Ltd.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
STI Risk Management Co.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
STR Grinnell GP Holding, Inc.		
Director	1/22/2003	
Vice President	3/12/2003	
STR Realty Holdings LLC		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
SWD Holding, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
SWD Holding, Inc. I		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Safe Link Corporation		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
Sakertrax, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Scott Aviation, Inc.		
Director	3/4/2004	5/13/2004
Vice President	3/4/2004	9/1/2004
Scott Technologies Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Scott Technologies, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Security Watch, Inc.		
Vice President	5/14/2004	8/5/1999
Secutron, Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
Senelco Iberia, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sensormatic Asia/Pacific, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sensormatic Distribution, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sensormatic Electronics Corporation		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Sensormatic Electronics Corporation (Puerto Rico)		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sensormatic Holding Corporation		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sensormatic International Holdings I, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sensormatic International Holdings II, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sensormatic International, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sensormatic Technology, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Sherwood Medical Company		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sherwood Medical Company I		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sherwood-Accurate Inc.		
Director	2/7/2003	5/13/2004
Vice President	2/7/2003	
Sigma Circuits, Inc.		
Director	2/26/2003	
Vice President	2/26/2003	
Sigma GP Holding, Inc.		
Director	1/21/2003	
Vice President	2/10/2003	
Sigma Holding Corp.		
Director	2/10/2003	
Vice President	2/10/2003	
Sigma Printed Circuits Holding Corp.		
Director	2/10/2003	
Vice President	2/10/2003	
Simplex Argentina, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Asia Holding, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Simplex Asia, I Inc.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Asia, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Beijing Holding, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Europe, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex India, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Malaysia, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Mexico, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Singapore, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Sino Holding, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex South Africa, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Thailand, L.L.C.		
Director	3/12/2003	5/13/2004
Vice President	3/12/2003	
Simplex Time Recorder Co.		
Director	1/22/2003	
Vice President	3/12/2003	
SimplexGrinnell Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
SimplexGrinnell LP		
Vice President	3/12/2003	
Smith Alarm Systems, Inc.		
Director	2/3/2003	5/13/2004
Vice President	5/14/2004	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Sonitrol Corporation		
Director	2/3/2003	3/26/2004
Vice President	2/3/2003	3/26/2004
Sonitrol Management Corporation		
Director	2/3/2003	3/26/2004
Vice President	2/3/2003	3/26/2004
Star Holding Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Star Sprinkler, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Sunbelt Holding LLC		
Manager	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sunbelt Holding, Inc. I		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sunbelt Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Sunbelt Manufacturing, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Surgical Service Corporation		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
T.J. Cope Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
T15 Acquisition Corp.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
TA, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
TAMS Consultants, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
TKC Holding Corp.		
Director	2/7/2003	
Vice President	2/7/2003	
TKN, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
TME Management Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
TPA Realty Holding Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
TSSL Holding Corp.		
Director	2/6/2003	
Vice President	2/6/2003	
TV&C GP Holding, Inc.		
Director	3/1/2003	
Vice President	3/1/2003	
TVC, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Talisman Partners, Ltd.		
Director		5/13/2004
Vice President	3/1/2003	
Techcon International Ltd.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
Telestate International, Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	
Thermacon, Inc.		
Director	4/10/2003	5/13/2004
Vice President	4/10/2003	
Tracer Construction Company		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tracer Field Services, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Tracer Industries Finance Co., Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Tracer Industries Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tracer Industries International, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Tracer Industries Management Co., Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tracer Industries, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tracer Licensing, L.P.		
Vice President	3/1/2003	
Transoceanic Cable Ship Company, Inc.		
Director	2/6/2003	
Vice President	2/6/2003	
Transpower Technologies, Inc.		
Director	2/25/2003	5/13/2004
Vice President	8/8/2003	
Tri-Ed Distribution Inc.		
Director	5/12/2003	5/13/2004
Vice President	5/12/2003	2/1/2005
Tri-Ed Puerto Rico Ltd. Inc.		
Director	8/8/2003	5/13/2004
Vice President	8/8/2003	2/1/2005
Tri-Systems, Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
TyCom (US) Holdings, Inc.		
Director	2/6/2003	
Vice President	2/6/2003	
TyCom Acquisition Co. I, Inc.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
TyCom Finance Company, Inc.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
TyCom Management Inc.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
TyCom Simplex Holdings Inc.		
Director	2/6/2003	
Vice President	2/6/2003	
Tyco (US) Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
Tyco AR Funding 2002 LLC		
Manager	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Acquisition Alpha LLC		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tyco Acquisition Corp. 26		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 27		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 28		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 29		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 30		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 33		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 35		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 39		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 40		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 41		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 42		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 43		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 44		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. 45		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. XII		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tyco Acquisition Corp. XIV		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. XXI		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. XXII (NV)		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Corp. XXV (NV)		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Delta LLC		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Epsilon LLC		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Acquisition Gamma LLC		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Adhesives GP Holding, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Adhesives LP		
Vice President	2/12/2003	
Tyco Adhesives, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
Tyco Capital Investments, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Electronics Corporation		
Director	2/17/2003	5/13/2004
Vice President	2/17/2003	
Tyco Electronics Installation Services, Inc.		
Director	3/3/2003	5/13/2004
Vice President	3/3/2003	
Tyco Electronics Power Systems, Inc.		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
Tyco Electronics Puerto Rico Inc.		
Director	2/26/2003	
Vice President	2/26/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tyco Finance Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Fire & Security LLC		
Director	3/1/2003	2/24/2004
Managing Director	2/24/2004	5/13/2004
Vice President	3/1/2003	
Tyco Fire (NV) Inc.		
Director	3/1/2003	5/14/2004
Vice President	3/1/2003	
Tyco Fire Products LP		
Vice President	3/1/2003	
Tyco Flow Control Company LLC		
Manager	3/1/2003	
Vice President	3/1/2003	
Tyco Flow Control, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Healthcare Group LP		
Vice President	2/7/2003	
Tyco Healthcare Holdings, Inc.		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
Tyco Healthcare Retail Group, Inc.		
Director	2/7/2003	5/13/2004
Vice President	2/7/2003	
Tyco Healthcare Services LLC		
Vice President	1/7/2003	
Tyco Holding Corp.		
Director	2/10/2003	
Vice President	2/10/2003	
Tyco Holdings of Nevada, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Holdings, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
Tyco Integrated Cable Systems, Inc.		
Director	2/6/2003	
Vice President	2/6/2003	
Tyco International (NV) Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco International (PA) Inc.		
Director	2/10/2003	
Vice President	2/10/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tyco International (US) Inc.		
Director	2/11/2003	
Vice President and General Counsel, Corporate and International Law	2/11/2003	
Tyco International Asia, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco International US China Inc.		
Vice President	5/13/2005	
Tyco Merger Sub (NJ) Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Networks (Solutions) Inc.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
Tyco Plastics LP		
Vice President	2/12/2003	
Tyco Printed Circuit Group LP		
Vice President	2/17/2003	
Tyco RFC 2002 LLC		
Manager	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Receivables Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Receivables Funding LLC		
Manager	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco SPC, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Safety Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Safety Products US, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Sailing, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Submarine Systems Projects, Inc.		
Director	2/6/2003	5/13/2004
Vice President	2/6/2003	
Tyco Technology Resources, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Tyco Telecom OSP Holding Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Tyco Telecommunications (US) Inc.		
Director	2/6/2003	
Vice President	2/6/2003	
Tyco Thermal Controls LLC		
Manager	3/1/2003	
Vice President	3/1/2003	
Tyco Valves & Controls - Puerto Rico Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Valves & Controls LP		
Vice President	3/1/2003	
Tyco Valves & Controls, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Valves and Controls Middle East, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Valves and Controls U.A.E., Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Tyco Worldwide Services, Inc.		
Director	2/10/2003	
Vice President	2/10/2003	
U.S.S.C. Puerto Rico, Inc.		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
USS Acquisition Corp.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
USSC Acquisition Corporation		
Vice President	5/14/2004	
USSC Cal Med, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
USSC Financial Services Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
USSC Tex Med, Inc.		
Director	4/1/2003	5/28/2004
Vice President	4/1/2003	
Unistrut Corporation		
Director	3/1/2003	
Vice President	3/1/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
United States Construction Co.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
United States Surgical Corporation		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
Valleylab Holding Corporation		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
Valleylab Inc		
Director	4/1/2003	5/13/2004
Vice President	4/1/2003	
W.A.F. Group, Inc.		
Director	2/12/2003	5/13/2004
Vice President	2/12/2003	
WPFY, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Water & Power Technologies of Texas, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Water Holdings Corp.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Water and Power Technologies, Inc.		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Westec Business Security, Inc.		
Director	2/3/2003	5/13/2004
Vice President	2/3/2003	
Westlock Controls Corporation		
Director	3/1/2003	5/13/2004
Vice President	3/1/2003	
Westlock Controls Holdings, Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	
Whitaker Corporation, The		
Director	2/26/2003	5/13/2004
Vice President	2/26/2003	
White Mountain Insurance Company		
Director	9/11/2003	
Senior Vice President	9/11/2003	
Willoughby Holdings Inc.		
Director	2/10/2003	5/13/2004
Vice President	2/10/2003	

Positions Held Report

As of 5/23/2005

Timothy E. Flanigan

Company/Title	Effective Date	End Date
Wormald Americas, Inc.		
Director	2/14/2003	5/13/2004
Vice President	2/14/2003	
Yarway Corporation		
Director	3/1/2003	5/19/2005
Vice President	3/1/2003	

III. GENERAL (PUBLIC)

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

   Throughout my career, I have sought out opportunities for public service, beginning in my first year in private practice when I participated in a program of pro bono representation of the City of New York in cases that the City's Corporation Counsel could not handle due to budget constraints.

   I have also had many opportunities through my church to render service, both legal and otherwise, to the disadvantaged, including representation of low income families in debt trouble who needed help in working out plans with their creditors to avoid personal bankruptcy. From 1995 to 2001, I served as the leader of a congregation organized specifically to address the needs of South East Asian refugees. In this role, I spent an average of approximately 20 hours per week rendering service to a displaced group of people struggling to make their way in a new land, including advising parents of wayward youth caught up in the juvenile justice system and facilitating family involvement in the public school system.

   Over the years, I have also sought to render service of a practical, non-legal nature, including providing leadership of various youth programs. In organizing these programs, my philosophy has always been to attempt to build character in youth by providing opportunities for both youth and adult leaders to render service to the disadvantaged. Examples of such service include assisting youth in organizing and participating in day camps for mentally handicapped persons at the Northern Virginia Training Center and canning food for distribution to the homeless. I have also served in various leadership capacities in connection with the Boy Scouts, including Scoutmaster and Troop Committee Chair.

   While at Tyco, I have had several opportunities to render service, including helping to create a special evening event for the residents of a Trenton women's shelter and participating with our Singapore-based legal team in a Tsunami victim relief project.

   I remain committed to serving the disadvantaged, and I will continue to seek out opportunities for such service during my tenure at the Department of Justice.

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

I do not belong to any such organization; nor to my knowledge have I ever belonged to such an organization. I take seriously the responsibility of individuals to demonstrate by their affiliations and memberships a strong commitment to eliminate such discrimination from our society.

Chairman SPECTER. Thank you all and that concludes our hearing.

Before closing the record I want to make a request for unanimous consent to include a copy of this letter from me to Judge Gonzales dated December 27, 2004 and make it a part of the record. That does conclude our hearing.

[Whereupon, at 5:30 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 7, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to questions arising out of the appearance of Timothy E. Flanigan before the Committee on July 26, 2005, concerning his nomination to be Deputy Attorney General of the United States. We hope that you will find this information helpful, and that you will not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Responses to Written Follow-Up Questions from Senator Patrick Leahy
for Timothy E. Flanigan
Nominee to Position of Deputy Attorney General

Trying Terrorism Suspects in Federal Courts

Q. Press accounts suggest that in your time as Deputy White House Counsel you argued forcefully against trying certain terrorism suspects in federal courts. Did you believe then that our federal prosecutors and our court system were inadequate to try these criminal suspects? Do you believe that now?

ANSWER: As I stated at my hearing, the United States has used military commissions since the Revolutionary War to bring our enemies to justice. The Supreme Court has repeatedly recognized the well-established power of the military to prosecute offenses against the laws of war through military commissions. Congress itself has recognized the propriety and importance of military commissions for the present war, as the Court of Appeals for the District of Columbia Circuit recently held in *Hamdan v. Rumsfeld.* In that case, the court of appeals upheld the establishment of military commissions in the current war on terrorism. *Hamdan v. Rumsfeld,* 415 F.3d 33, 38 (D.C. Cir. 2005). The court concluded that "it is impossible to see any basis for [the] claim that Congress has not authorized military commissions." *Id.* Relying upon Supreme Court precedent, the congressional Authorization for Use of Military Force, and sections 821 and 836 of title 10, United States Code, the court held that "Congress authorized the military commission that will try" a Guantanamo detainee who admits to having been Osama bin Laden's personal driver. *Id.* I believed then and believe now that military commissions are appropriate for trying enemy combatants while protecting classified information and avoiding placing an unreasonable burden and security risk upon federal courts. As I stated at my hearing, serious national security concerns would likely arise if, for example, Osama bin Laden were tried in a United States District Court.

Congressional Oversight

Q. In the hearing, you and Senator Specter engaged in extended discussion of congressional oversight. What is your understanding of your obligations to respond to Congressional oversight?

ANSWER: I fully appreciate that Congress needs information about the administration of Executive Branch programs and activities in order to perform its legislative function under the Constitution. Congressional committees, acting through their chairmen, conduct oversight about matters within their jurisdiction in order to obtain that information. The Executive Branch has an obligation to facilitate oversight, doing so in a principled way consistent with its own constitutional responsibilities, resolving any issues through a process of good faith accommodation. I intend to work with the Senate Judiciary Committee to satisfy its oversight needs, and I am confident that we can do so.

Q. Will you make yourself available for appearances before the Committee?

ANSWER: Yes. I am advised that, from time to time, Deputy Attorneys General have made themselves available for appearances before the Senate Judiciary Committee and, if confirmed, I will follow in that tradition.

Military Commissions

Q. Media accounts suggest that you were deeply involved in drafting the military order that the President signed on November 13, 2001. Many members of Congress, including myself, were disturbed by the extraordinary assertion of executive power it contains.

For example, the military order allowed for the arrest and indefinite detention of persons without charge and without legal recourse if they were held unlawfully. While paying lip service to a full and fair trial, there was no requirement of a presumption of innocence, or that defendants be granted access to the evidence submitted against them, or even that proof of guilt be established beyond a reasonable doubt. No protection was provided against forced confessions.

Did you support the use of military commissions as defined by this order when the order was issued? Would you support such commissions today?

ANSWER: I supported the creation of a framework for the use of military commissions in 2001, and I support their use today. As I stated at my hearing, the United States has used military commissions since the Revolutionary War to bring our enemies to justice. The Supreme Court has repeatedly recognized the well-established power of the military to prosecute offenses against the laws of war through military commissions. Congress itself has recognized the propriety and importance of military commissions for the present war, as the Court of Appeals for the District of Columbia Circuit recently held in *Hamdan v. Rumsfeld*. In that case, the court of appeals upheld the establishment of military commissions in the current war on terrorism. *Hamdan v. Rumsfeld*, 415 F.3d 33, 38 (D.C. Cir. 2005). The court concluded that "it is impossible to see any basis for [the] claim that Congress has not authorized military commissions." *Id.* Relying upon Supreme Court precedent, the congressional Authorization for Use of Military Force, and sections 821 and 836 of title 10, United States Code, the court held that "Congress authorized the military commission that will try" a Guantanamo detainee who admits to having been Osama bin Laden's personal driver. *Id.* The procedures for the present military commissions compare very favorably with those used in the past. The President's Military Order, to which the question refers, must be considered in conjunction with the Secretary of Defense's subsequent implementing order, given that the President's order expressly charged the Secretary of Defense with establishing procedures for the military commissions that would ensure each defendant a full and fair trial. Each defendant enjoys the presumption of innocence; each defendant must be

found guilty beyond a reasonable doubt; each defendant is informed of all charges against him; each defendant has the ability to procure evidence in his defense; each defendant is provided capable military counsel; each defendant may obtain the additional assistance of civilian counsel; each defendant is guaranteed an appeal to a special panel of some of the most distinguished lawyers in America; and each case is reviewed either by the President or the Secretary of Defense.

"Enemy Combatants"

Q. Jose Padilla was arrested in Chicago's O'Hare Airport on May 8, 2002, on a material witness warrant issued by a court in the Southern District of New York. Three weeks later, President Bush designated Padilla an "enemy combatant" and had him transferred to a naval brig in South Carolina. The central question in his case is still a matter of dispute in the courts. That question is whether the President has the constitutional or congressionally-provided authority to detain without charge so-called "enemy combatants" who are U.S. citizens detained on U.S. soil, far from any field of combat.

(A) As Deputy White House Counsel, were you involved in the decision-making process that led to Padilla's designation as an "enemy combatant"?

ANSWER: No.

(B) It has been reported in the press that you argued against giving Padilla any access to counsel. Are such reports accurate?

ANSWER: Although I cannot comment on the specifics of internal deliberations, Padilla has received, and continues to receive, access to counsel.

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

ANSWER: I understand that Padilla trained with and was closely associated with al Qaeda both before and after September 11, 2001. Armed with an AK-47 assault rifle, he engaged in armed conflict against the United States and allied forces in Afghanistan. After eluding our forces on the battlefields of Afghanistan and escaping to Pakistan, he met with senior al Qaeda operatives, including Khalid Sheikh Mohammad and Mohammed Atef, and accepted a mission from al Qaeda to enter the United States and carry out attacks on our citizens within our own borders. He then came to this country intent on carrying out that mission.

The President based his decision to detain Padilla as an enemy combatant on written findings that Padilla: closely associated with al Qaeda; engaged in hostile and war like acts, including conduct in preparation for acts of international terrorism against the United States; possessed intelligence

about al Qaeda that would aid U.S. efforts to prevent attacks by al Qaeda on the United States; and represented a continuing, present, and grave danger to the national security of the United States, such that his detention was necessary to prevent him from aiding al Qaeda in its efforts to attack the United States or its armed forces, other governmental personnel, or citizens.

Q. In *Hamdi v. Rumsfeld*, the Court ruled 8-1 that a U.S. citizen captured in Afghanistan and labeled an "enemy combatant" could not be held indefinitely at a U.S. military prison without the assistance of a lawyer, and without an opportunity to contest the allegations against him before a court. Justice Sandra Day O'Connor in *Hamdi* made clear that the executive's power is constrained by the Bill of Rights, finding that "due process demands that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decision-maker." Do you disagree with the Court's decision in *Hamdi*?

ANSWER: *Hamdi* determined what the law of the land requires. I understand that the government has complied with that decision, and as Deputy Attorney General, I would expect the government to continue to do so.

Q. The U.S. Supreme Court also rejected the Administration view that those detained at Guantanamo Bay, Cuba, had no right to challenge the legality of their detention. The Court held 6-3 in *Rasul v. Bush* that the detainees were entitled to challenge the legality of their prolonged detention at Guantanamo in U.S. federal court. Do you disagree with the Court's decision in *Rasul*?

ANSWER: *Rasul* held that, under the federal habeas corpus statute, federal courts have jurisdiction over suits brought by certain individuals challenging the legality of their detention at Guantanamo Bay. That decision determined what the law of the land requires. I understand that the government has complied with *Rasul*, and as Deputy Attorney General, I would expect the government to continue to do so.

<u>August 1, 2002 OLC Memo</u>

Q. In your confirmation hearing, you stated that the Central Intelligence Agency (CIA) made a direct request to the Office of Legal Counsel for a memorandum interpreting the torture statute. You said to Senator Hatch, "[T]he request for this advice came from--directly to the Office of Legal Counsel from the CIA. The first that I heard that the question had been asked was when we were called by the Office of Legal Counsel and a briefing was proposed." The memorandum itself is addressed not to the CIA but to then-White House Counsel Alberto Gonzales. Its opening lines read, "You have asked for our Office's views regarding the standards of conduct under the Convention Against

Torture..." as implemented by 18 U.S.C. 2340-2340A. Can you explain this inconsistency? Who made the request to the Office of Legal Counsel?

ANSWER: I do not remember receiving the August 1, 2002, memorandum at that time. I came to learn through press reports, after I had left my employment at the White House, that OLC had prepared such a memorandum and that it was addressed to the then-Counsel to the President, Alberto R. Gonzales. I do not remember seeking, nor do I remember the then-Counsel to the President seeking, the memorandum—though a request for such guidance would have been consistent with our effort to ensure that the Executive Branch received appropriate guidance from the Department of Justice.

Sarbanes-Oxley

Q. When you joined Tyco International in late 2002, the company was still in turmoil. In June 2005, a Manhattan jury convicted two former Tyco executives - the CEO and the CFO -- of misrepresenting the company's financial condition and stealing millions of dollars of unapproved compensation. Having experienced first-hand the repercussions of these crimes to the company, its employees, and its investors, do you support the view expressed by some in the business community that the costs of Sarbanes-Oxley outweigh the benefits?

ANSWER: The Sarbanes-Oxley Act was passed in July 2002 with strong bipartisan support, in response to the President's call for decisive action to ensure high ethical standards in American business and to combat corporate fraud. At the same time, the President created the Corporate Fraud Task Force, which is chaired by the Deputy Attorney General. Those measures were designed to prevent a recurrence of the type of corporate corruption that was revealed in a series of high-profile corporate scandals. Over the past three years, the Department of Justice has made corporate fraud enforcement a high priority and has built an impressive record of successful prosecutions.

The Sarbanes-Oxley Act imposed tougher penalties for fraud, obstruction of justice, and other crimes, and gave prosecutors important new tools to investigate and prosecute cases of corporate fraud, including the requirement that chief executive officers and chief financial officers personally certify corporate financial statements. The Act includes numerous measures designed to ensure auditor independence, to strengthen internal corporate controls, and to improve financial disclosure and reporting.

As with any regulation, the costs of compliance must be borne by businesses. In particular, Section 404 of the Act, which requires companies to audit and report on their internal controls, has imposed significant costs. From my current vantage point, I would say that the timing and magnitude of the changes mandated by Section 404 call into question whether Congress fully appreciated the complexity and cost of those changes, particularly in a global company that is

diverse in terms of languages, cultures, and geography. I am aware that the Administration has closely monitored those costs and has taken steps to reduce the burdens. For example, the Securities and Exchange Commission (SEC) has established an advisory committee to assess the costs of Sarbanes-Oxley compliance on small businesses.

The benefits of Sarbanes-Oxley have been substantial and, in my opinion, have far outweighed the costs. The Act has helped ensure that accountants, attorneys, and other professionals who act as the gatekeepers of the financial markets are independent and honest. It has helped ensure reliability and transparency in financial reporting. And it has helped prosecutors and regulators to uncover and punish those who commit corporate wrongdoing. I would caution, however, based on my experience in the corporate environment, that no set of improved internal controls, however extensive, will ever provide iron-clad protections against fraud. We can never abandon vigorous enforcement, nor can businesses ever cease to work on improving their ethical culture.

If confirmed as Deputy Attorney General, I would support the efforts of the Department of Justice to aggressively enforce of the Sarbanes-Oxley Act and other laws against corporate fraud and white-collar crime.

Death Penalty

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

ANSWER: As an initial matter, I want to clarify what I understand to be the role of the Deputy Attorney General and the Office of the Deputy Attorney General in death penalty decisions.

The Department's death penalty protocol, set forth at USAM 9-10.000 et seq., establishes a standard review and decision-making process for any conduct being prosecuted in federal court for which a capital offense is or could be charged. The goal underlying the protocol is the consistent and fair application of federal capital statutes and procedures to prosecute the "worst of the worst" defendants nationwide, irrespective of the location of the offense or trial and local sentiment for or against the death penalty.

Under the protocol, it is the Attorney General's decision whether to seek the death penalty for a death penalty-eligible offender. After a case has been reviewed by the Attorney General's Review Committee on Capital Cases, it is forwarded to the Office of the Deputy Attorney

General, where a thorough review by staff informs the recommendation of the Deputy Attorney General. Thus, the role of the Deputy Attorney General in death penalty cases is potentially two-fold. The Deputy Attorney General and his Office provide an individual assessment and recommendation to the Attorney General regarding whether the death penalty should be sought. Second, when the Attorney General is unavailable, the Deputy Attorney General as Acting Attorney General may make the final death penalty decision.

I believe that the recommendation of the U.S. Attorneys should be given great weight but should not be dispositive if, for example, the recommended course of action would be inconsistent with decisions reached in other comparable cases.

Crack/Powder Sentencing Disparity

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

ANSWER: Federal law requires possession of 500 grams of powder cocaine to trigger a five-year mandatory minimum sentence but only five grams of crack cocaine to trigger the same sentence; similarly, possession of 5,000 grams of powder cocaine triggers a 10-year mandatory minimum sentence, while only 50 grams of crack are needed to trigger a 10-year mandatory minimum.

Congress created the current sentencing laws in the late 1980s. As you know, since then Congress has rejected a proposal by the Sentencing Commission that would have equalized penalties for powder and crack cocaine.

The differential between powder and crack cocaine sentences is based on several distinctions between the different forms of cocaine. Crack is more addictive than powder and creates a more intense high of shorter duration, requiring more frequent use to maintain the high. Crack users are more likely to overdose. Crack is also easier to conceal, transport, and distribute. It has also been much more closely associated with firearms use and with homicide trends. For these reasons, Congress imposed more severe penalties for crack trafficking and distribution.

I understand that the Administration conducted a policy review of the subject in 2002 and rejected recommending changes to the current system. Following that review, then-Deputy Attorney General Larry Thompson opined in testimony before the Sentencing Commission that "[c]urrent federal policy and guidelines for sentencing crack cocaine offenses are proper." He also expressed the view that "[i]t would . . . be more appropriate to address the differential between crack and powder cocaine by recommending that penalties for powder cocaine be increased." Further, he said that "[l]owering crack penalties now would simply send the wrong message – that we care less about the people and the communities victimized by crack."

I have not studied this issue closely. The position that Congress and previous Administrations, in addition to this one, have taken to justify the differential is rational and justified by the evidence. On the other hand, if I am confirmed, I will be open to reviewing the issue again.

Judicial Philosophy

Q. In my opening statement, I quoted from your testimony in a 1997 hearing about the need for the Senate to vigorously investigate the judicial philosophy of those nominated to serve on the federal bench. You said that you would place the burden on the nominee to prove that he or she has a well-thought out judicial philosophy. You said to Senator Durbin in the hearing that you stand by those words. If the nominee cannot meet the burden of proof, what do you believe the Senate should do?

ANSWER: I continue to believe that judicial nominees should recognize the limited role of Federal judges under our Constitution and should demonstrate they have thought about that role and what it means with respect to the interpretation of statutes and the Constitution. If any individual Senator believes that the nominee has not demonstrated such an understanding or disagrees with the nominee, the Senator must determine whether to vote for or against the nominee.

AUSA Retirement Benefits

Q. In past Congresses, I introduced with Senator Hatch and others the bipartisan Federal Prosecutors' Retirement Benefit Equity Act. This bill would correct an inequity that exists under current law, whereby Federal prosecutors receive substantially less favorable retirement benefits than other nearly all other people involved in the federal criminal justice system. The bill would increase the retirement benefits given to Assistant United States Attorneys by including them as "law enforcement officers" ("LEOs") under the Federal Employees' Retirement System and the Civil Service Retirement System. The bill would also allow the Attorney General to designate other attorneys employed by the Department of Justice who act primarily as criminal prosecutors as LEO's for purposes of receiving these retirement benefits. The bill was last introduced in the 108th Congress as S.640. If confirmed, will you work with me and other senators to enact this important legislation?

ANSWER: If I am confirmed, I would be happy to engage in discussions with you on this matter and to review any legislation that may be introduced with regard to retirement benefits for Assistant United States Attorneys.

Senate Judiciary Committee
Hearing on Timothy E. Flanigan to be Deputy Attorney General
Tuesday, July 26, 2005

Responses to Written Questions Submitted by U.S. Senator Russell D. Feingold to Timothy E. Flanigan

1. During your testimony before the Senate Judiciary Committee, you testified that in 2001 you did not seek the advice of experts in the military and other agencies to formulate procedures for trying suspected terrorists before military commissions because "the process was just taking too much time." The military commissions, subsequently established by Executive Order, did not begin reviewing charges against Guantanamo detainees until June 29, 2004.

a. Given this delay, can you explain why you believed that it was necessary to expedite the issuance of the Executive Order in 2001?

ANSWER: Because war is inherently unpredictable and demands rapid responses, the necessary tools must be at the ready as soon as possible. Military commissions are an important one of these tools. Indeed, the Supreme Court has recognized military commissions as part of the conduct of war. Because no one could predict the course of events immediately following the attacks of September 11, it was important and prudent to get procedures in place as soon as practicable. Congress itself has recognized the propriety and importance of military commissions in the present war, as the Court of Appeals for the District of Columbia Circuit recently held in *Hamdan v. Rumsfeld.* In that case, the court of appeals upheld the establishment of military commissions in the current war on terrorism. *Hamdan v. Rumsfeld*, 415 F.3d 33, 38 (D.C. Cir. 2005). The court concluded that "it is impossible to see any basis for [the] claim that Congress has not authorized military commissions." *Id.* Relying upon Supreme Court precedent, the congressional Authorization for Use of Military Force, and sections 821 and 836 of title 10, United States Code, the court held that "Congress authorized the military commission that will try" a Guantanamo detainee who admits to having been Osama bin Laden's personal driver. *Id.*

a. The President's Executive Order was heavily criticized as going too far, and subsequent Defense Department rules governing the military commission process included additional safeguards not contained in the President's Executive Order, although those rules also have been criticized as not providing a fair process. Do you think the process of finalizing the commission procedures would have taken as long and been as controversial if you had involved military and State Department experts from the beginning?

ANSWER: As I stated in my testimony, I believe that we did have from the beginning the benefit of experts in the military and in the State Department and that we ultimately created a process that was largely in accordance with their views. The numerous safeguards included in

the Defense Department rules contain considerably more protections than were available under previous military commission procedures used at several points in our Nation's history, as I also suggested in my testimony. Each defendant enjoys the presumption of innocence; each defendant must be found guilty beyond a reasonable doubt; each defendant is informed of all charges against him; each defendant has the ability to procure evidence in his defense; each defendant is provided qualified military counsel; each defendant may obtain the additional assistance of civilian counsel; each defendant is guaranteed an appeal to a special panel of some of the most distinguished lawyers in America; and each case is reviewed either by the President or the Secretary of Defense. These safeguards, to the extent they are "additional" to those in the President's order, are not in tension with that order but rather expressly contemplated by it, as the President, in his Military Order, charged the Secretary of Defense with establishing procedures for the military commissions that would ensure each defendant a full and fair trial.

2. You testified that the military commissions now provide a fair trial. The rules governing these commissions do not prohibit the admission of testimony that was produced through torture or other coercive means.

a. Would such evidence be admissible?

b. Do you think that a trial that allows the use of such evidence is fair?

ANSWER: The President has recently and repeatedly reaffirmed the longstanding policy that the United States will not commit or condone torture under any circumstances. In addition, the President's Military Order, dated November 13, 2001, requires that each individual tried by military commission be given a full and fair trial. Consistent with this guidance from the President, it is my expectation that no statements will be obtained by torture and, hence, no statements obtained by torture will be offered or admitted as evidence in the military commission proceedings.

3. Stories in the New York Times and Wall Street Journal on August 1, 2005, reported that two members of the military prosecution team questioned the fairness of the military commission proceedings last year. According to the news stories, evidence that one of the defendants subject to trial by military commission had allegedly been tortured had been either lost or withheld from the defense. Do you believe that a trial may be fair even if a defendant is not provided access to evidence that may show the defendant had provided information after being subjected to coercive force?

ANSWER: I am not now in a position to evaluate the statements of the two prosecution team members. I note, however, that the *New York Times* and *Wall Street Journal* stories to which you refer state that, according to Department of Defense officials, several reviews, including one by a

Pentagon inspector general, found the allegations of unfairness unsubstantiated. These articles, moreover, make no mention of allegations that any evidence was obtained by torture.

4. You were quoted in a New York Times story last fall regarding your involvement in the Administration's decision to establish military commissions for prosecuting suspected terrorists, rather than military courts-martial or criminal trials. According to the Times, you said: "Are we going to go with a system that is really guaranteed to prevent us from getting information in every case or are we going to go another route?" Please explain what you meant by the statement quoted in the Times, and please explain whether you believe the Fifth Amendment right to be free from coercive interrogations undermines law enforcement.

ANSWER: Military commissions provide sufficient process for enemy combatants and are fully appropriate to protect classified information and to avoid an unreasonable burden and security risk for civil and military courts. Military commissions have been used throughout our Nation's history as a means of providing justice to combatants. The point of my statement was that rules established for the civil courts are not necessarily appropriate for proceedings involving enemy combatants in wartime. For example, as I stated at my hearing, serious national security concerns would arise if, for example, Osama bin Laden were tried in a United States District Court.

I believe that the Department can and must carry out its mission to enforce the law consistent with the Fifth Amendment to the Constitution.

5. In 2001, you were heavily involved in the development and drafting of the USA Patriot Act. Many members of Congress believe that the sunset provisions of the Patriot Act have been invaluable to Congress' ability to conduct oversight of that law. What is your current view of the sunset provisions?

ANSWER: While I certainly respect the views of those who believe that sunsets are necessary for oversight, I continue to believe that the burdens imposed by sunsets outweigh the benefits. In particular, I believe that sunsets call into question the durability of our commitment to provide law enforcement with the tools needed to carry on the fight against terrorism. Ultimately, however, I agree with the Attorney General's testimony that "the Department of Justice has exercised care and restraint in the use of these important authorities, because we are committed to the rule of law. We have followed the law, because it is the law, not because it is scheduled to sunset. With or without sunsets, our dedication to the rule of law will continue. The Department will strive to continue to carry out its work lawfully and appropriately, and as a citizen I expect Congress will continue its active oversight over our use of the PATRIOT Act, not because it sunsets, but because oversight is a constitutional responsibility of Congress."

6. According to documents released through a FOIA lawsuit, FBI officials have raised serious concerns with Justice Department officials about coercive interrogation techniques being employed at Guantanamo Bay by officers from other agencies, including some who reportedly impersonated FBI agents in the course of interrogations. As the number two official at the Justice Department, what would you do if FBI officials told you they thought other agencies were violating U.S. law in their interrogation techniques?

ANSWER: If FBI or other officials indicated to me that they thought other agencies were violating U.S. law in their interrogation techniques, I would ensure that the allegations were fully investigated and dealt with appropriately under the law. I would also ensure that the allegations were brought to the attention of senior officials of the involved agencies.

Responses to Senator Richard J. Durbin's
Written Questions for Timothy Flanigan, Nominee to be Deputy Attorney General

1. At your hearing, I asked you whether U.S. personnel are prohibited from subjecting detainees to cruel, inhuman or degrading treatment in all circumstances. You told me, "I have some hesitancy in signing on without understanding what a particular phrase means."

To clarify, when the United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Senate filed a reservation to define cruel, inhuman or degrading treatment. This reservation states that the United States is bound to prevent "cruel, inhuman or degrading treatment" to the extent that phrase means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution.

> **a. In light of this definition, do you believe that U.S. personnel can legally engage in cruel, inhuman, or degrading treatment under any circumstances?**

ANSWER: I am aware that the United States has committed itself to complying with all of its obligations under the Convention. I believe that all U.S. personnel are bound to abide by these obligations and that no U.S. personnel may, under any circumstances, engage in acts of cruel, unusual, and inhumane treatment or punishment prohibited by the Constitution.

> **b. Can you assure me that, if you are confirmed, you will not advise the Attorney General or anyone else that U.S. personnel are legally permitted to engage in cruel, inhuman or degrading treatment?**

ANSWER: Yes. If confirmed, I would uphold the Department's commitment to enforce the law. I would not advise the Attorney General or others that U.S. personnel are permitted to engage in cruel, inhuman, or degrading treatment prohibited by the CAT or other provisions of law.

2. During his confirmation hearing, Attorney General Alberto Gonzales said, "as a direct result of the reservation the Senate attached to the CAT, the Department of Justice has concluded that under Article 16 there is no legal prohibition under the CAT on cruel, inhuman or degrading treatment with respect to aliens overseas."

Abraham Sofaer, who was the State Department's Legal Adviser in 1985-90, was the Reagan Administration official who handled the ratification of the CAT. He said, "I disagree with the merits and wisdom of the conclusion reached by the Department of Justice and cited in the response of Judge Gonzales concerning the geographic reach of Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Do you agree with the Justice Department or Mr. Sofaer?

ANSWER: I have reviewed a letter, dated April 4, 2005, from Assistant Attorney General William Moschella to Senators Leahy, Feinstein, and Feingold, which analyzes U.S. obligations under Article 16 of the Convention Against Torture. (A copy of that letter is attached.) This letter further explains the Attorney General's statement. The analysis in this letter appears to me to be correct.

3. At your hearing, you said, "The President has said we will not treat people inhumanely ... So I guess I would take very seriously any allegation or suggestion that we were treating anyone inhumanely."

How do you define inhumane treatment?

ANSWER: My statement referred to the President's memorandum of February 7, 2002, in which he directed that the United States Armed Forces shall treat detainees humanely. If confirmed as Deputy Attorney General, I will take seriously my role and responsibility to ensure that the directive referred to is implemented. Any questions that may arise regarding whether particular treatment complies with that directive should be resolved by reference to the customary laws of war based upon a careful review of all of the relevant facts and circumstances. Because the determination of whether particular treatment is inhumane is fact-specific, I do not believe that the term "inhumane" treatment is susceptible to a succinct definition.

4. At your hearing, you said you and White House Counsel Alberto Gonzales were briefed twice by the Justice Department's Office of Legal Counsel (OLC) on legal opinions they were preparing at the request of the CIA regarding the torture statute (18 U.S.C. §§ 2340 – 2340A) and specific interrogation techniques.

> **a. Please describe the substance of these briefings in as much detail as possible, including any discussion of specific interrogation techniques. Please respond to this question in an unclassified form to the greatest extent possible, with a classified annex if necessary.**

ANSWER: Following the attacks of September 11, 2001, it was the policy of the Administration to gather as much information as possible, within the bounds of the law, concerning terrorists and their plans and activities in order to prevent additional and potentially even more devastating attacks.

As I noted in my testimony before the Committee, I remember participating in two briefings regarding legal advice that the Department of Justice's Office of Legal Counsel (OLC) was asked to provide regarding the scope of 18 U.S.C. §§ 2340 & 2340A (the "anti-torture statute").

The anti-torture statute defines torture, in part, as an act that is "specifically intended to inflict severe physical or mental pain or suffering." The substance of the two briefings was OLC's views on the interpretation of the anti-torture statute – what the words of the statute meant and how it would be applied. Although specific interrogation methods were mentioned, I do not recall that they were discussed in detail, or that they were evaluated in terms of the legal analysis that was the subject of the OLC briefing.

My role as Deputy Counsel to the President was not to evaluate these methods or even to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis. Rather it was to assist the Counsel to the President in ensuring that the Department of Justice was providing legal advice responsive to the request that would assist the government in complying with the law.

b. On what dates were these briefings?

ANSWER: I do not remember the specific dates on which the two briefings occurred. I believe they occurred sometime during the summer of 2002.

c. Who conducted the briefings?

ANSWER: Lawyers from OLC conducted the briefings.

d. At or following the briefings did you receive any written analysis, e.g. draft memos?

ANSWER: I do not remember receiving any written analysis or draft memoranda on the matters discussed during the briefings.

e. When did you receive the final OLC opinions? Were you in agreement with their conclusions? Did you take any action after reviewing them?

ANSWER: I do not remember receiving any final OLC opinions. I came to learn through press reports, after I had left my employment at the White House, that OLC did, in fact, prepare a final memorandum dated August 1, 2002, that was addressed to the then-Counsel to the President (the "August 1, 2002, memorandum"). Because I do not remember receiving any final OLC opinions, I do not remember whether, at the time I reviewed them, I agreed with their conclusions or took any action after reviewing them.

f. Regarding the briefings, you said, "my principal concern would have been to make sure that they had the statutory analysis correct, that it sounded correct." Did you then believe that OLC's analysis of the torture statute and specific interrogation techniques was correct? Do you now?

ANSWER: I remember that I was persuaded by the description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute. I do not recall any discussion applying that analysis to particular interrogation methods.

I would note that the August 1, 2002, memorandum was withdrawn in June 2004 and was replaced with a new OLC memorandum on December 30, 2004 (the "December 30, 2004, replacement memorandum"). I understand that the December 30, 2004, replacement memorandum sets forth OLC's reconsidered views on the proper interpretation of the anti-torture statute. The analysis set forth in that replacement memorandum regarding the intent of Congress in framing the anti-torture statute is consistent with my recollection of the briefing given by OLC regarding its statutory analysis. I agree with the analysis set forth in the December 30, 2004 replacement memorandum.

5. As you know, one product of the discussions about the torture statute was an August 1, 2002 OLC opinion entitled, "Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340 – 2340A" (hereinafter OLC torture memo).

The OLC torture memo concludes that the torture statute does not apply to interrogations conducted under the President's Commander-in-Chief authority. At your hearing, you said this argument was "inappropriate in a sort of sophomorish way. It was a kitchen sink argument that was basically thrown in."

> **a. Were you briefed on this interpretation of the torture statute? Do you believe it is correct?**

ANSWER: As Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. The August 1, 2002, memorandum to which your question refers was withdrawn and was subsequently replaced by a publicly available memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was—and remains—unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

> **b. At your hearing, you discussed a hypothetical statute that "would be unconstitutional as applied to the President's orders as Commander-in-Chief." In your opinion would the torture statute be unconstitutional if it conflicted with an order issued by the President as Commander-in-Chief?**

ANSWER: The President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I agree wholeheartedly with that policy. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. Given the

President's unequivocal policy against torture, I do not foresee a circumstance in which the issue you raise would occur.

c. Can you assure me that, if you are confirmed, you will not advise the Attorney General or anyone else that the President, acting as Commander-in-Chief, is not required to comply with the torture statute?

ANSWER: Yes. The President has made clear that the United States will neither commit nor condone torture.

The OLC torture memo argued that in order for abuse to constitute torture under the torture statute, "The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result."

d. Were you briefed on this interpretation of the torture statute? Do you believe it is correct?

ANSWER: As Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion of the analysis to which you refer. I agree with the analysis of the December 30, 2004 replacement memorandum that disavows the analysis that your question quotes.

The torture statute defines torture to include "prolonged mental harm caused by or resulting from ... the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality." The OLC torture memo argues that the statute only prohibits the use of mind-altering drugs or other procedures that "penetrate to the core of an individual's ability to perceive the world around him, substantially interfering with his cognitive abilities, or fundamentally alter his personality." They give the example of "pushing someone to the brink of suicide (which could be evidenced by acts of self-mutilation)" as a sufficient disruption to constitute torture.

e. Were you briefed on this interpretation of the torture statute? Do you believe it is correct?

ANSWER: I do not recall any discussion of the analysis to which you refer. I agree with the analysis of the statute contained in the December 30, 2004, replacement memorandum.

6. At your hearing, you would not comment on specific interrogation techniques because you did not want reveal classified information inadvertently. To avoid this, I told you I

would send you written questions asking for your personal opinion on specific interrogation techniques.

a. In your personal opinion, is it legally permissible for U.S. personnel to subject a detainee to waterboarding (simulated drowning)? Is it inhumane?

b. In your personal opinion, is it legally permissible for U.S. personnel to subject a detainee to mock execution? Is it inhumane?

c. In your personal opinion, is it legally permissible for U.S. personnel to physically beat a detainee? Is it inhumane?

d. In your personal opinion, is it legally permissible for U.S. personnel to force a detainee into a painful stress position for a prolonged time period? Is it inhumane?

ANSWER: The following is in response to questions 6(a)-(d): The President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. Article 4 of the Convention Against Torture requires the United States to "ensure that all acts of torture are offences under its criminal law." The anti-torture statute, 18 U.S.C. §§ 2340-2340A, makes it a crime for any person outside the United States to commit, attempt to commit, or conspire to commit torture. The Constitution and numerous state and federal criminal laws prohibit conduct that amounts to torture within the United States. Article 16 of the Convention Against Torture also requires the United States to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture." Pursuant to a reservation required by the U.S. Senate, the United States is bound by this obligation "insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution." Depending on the circumstances, interrogation practices may be subject to other treaties and statutes. Whether a particular interrogation technique is lawful depends on the facts and circumstances. Without knowing the facts and circumstances, it would be inappropriate for me to speculate about the legality of the techniques you describe. With respect to your question whether these techniques are "inhumane," "inhumane" treatment is not susceptible to a succinct definition. It is informed by the customary laws of war and depends on all of the relevant facts and circumstances.

7. At your hearing, we discussed your relationship with Jack Abramoff, who Tyco International retained as a lobbyist.

a. Was it your decision to retain Abramoff as a lobbyist?

ANSWER: Some time before I joined Tyco in December 2002, the Company had retained the firm of Greenberg Traurig, LLP to perform governmental relations services on Tyco's behalf. Mr. Abramoff was not involved in that work. In the spring of 2003, Tyco consulted with Greenberg Traurig regarding potential tax legislation that would discriminate against corporations incorporated outside the United States (discussed more specifically in response to question "d." below). The Greenberg Traurig partners with which Tyco had an existing relationship introduced Mr. Abramoff to us and proposed that he be assigned to perform legislative affairs work on Tyco's behalf in connection with this issue. As part of my responsibilities as Tyco's General Counsel for Corporate and International Law, I (along with Gardner Courson in his role as Tyco's Deputy General Counsel for Litigation and other Tyco personnel) approved engaging Greenberg Traurig and Mr. Abramoff. I had not met or heard of Mr. Abramoff before that time.

In reaching the decision to retain Greenberg Traurig, we were impressed by the breadth of the team of specialists the firm identified to work on the engagement team. This group included highly regarded former Congressional staff members, from both political parties. Greenberg Traurig assigned the day-to-day management of Tyco's engagement to another partner of the firm, Mr. Edward Ayoob. (Although Mr. Ayoob has since left Greenberg Traurig, he remains one of Tyco's legislative advisors.).

b. Did Abramoff claim that he had any special influence on or access to the Executive Office of the President (EOP), the Commerce Department, the Senate, or the House of Representatives? Who were his contacts in the EOP, the Commerce Department, the Senate, and the House?

ANSWER: As mentioned above, several Greenberg Traurig partners recommended that Tyco engage Mr. Abramoff to perform legislative affairs services on its behalf. These Greenberg Traurig partners advised Tyco that Mr. Abramoff had good relationships with members of Congress, including Rep. Tom DeLay. Sometime after Tyco agreed to Mr. Abramoff's addition to the engagement team, he told us that he had contact with Mr. Karl Rove. I do not recall the names of any other contacts he may have claimed to have.

c. You said that, "For a period of time ... I was the one who was responsible on a day to day basis for supervising [Abramoff's] activities." How closely did you oversee Abramoff's activities? Did he have an unusual amount of authority or discretion compared to other lobbyists?

ANSWER: I monitored the activities of the Greenberg Traurig team primarily through periodic phone and email contact with Mr. Ayoob and, less frequently, with Mr. Abramoff. In my contacts with the Greenberg Traurig team, I endeavored to ensure that the steps they were taking or considering were in Tyco's best interests and an appropriate use of the company's resources. Neither Mr. Abramoff nor the rest of the Greenberg Traurig team had any more or less authority or discretion than any other lobbyist retained by Tyco would have had.

d. For what specifically did Abramoff lobby on behalf of Tyco? Did he lobby against legislation that would have penalized companies incorporated outside the U.S. to avoid taxes, e.g., the Corporate Patriot Enforcement Act (H.R. 737 and S. 384 in the 108th Congress)?

ANSWER: Greenberg Traurig was retained to monitor and, where appropriate, oppose legislation that would (i) treat a foreign incorporated entity as an "inverted" domestic corporation, increasing its tax liability, or (ii) deny contracts with the federal government to such corporations. Our challenge was to communicate to lawmakers that Tyco is not, in fact, an "inverted company" as that term is normally understood (i.e., a company that elects for tax reasons to abandon its U.S. incorporation in favor of a new charter in an off-shore jurisdiction). Tyco has been incorporated in Bermuda since 1997 as the result of a legitimate merger with another publicly traded company (ADT Limited). The negative publicity that Tyco had experienced in 2002 and 2003 in connection with the indictment of several of its executive officers made it difficult for Tyco to communicate this distinction to Congress and secure broad support for Tyco's legislative positions.

e. For what specifically did Abramoff lobby the EOP on behalf of Tyco? Please describe the nature of your supervision of Abramoff's lobbying of the EOP.

ANSWER: I did not ask Mr. Abramoff to lobby the EOP. Nor did I direct or encourage Mr. Abramoff to meet with personnel in the EOP. At some point after he joined the engagement team, Mr. Abramoff told me that he intended to contact Mr. Rove directly or indirectly to communicate Tyco's position on the topics discussed in the answer to question "d."

f. How was Abramoff paid? Did Tyco make any payments to third parties or entities on behalf of Abramoff?

ANSWER: Tyco did not make any payments to Mr. Abramoff. Nor did Tyco knowingly make payments to any third parties or entities on behalf of Mr. Abramoff. Tyco paid Greenberg Traurig a flat monthly fee, plus reasonable expenses, for Greenberg Traurig's services. Tyco did make payments directly to a third party consultant, GrassRoots Interactive, LLC, that Tyco engaged on Mr. Abramoff's recommendation, to perform support services in connection with Greenberg Traurig's lobbying activities.

g. Has Tyco conducted an investigation of Abramoff's activities on behalf of Tyco? If so, what were the results of the investigation?

ANSWER: Tyco has not conducted such an investigation. Greenberg Traurig, however, has conducted its own internal investigation and has informed Tyco of its conclusion that payments made by Tyco to GrassRoots Interactive, LLC were diverted by Mr. Abramoff. Specifically, Greenberg Traurig advised Tyco that Mr. Abramoff caused Tyco's payments to GrassRoots

Interactive, LLC to be forwarded to a Greenberg Traurig trust account and, from there, ultimately to entities controlled by Mr. Abramoff. Greenberg Traurig informed Tyco that the funds diverted to the entities controlled by Mr. Abramoff were not used in furtherance of lobbying efforts on behalf of Tyco. This diversion occurred without my knowledge and was in violation of Mr. Abramoff's ethical, fiduciary, and contractual obligations to Tyco.

Tyco and Greenberg Traurig have reached an agreement in principle to settle Tyco's claims stemming from the diversion of funds as described above. Pursuant to the settlement, Greenberg Traurig will compensate Tyco for the funds diverted by Mr. Abramoff.

h. Will you recuse yourself from any Justice Department investigations of Abramoff and his activities?

ANSWER: I am not familiar with the scope or facts of the pending investigations and thus cannot at this point determine whether I should recuse myself. If I am confirmed, I will consult with DOJ ethics officials in making any recusal decisions, and I will apply the normal recusal standards used by DOJ officials for avoiding actual or apparent conflicts. If, for example, it appears likely that those investigations could involve Tyco (e.g., by virtue of its apparent victimization by Mr. Abramoff), I would recuse myself.

Responses to Questions for Timothy Flanigan,
Nominee to be Deputy Attorney General
From Senator Edward M. Kennedy

I. Interrogation and Detention of Detainees

1. Independent Commission

It has been reported that you played a central role in crafting the Administration's policies relating to the detention and interrogation of detainees, including the formulation of the plan for military commissions and expanding the scope of permissible interrogation techniques beyond reasonable limitation. You seem to have been at the center of the policy making that excluded the Judge Advocate Generals and the State Department from meaningful participation in the creation of this new legal regime, one where the Geneva Conventions don't apply, where torture was defined so narrowly as to permit almost any conduct, and where our allies questioned the fairness of the military commission system that you helped to devise.

Secretary of State Colin Powell warned the White House, that the approach would "... reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops." Unfortunately, his predictions came true. Yet, despite the fact that we have had twelve separate military investigations into allegations of detainee abuse, not a single report has examined comprehensively the role that civilian authorities, including you, have played in crafting the policies that led to our missteps

A Do you agree that the Department of Justice could not have any role in examining the issues surrounding the Administration's interrogation and detention decisions if the Attorney General and the Deputy Attorney General were involved in the formulation, adoption, and implementation of those decisions? If not, how could the Department of Justice participate in an inquiry, study, or investigation without creating the appearance of impropriety since the roles played by you and the Attorney General would necessarily be the subject of any such inquiry, study, or investigation?

ANSWER: The President has repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. Whether a particular Executive Branch officer or employee is properly recused from participating in a matter is a question of law and policy that turns on all of the relevant facts and circumstances.

Even in circumstances in which senior officers of the Department of Justice are recused from particular matters, the Department has in place procedures for investigating such matters effectively and impartially.

B. Isn't the only answer to have an independent commission to avoid the appearance of any conflicts of interest?

ANSWER: The President has repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. The United States has conducted a large number of investigations focusing on allegations of torture or abuse. Additionally, the Senate Armed Services Committee held extensive hearings on this issue. These investigations have resulted in multiple substantive reports. I understand that individuals found to have acted unlawfully were or are being held accountable.

C. The Administration strongly resisted the formation of the 9/11 Commission, yet it provided valuable insights into our intelligence failures. Why shouldn't we let an independent body review the policies and decisions that have effectively undermined a critical component of ore military culture?

ANSWER: The United States has conducted a large number of investigations focusing on allegations of torture or abuse. These investigations have resulted in multiple substantive reports. I understand that individuals found to have acted unlawfully were or are being held accountable.

2. Bybee Torture Memorandum

The August 2002 Bybee Torture Memorandum was officially withdrawn last December and its analysis of the definition of torture under 18 U.S.C. 2340-2340A was repudiated. You testified on July 26, 2005 before the Judiciary Committee that you were briefed by the Office of Legal Counsel on the substance of the memo, that you likely asked questions about the statutory analysis to be sure that it was "correct" and that it "was something that made sense."

A. Do you now agree that that the statutory analysis was too extreme and incorrect?

ANSWER: As I stated at my confirmation hearing, I believe that certain arguments contained in the August 1, 2002, memorandum were unnecessary. That memorandum, however, has been withdrawn and subsequently replaced by a memorandum dated

December 30, 2004. I agree with the analysis of the statute contained in the December 30, 2004, memorandum.

B. If it is too extreme now, why was it acceptable when it was presented to you?

ANSWER: I was persuaded by the general description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute. The purpose of the briefings, as I understood them, was to keep the Counsel to the President informed, not for me to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis.

C. You had been the Assistant Attorney General of the Office of Legal Counsel; your opinion of the Memorandum's analysis would have carried great weight. Did you ever express opposition or reservations about any aspect of the Memorandum? If so, to whom, as to which portions, and what was the response? If not, why not?

ANSWER: As explained above, I was persuaded by the description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute. However, as I have explained, the purpose of those briefings was to keep the Counsel to the President informed. I was not in a position to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis, as I did not have the time or resources to conduct an independent analysis of the question.

D. What does it mean to you that a statutory analysis "makes sense?"

ANSWER: It means that the analysis regarding the intent of Congress in framing the anti-torture statute appears to be reasonable.

a. Did it make sense that that torture was being defined as physical pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death?"

ANSWER: As Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion of the analysis to which you refer.

b. Did it make sense that the Memorandum confused the most basic distinctions in criminal law between intent and motive?

ANSWER: As I stated in my previous response, as Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion of the analysis to which you refer.

c. Did it make sense that the President has the power to overrule Congressional prohibitions on committing torture, regardless of how it is defined?

ANSWER: As I have stated in my previous responses, as Deputy Counsel to the President, I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. The August 1, 2002, memorandum was withdrawn and was subsequently replaced by a memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was—and remains—unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

d. In your July 26, 2005 testimony, you described the references to the Commander-in-Chief override as "unnecessary" and "useless." Yet, this analysis was contained in a official legal policy from OLC that was the basis of a substantial portion of the Defense Department policy on interrogation contained in its April 2003 Working Group Report. As embodied in the Bybee Memorandum and the March 2003 Yoo Memorandum to Defense Department General Counsel Haynes, this view of unchecked Executive Power became policy for the Defense Department over the objections of the Judge Advocates General. If, as you testified, the President is not above the law and the President can not place other people above the law, how could you have permitted the Bybee Memorandum to become the official view of the law for the country?

ANSWER: The President, like all officers of the Government, is not above the law. He has a duty to protect and defend the Constitution and faithfully to execute the laws of the United States, in accordance with the Constitution. I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. I am not aware of any actions taken or any policies adopted based on the "Commander-in-Chief override" analysis to which the question refers. I am aware that the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture.

3. March 2003 Yoo Memorandum to Haynes

As a former Assistant Attorney General for the Office of Legal Counsel, I'd like to your impressions of the document, "Principles to Guide the Office of Legal Counsel," issued in December 2004 and signed by 19 attorneys formerly with the office. I have attached a copy to these questions for your review.

I'm particularly interested in principle #6 which states that "OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or non-disclosure."

A. Do you agree that OLC opinions which form the basis of Administration policy ought to be disclosed in a timely manner?

ANSWER: I agree that many OLC opinions can and should be published, usually after a lapse of time, where the Department of Justice determines, in consultation with affected agencies, that publication is in the public interest. During my tenure as Assistant Attorney General for OLC, I directed that those consultations proceed and that as many opinions as possible be published. That practice, however, does not diminish the interest that the Government may have in preserving the confidentiality of other OLC opinions. As the document to which you refer entitled "Principles to Guide the Office of Legal Counsel" (Principles) recognizes, some of OLC's legal advice "properly should remain confidential, most notably, some advice regarding classified and some other national security matters." Maintaining the confidentiality of OLC legal advice is often essential to the Department, the President, and the Executive Branch.

Moreover, I have reviewed generally the Principles and agree with much of the document. I believe that the document reflects operating principles that have long guided OLC in both Republican and Democratic administrations.

As referred to above, a March 14, 2003 OLC opinion by John Yoo may concludes that the President can authorize violation of the Uniformed Code of Military Justice. It seems to say that the President can override Congress's authority to criminalize abusive treatment of detainees.

Several Senators from our Committee and the Armed Services Committee have asked for the Yoo Memo and we were told it would be available. But the Administration has refused to provide it – even in a classified form – and no adequate explanation has been given to justify withholding it.

B: Do you agree that there is no Commander-in-Chief override which would permit the President to authorize torturing a detainee or abusing a detainee in violation of the UCMJ? If not, please describe in detail the circumstances under which you believe the President has authority to ignore the prohibitions contained in military law ratified by Congress?

ANSWER: The President does not ignore the law. I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. The "Commander-in-Chief override" analysis to which the question refers appears similar to analysis contained in the August 1, 2002, memorandum, discussed above. The August 1, 2002, memorandum was withdrawn and was subsequently replaced by a memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was-and remains-unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

C: Should the Senate have access to the Yoo Memorandum so that the country can decide whether the Administration has wrongly expanded its authority? If not, please describe in detail why the official legal opinion that provides the basis for this unprecedented expansion should be withheld?

ANSWER: I left the Government in December 2002. Therefore, I was not briefed on, or otherwise involved in reviewing or preparing government documents in the Spring of 2003. As a result, I have no knowledge of government memoranda issued in 2003. I am not in a position to say whether it would be appropriate to disclose the memorandum. I am not aware of any actions taken or any policies adopted based on the "Commander-in-Chief override" analysis. To the contrary, I am aware that the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture.

D: If you're confirmed as Deputy Attorney General, should you recuse yourself from any role in deciding whether to provide the Yoo Memo or similar OLC documents on detention and interrogation policies? Please explain.

ANSWER: Whether a particular Executive Branch officer or employee is properly recused from participating in a matter is a question of law and policy that turns on all of the relevant facts and circumstances. If confirmed, I would be committed to determining whether I would properly be recused under the applicable law and policy.

1. **As you know, Democrats and Republicans alike have concerns about the activist agendas of judicial nominees. How would you require a nominee to bear the burden that you described? What sort of proof would you require?**

ANSWER: As I stated in my earlier testimony, a nominee for the federal judiciary should have an understanding of the proper role of judges in our constitutional system. Senators have the opportunity to question nominees about their judicial philosophy during a confirmation hearing. Each senator must decide for her or himself whether the nominee has articulated an appropriate judicial philosophy prior to voting on confirmation.

I understand that you've been an active member of the Federalist Society for many years, including as a paid research consultant. Federalist Society leader Boyden Grey has commented that in this Administration, "the real legal policy energy may well be in the White House when it comes to selection of judges and justices and policy-making . . ." That suggests an aggressive attempt to change national policy through the courts, rather than through Congress or the Executive Branch.

2. **Isn't this a sign of choosing judges who suit policy tests, rather than neutrally apply law to facts? Why isn't this practice exactly the kind of judicial activism that you say you disfavor?**

ANSWER: I am not familiar with Mr. Gray's statement or the context in which it was made and therefore am unable comment on it. The President has repeatedly stated that he is committed to nominating individuals who share his view of the proper role of a judge in our system, which is to interpret the law and not to legislate from the bench.

The Administration and Republican majority have recently orchestrated a drumbeat of attacks on the independence of the Judiciary. Judicial blacklists, jurisdiction stripping legislation, and proposals designed to limit judicial discretion are fast becoming the norm in Congress. Heated rhetoric threatening the independence of the judiciary along with demand that judges justify their decisions has become a staple of Republican philosophy.

You testified in July 1997 before the Judiciary Committee that:

> **. . . A judge could so abuse the judicial power through willful misconstruction of the law that the judicial oath would be violated. A frank discussion in the political sphere of the possibility of removal in such cases may have the salutary effect of prompting judges to put aside their own policy preferences and adhere to the law.**

B. **Do you agree that during your time as Deputy White House Counsel, you were aware that waterboarding was a technique designed to induce the perception of suffocation?**

ANSWER: Although I was present at briefings in which specific interrogation methods were mentioned, I do not recall that they were discussed in detail. My role as Deputy Counsel to the President was not to evaluate particular methods. Rather it was to assist the Counsel to the President in ensuring that the Department of Justice was providing legal advice that would assist the Government in complying with the law.

C. **If the military adopted the discredited analysis contained in the Bybee Memorandum that assumed the President could override the UCMJ and defined Torture so narrowly that it permitted suffocating detainees until they thought they would die, why shouldn't all those in the Administration that approved, condoned, or facilitated the promulgation of the Bybee Memorandum be: a) required to disclose all knowledge about the Memorandum's creation and promulgation; and b) held accountable for advocating violations of federal law?**

ANSWER: As an initial matter, the President has recently and repeatedly reaffirmed the longstanding policy that the United States will neither commit nor condone torture. I agree wholeheartedly with that policy. I understand that the Administration and the Department of Justice are committed to investigating and punishing acts of torture or improper treatment of detainees. I am unaware of any actions taken or policies adopted by the Government that are inconsistent with the analysis set forth in the December 30, 2004, OLC memorandum, which superseded the Bybee memorandum.

II. Judicial Activism/Independence of the Judiciary

In 1997, you testified before the Subcommittee on the Constitution, Federalism, and Property Rights on judicial activism and the independence of the courts. You said:

> **"In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory that it could find no fault with the nominee. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well-thought out judicial philosophy, one that recognizes the limited role of federal judges."**

a. If you refuse to confirm your recusal, explain why your close relationship and loyalty to the President and the Attorney General would not create the appearance of impropriety if you participate in the investigation?

ANSWER: If confirmed, I would – like Mr. Fitzgerald – be "in the Administration," appointed by the President to serve in the Justice Department and "take Care that the Laws be faithfully executed." U.S. Const., art. II, § 3. As such, I would not be influenced by any person's political association, activities, or beliefs, or by my own personal feelings concerning any person, but would seek to obtain all of the evidence and, if warranted, see that federal prosecutors charge the most serious, readily provable offense.

b. Is there any reason why Mr. Fitzgerald should not be permitted finish the investigation under his existing authorization and conditions?

ANSWER: Not to my knowledge.

c. Why would you try to exercise control just as the investigation is nearing a conclusion?

ANSWER: As a private citizen, I am not familiar with the facts or scope of the investigation. I do not now foresee a need to exercise control over the investigation.

2. If you do not intend to recuse yourself, please state your commitment not to intrude into or interfere in any way with the investigation, not to share any information with the White House or the Attorney General, and not to revoke or alter the existing authorization and conditions under which Mr. Fitzgerald is operating. If you refuse to do so, explain why.

ANSWER: As a private citizen, I am not familiar with the facts or scope of the investigation. I do not now foresee a need to exercise control over the investigation. If confirmed, I will consult with Department of Justice ethics officials as to whether I should recuse myself from participation in the Plame investigation. If it is determined that I should not recuse myself, then I would participate in the oversight of the investigation in strict compliance with all applicable ethics laws, regulations, and rules.

In your July 26, 2005 testimony acknowledged that, even in context, this testimony was "an overstatement, to be sure, and inappropriate to suggest that we should threaten Federal judges as a general matter with impeachment."

3. **Your retraction notwithstanding, your 1997 testimony seems to be consistent with a general Republican hostility to the courts today. Does your testimony on July 26, 2005 represent a break from a prior philosophy? If so, to what do you attribute the shift?**

ANSWER: As I stated in my July 26, 2005, testimony, my 1997 testimony was an overstatement. It has been my consistent belief that judges should apply the law as it is written and not inject any personal policy preference into their decision-making.

4. **If you are saying now that your 1997, testimony was simply inartful, can you explain why your 1997 comments seem to be so consistent with the current trend, exemplified by Congressional comments surrounding the Terry Schiavo episode, that appear so hostile to the independence of the judiciary?**

ANSWER: I believe that the independence of the judiciary is extremely important, and my testimony was never meant to suggest otherwise. I continue to have concerns, as I expressed in my 1997 testimony, about judges who substitute their personal opinions for the rule of law.

III. Valerie Plame Investigation

Deputy Attorney General Comey appointed a special prosecutor in the Valerie Plame investigation because of the conflicts of interest posed by anyone in the Administration participating.

1. **Please confirm that if you become Deputy Attorney General, you will disqualify yourself from any role in that investigation, to avoid any appearance or possibility of political interference with Mr. Fitzgerald's efforts.**

ANSWER: If confirmed, I will comply with all applicable ethics laws, regulations, and rules. With regard to the Plame investigation, if confirmed, I would consult with and rely upon the advice of the Department of Justice's ethics officials to determine whether I should be recused.

4. Waterboarding/Mock Execution

In March 2005, you were quoted in an article in The American Prospect acknowledging that waterboarding was discussed by the Administration as a way of handling the interrogation of high-level Al Qaeda suspects. During your July 26, 2005 testimony, you said that you did not know whether waterboarding is an acceptable technique to be used by an agent of the United States. You testified that the issues surrounding waterboarding were not "at stake" in the briefings you received about the Bybee Torture Memorandum.

In fact, waterboarding and similar techniques were exactly what was at stake. On October 11th 2002, three months after the date of the Bybee Memorandum, major General Dunlavey, Commander of the Joint Task Force at Guantanamo Bay, Cuba, requested approval for use of several interrogation techniques, including the use of scenarios designed to convince detainee that death or severely painful consequences were imminent for him and/or his family and specifically, the use of a wet towel and dripping water to induce the misperception of suffocation.

The legal analysis provided by staff judge advocate Diane Beaver indicated that such conduct would be a violation of the UCMJ, but that they would not violate applicable federal laws because she recommended obtaining permission or immunity in advance from the convening authority for military members utilizing these methods.

Beaver also wrote that these techniques were legal under 18 U.S.C. 2340 because: a) no severe physical pain would be inflicted; b) prolonged mental harm is not intended; and c) there is a legitimate governmental objective in obtaining the information for national security reasons. These are the erroneous justifications that were incorporated in the Bybee Memorandum, which you judged to see if they "made sense," and which were flatly rejected by the December 30, 2004 OLC revision.

A. Do you agree that intentionally inducing a detainee's perception of suffocation is torture under 18 U.S.C 2340 and is illegal?

ANSWER: I agree with the statutory analysis set forth in the December 30, 2004, memorandum. Whether a particular interrogation technique violates section 2340 depends on all of the relevant facts and circumstances, and it would therefore be inappropriate for me to speculate as to the legality of any interrogation technique without knowing the facts and circumstances.

3. Have you been interviewed by the special prosecutor? If so, when and on what topics?

ANSWER: No.

4. Have you been invited or subpoenaed to appear before the grand jury?

ANSWER: No.

5. Please confirm that you have not been briefed by anyone at any time on any investigative or grand jury information related to the investigation, and that you did not participate in any way in the collection and/or review of evidence by the White House Counsel

ANSWER: I have not been briefed by anyone at any time on any investigative or grand jury information related to the Plame investigation. Furthermore, I did not participate in any way in the collection and/or review of evidence by the White House Counsel.

6. Is it appropriate for White House officials or their attorneys or political representatives to be making detailed public arguments about the evidence in the case, at a time when, according to the White House spokesman, Mr. Fitzgerald has asked the White House <u>not</u> to comment on the case?

ANSWER: I am not familiar with any statements about the case made by White House officials, attorneys, or political representatives, nor am I familiar with any request not to comment made by Mr. Fitzgerald. As a result, I am unable to comment on the propriety of any statements that may have been made.

IV. Hate Crimes

As I'm sure you agree, Hate Crimes are a violation of all our country stands for. They send the poisonous message that some Americans deserve to be victimized solely because of their race, religion, sexual orientation, or because of other kinds of bigotry. Hate crimes are crimes against entire communities. As the Supreme Court has said, bias-motivated violence is "more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest."

1. In your view, do Hate Crimes involve substantial federal interests?

ANSWER: I am opposed to all violent crimes, no matter where they are committed. Section 245 of Title 18, which I fully support and would vigorously enforce, allows federal prosecutors to pursue bias motivated crimes that implicate federally protected activities.

Last year, the vast majority of Congress supported legislation to strengthen the protections under the current federal hate crime statute, 18 U.S.C. Section 245. Under the leadership of Senator Warner and Senator Gordon Smith, the Senate approved legislation by a nearly 2-to-1 bipartisan majority of 65 to 33. Eighteen Republicans joined all the Democrats in approving this measure. In the House, by a vote of 213 to 186, members instructed the GOP leadership to support the legislation. Unfortunately, the House Republican leadership blocked the protections from the first bill.

2. Did you have any role in communicating to the House leadership the Administration's opposition to the legislation?

ANSWER: I left my position as Deputy Counsel to the President in December of 2002. I did not play any role in this piece of legislation before Congress in 2004.

The hate crimes provision is an essential response to a serious problem which continues to plague the nation. Since the September 11th attacks, we've had a shameful increase in the number of hate crimes committed in our country against Arabs and Muslims – murders, beatings, arson, attacks on mosques, shootings, and other assaults. Our legislation makes it easier for the Justice Department to assist state and local authorities in dealing with this type of crime. Investigation and prosecution of these crimes is often, labor intensive, and time-consuming. It relies significantly on the use of investigative grand juries. State and local authorities are often desperate for federal prosecutors to shoulder some of the burden of these prosecutions.

Unfortunately current law fails to protect people from hate crimes because of disability or their sexual orientation. It contains excessive restrictions requiring proof that the victims were attacked because they were engaged in certain "federally protected" activities."

3. Do you favor strengthening the current law to deal with these crimes?

ANSWER: Bias motivated crimes are a scourge on our society that must be prevented and punished to the full extent of the law. It is my understanding that the Department prosecutes a wide variety of bias motivated crimes under existing federal law. I also understand that the Department effectively cooperates with state and local authorities in

prosecuting bias motivated crimes, typically by allowing them to prosecute such crimes first because later federal prosecution is not precluded if it becomes necessary. This cooperative model of vigorous law enforcement has worked well in the context of backlash crimes. Indeed, I am informed that the Civil Rights Division and the FBI have investigated over 650 such incidents, worked cooperatively with state and local prosecutors in bringing approximately 150 cases, and brought federal charges in 22 cases against 27 defendants.

I have put these issues before the Department for the past 4 years. They've had ample time to consider them, but we've never received a definitive answer whether the Administration supports or opposes this legislation.

4. Flanigan, if confirmed to be Deputy Attorney General, will you support the expansion of the hate crime statute?

ANSWER: I do not have access to the type of information that needs to be considered in making such a decision. If I am confirmed, I would be happy to review any such legislation.

V. Guns

1. District of Columbia Gun Ban

On June 26, 1976, the District of Columbia Council passed a ban on handguns. As you likely know, the House has recently adopted an amendment to the DC appropriations bill that would roll back this ban and impose restrictions on the DC government's ability to limit loaded firearms in the District. Similar proposals to repeal the DC gun ban have been introduced in the Senate.

Representative Eleanor Holmes Norton, Mayor Anthony Williams and Police Chief Charles Ramsey all oppose this funding limitation in the House appropriations bill. In addition, all oppose efforts to oppose DC's ban on handguns given their ongoing efforts to limit firearms-related violence in the District.

A. What is your position on the amendment passed by the House? Do you support the language in the amendment to limit the DC Council's authority so that gun ban restrictions do not apply to handguns?

B. If you support limiting DC authority, how do you resolve the serious federalism issues raised by your position? It is without question that the federal government could not and would not take such a position if a State or other municipality took the District's position. How can you justify overriding the District's popular will?

ANSWER: I understand that the Administration has not taken a position on the amendment the House adopted. With respect to the second question, I do not believe any federalism issues are raised. Unlike the states or their municipal corporations that exist pursuant to state law, the District of Columbia is an entity of the federal government. The Constitution vests legislative authority over the District of Columbia in Congress, and the D.C. City Council is a creature of Congress, which is ultimately responsible for legislating for the District of Columbia. Therefore, questions of federalism do not enter into the discussion when Congress is considering legislating for the District of Columbia.

2. Law Enforcement Safety Act

During the last Session of Congress, both the House and the Senate passed the so-called "Law Enforcement Officers' Safety Act." This new law will exempt certain law enforcement officers from state concealed carry laws – despite concerns that this new law will undermine the safety of our communities and the safety of police officers. Without question, the intent of the legislation was to broadly override state and local gun-safety laws and, as a result, nullifies the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms.

When these bills were considered before Congress, they were strongly opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

A. Please describe your position on this new law and explain how it should be implemented? What is your position on the effectiveness of state laws and whether they should be preempted by federal legislation?

ANSWER: I understand that the Administration supported enactment of the Law Enforcement Officers' Safety Act, and I support the Administration's program. With respect to the Act's implementation, I understand that the Department of Justice issued implementation guidance for its law enforcement agencies on January 31, 2005, and published that guidance in the Federal Register.

With respect to the question of the effectiveness of state laws and the wisdom of preempting them by federal law, there are circumstances in which preemption is sensible and those in which deference to state laws is to be preferred. In the case of the Law Enforcement Officers' Safety Act, Congress made the determination that the preemption of state laws was appropriate. The fact that Congress determined that preemption was appropriate in this case does not predetermine its appropriateness in any other instance. Should questions of preemption come before me as a policy matter, I will approach them on a case-by-case basis in developing my position.

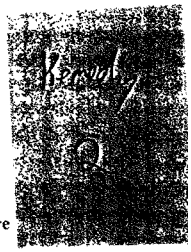
VI. Civil Rights

Several key provisions of the Voting Rights Act will expire in August 2007 unless they are reauthorized by Congress, including the pre-clearance requirements of section 5 and the requirements regarding bi-lingual election materials in section 203.

1. **If you are confirmed, will you ensure that the Department assists Congress in conducting the thorough hearings needed to evaluate the reauthorization of the Voting Rights Act, including providing Congress with information and documents about the Department's enforcement of the Act?**

ANSWER: Attorney General Gonzales has stated clearly that this Administration looks forward to working with Congress on the reauthorization of the Voting Rights Act.

Responses to Follow-up Questions for Timothy Flanigan, Nominee to be Deputy Attorney General From Senator Edward M. Kennedy



Analysis of 18 U.S.C. 2340-2340A

Question 1:

You indicated in your written response that you were "persuaded by the general description given in the briefings of OLC's analysis of the intent of Congress in framing the anti-torture statute." Did you read the Memorandum before your were briefed on its substance?

ANSWER: I do not recall reading the memorandum that the question references before being briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute.

a) **If so, why did you accept the OLC's conclusion that the statutory definition of torture required "damage" to "rise to the level of death, organ, failure, or serious impairment of body functions? In conducting its analysis of Congressional intent, OLC relied on unrelated statutes addressing health benefits for emergency medical conditions, and even that definition was narrowed from serious impairment or serious dysfunction of bodily functions to "permanent" impairment.**

ANSWER: As stated above, I do not recall reading the memorandum that the question references before being briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute.

b) **If not, why didn't you seek further information after you were briefed on conclusions that were so patently erroneous that the Judge Advocate Generals voiced opposition to it and the Justice Department repudiated it after it caused a public uproar?**

ANSWER: As I have previously stated, as Deputy Counsel to the President I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I recall that those briefings focused in particular on the Senate's understanding concerning the definition of "torture" under the Convention Against Torture, and Congress's intent in incorporating that Senate understanding into the language of the anti-torture statute. The purpose of those briefings was to keep the Counsel to the President informed, not for me to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis. My role as Deputy Counsel to the President was to assist the Counsel to the President in ensuring that the Department of

Justice was providing legal advice that would assist the Government in complying with the law. At the time, I believed that the Department of Justice's briefings, as described above, seemed reasonable.

c) Please directly answer whether you believe the statutory analysis contained in the Bybee Memorandum was extreme and incorrect?

ANSWER: As I have previously stated, I agree with the analysis of the statute contained in the December 30, 2004, memorandum that replaced the August 1, 2002, memorandum. The December 30 memorandum concluded that the statutory analysis contained in the August 1 memorandum was incorrect in certain respects. I agree with that conclusion.

Question 2:

Please directly answer the question previously posed: Did you ever express opposition or reservation about any aspect of the Bybee Memorandum? If so, to whom, as to which portions, and what was the response?

ANSWER: I am advised by the Department of Justice that further discussion of my role in this deliberative process would be inconsistent with the confidential nature of that process.

Question 3:

You indicated several times in your previous answers that you were:

not in a position to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis, as I did not have the time or resources to conduct an independent analysis of the question.

a) Is it your testimony that your role as a counsel to the President was merely to uncritically pass on legal opinions to the President about matters of national security, separation of powers, and altering fundamental understandings of military practice?

ANSWER: No. The Department of Justice, through the Attorney General assisted by the Office of Legal Counsel, functions as legal adviser to the President. As I have previously stated, as Deputy Counsel to the President I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. In particular, I recall that those briefings focused on Congress's intent in incorporating into the anti-torture statute the Senate's understanding concerning the definition of "torture" under the Convention Against Torture. The purpose of those briefings was to keep the Counsel to

the President informed, not for me to substitute my judgment for that of the Department of Justice regarding the appropriate underlying legal analysis. My role as Deputy Counsel to the President was to assist the Counsel to the President in ensuring that the Department of Justice was providing legal advice that would assist the Government in complying with the law. At the time, I believed that the Department of Justice's briefings, as described above, seemed reasonable.

b) **As Deputy Attorney General, would you expect to receive recommendations and analyses from your assistants and counsel who review Memoranda for you that have been sent by OLC or other Justice Department components? If so, why would the President's expectations of you have been any different?**

ANSWER: As Deputy Attorney General, my expectations from those providing me counsel and assistance would necessarily depend on the specific subject and circumstances of a given memorandum. In the context of reviewing the Office of Legal Counsel's legal analysis, the relationship between the Deputy Counsel to the President and the President is not the same as the relationship between the Deputy Attorney General and his assistants and counsel.

Question 4:

You testified during your confirmation hearing regarding your briefings on the Bybee Memorandum that:

> **I think I may have asked questions about the statutory analysis to be sure that I understood what it was they were after. As a former head of the Office of Legal Counsel, my principal concern would have been to be sure that they had the statutory analysis correct, that it sounded correct.**

a) **In your answers to our previously issued questions, you wrote that you did not recall discussions of analysis regarding: the definition of torture or the intent required to violate the statute. Wouldn't these areas be exactly the kind of analysis that you would have been examining as a former head of OLC?**

ANSWER: As I have previously stated, as Deputy Counsel to the President I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. The purpose of those briefings was to keep the Counsel to the President informed. I do not recall every issue discussed in those briefings, which occurred over three years ago. Moreover, those briefings did not present, and could not have presented, every facet of the Office of Legal Counsel's analysis ultimately detailed in the now superseded fifty-page August 1, 2002, memorandum.

b) Were these matters ever discussed in your presence while you were Deputy Counsel to the President? If so, by whom, when, and what was the substance of the discussion?

ANSWER: I am advised by the Department of Justice that further discussion of my role in this deliberative process, including the substance of any discussions in which I participated, would be inconsistent with the confidential nature of that process.

c) Please describe in detail the substance of the briefing or briefings you received about the OLC's conclusions, the materials that you were provided for the briefing(s), and the materials that you reviewed.

ANSWER: As I have previously stated, as Deputy Counsel to the President I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. The purpose of those briefings was to keep the Counsel to the President informed. I do not recall all of the details of those briefings, which occurred over three years ago. I am advised by the Department of Justice that further discussion of my role in this deliberative process, including the substance of the briefings I received, would be inconsistent with the confidential nature of that process.

Presidential Power to Overrule the Prohibition on Torture

Question 5:

The Bybee Memorandum concluded that prosecution under Section 2340A may be barred because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war. Please answer directly whether the issue of Commander-in-chief Authority, as described in the Bybee Memorandum, was discussed during your briefings.

ANSWER: As I have previously stated, as Deputy Counsel to the President I was briefed by the Office of Legal Counsel on that Office's interpretation of the anti-torture statute. I do not recall any discussion at these briefings of whether prosecution under section 2340A may be barred because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war.

Question 6:

If the answer to Question 5 is yes, please describe:

a) whether you agreed with the OLC analysis and conclusions on the scope of the Commander-in Chief Authority at the time that you learned of it;

b) **any and all comments you made, either in favor of or objecting to, the analysis;**
c) **any and all comments made by others who were present during the briefings, either in favor of or objecting to, the analysis; please identify any memos, documents, or reports in which you may have communicated your assessment of OLC's analysis and conclusions**

ANSWER: Please see my answer to question 5, above.

Question 7:

If the answer to Question 5 is no, please identify how and when you first learned of OLC's Commander-in-Chief analysis and conclusions, whether you agreed with the analysis, and describe all actions which you took to object to or approve of the analysis. Please identify any memos, documents, or reports in which you may have communicated your assessment of OLC's analysis and conclusions.

ANSWER: I have no clear recollection of having learned of the Commander-in-Chief analysis while serving as Deputy Counsel to the President. The first time I recall learning of the Commander-in-Chief analysis is through press reports, after I had left my employment at the White House. Thus, I do not recall having objected to or approved of the Commander-in-Chief analysis, or having communicated, in any memoranda, documents, or reports, an assessment of that analysis while in Government. The August 1, 2002, memorandum in which the Commander-in-Chief analysis appears has been withdrawn and has been replaced by a publicly available memorandum dated December 30, 2004, which concludes that the Commander-in-Chief analysis in the August 1, 2002, memorandum "was—and remains—unnecessary." I agree with this conclusion, particularly in light of the President's unequivocal and repeatedly reaffirmed policy against torture.

As I stated at my confirmation hearing: "The specific use of that argument in the Office of Legal Counsel memorandum from August 2002 was, in my view, inappropriate in a sort of sophomorish way. It was a kitchen sink argument that was thrown in. As I read the memo now, it looks like a kitchen sink argument that was thrown in to basically be a belt and suspenders argument. It was unnecessary, it was useless."

Question 8:

In response to my previous questions, you repeatedly indicated that the President has re-affirmed the policy that the United States will neither commit nor condone torture. You also wrote that the President does not ignore the law. However, your interpretation of what the law permits or prohibits is critical to assessing your qualifications. Therefore, please provide a direct answer to the question:

Do you agree that there is no Commander-in-Chief override which would permit the President to authorize torturing a detainee or abusing a detainee in violation of the UCMJ or 18 U.S. C. 2340-2340A? If not, please describe in detail the circumstances under which you believe the President has authority to violate the prohibitions contained these statutes?

ANSWER: The President, like all officers of the Government, is not above the law. He has a duty to protect and defend the Constitution and faithfully to execute the laws of the United States, in accordance with the Constitution. The President's independent constitutional powers have never been fully defined and cannot be, because their contours depend on the circumstances. In the words of Justice Jackson, the President's independent powers may "depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." It would be imprudent to purport to define the limits of the President's constitutional powers based on hypotheticals. It would be especially imprudent where, as here, the President's unequivocal policy against torture obviates the practical need to confront and resolve this issue. If confirmed, I would uphold the Department's commitment to enforce the law. I would not advise the Attorney General or others that U.S. personnel are permitted to engage in conduct prohibited by law.

Waterboarding

Question 9:

In March 2005, you were quoted in an article in the American Prospect acknowledging that waterboarding was discussed by the Administration as a way of handling the interrogation of hi-level Al Qaeda suspects. Please answer directly whether you were aware during your time as Deputy White House Counsel that waterboarding was a technique designed to induce the perception of suffocation.

ANSWER: As I have previously stated, I do not recall discussions of the details of any particular interrogation technique. In any event, I am advised by the Department of Justice that discussion of any particular interrogation techniques would involve sensitive information and could compromise intelligence sources and methods. In addition, it is important to note that my role as Deputy Counsel to the President was not to evaluate particular methods; rather it was to assist the Counsel to the President in ensuring that the Department of Justice was providing legal advice that would assist the Government in complying with the law.

Question 10:

In your prior answers, you refused to say whether intentionally inducing a detainee's perception of suffocation is torture under 18 USC 2340 and therefore would be illegal, without knowing the facts and circumstances surrounding use of

the technique. Please describe the facts and circumstances which would qualify waterboarding – inducing a detainee's perception of suffocation with water or wet towels – as legal.

ANSWER: As I have explained, I agree with the statutory analysis set forth in the December 30, 2004, Office of Legal Counsel memorandum. Application of the standard set forth in that memorandum depends on all relevant facts and circumstances, including the precise nature of the interrogation technique at issue. Because I do not recall discussions of the details of any particular interrogation technique, I am not in a position to speculate as to whether the use of a particular technique would be lawful under any given circumstances.

Question 11:

Prior Question 4(A) (C) addressed accountability for the policies that stemmed from the legal analysis contained in the Bybee Memorandum. You indicated that you were unaware of any actions taken or policies adopted by the government that are inconsistent with the analysis set forth in the December 30, 2004 OLC Memorandum. However, the question specifically asked for your opinion given the circumstances described in the questions. Please answer the question directly with specificity. It asked:

> **If the military adopted the discredited analysis contained in the Bybee Memorandum that assumed the President could override the UCMJ and defined Torture so narrowly that it permitted suffocating detainees until they thought they would die, why shouldn't all those in the Administration that approved, condoned, or facilitated the promulgation of the Bybee Memorandum be: a) required to disclose all knowledge about the Memorandum's creation and promulgation; and b) held accountable for advocating violations of federal law?**

ANSWER: This question raises a series of hypothetical scenarios. The December 30, 2004, OLC memorandum concluded, after reviewing OLC's prior opinions addressing issues involving treatment of detainees, that OLC did not believe that any of the conclusions of those prior opinions would be different under the standards set forth in the December 30, 2004, memorandum. Given both the Administration's unequivocal policy that the United States will neither commit nor condone torture under any circumstances and my lack of knowledge of any government actions or policies inconsistent with the analysis set forth in the December 30, 2004, memorandum that superseded the memorandum referenced in the question, it would be inappropriate for me to attempt to resolve these issues in this hypothetical context. If confirmed, I would uphold the Department's commitment to enforce the law, including all federal law concerning the treatment of detainees.

Judicial Activism

Question 12:

In response to my prior questions, you wrote that you continue to have concerns about judges who substitute their personal opinions for the rule of law. Please provide 5 examples of this practice so that we may better understand the exact nature of your position on the role of judges in our constitutional scheme.

ANSWER: Under our Constitution, the judiciary is a co-equal branch of the federal government. It does not, however, have a role in making policy or laws, or in carrying out the law. Those are the roles of the legislative and executive branches. The role of judges is to say what the law is, and to interpret the constitution, statutes, and regulations. An example of judicial activism would be where a judge second guesses the policy decision of the legislature by striking down a law that would otherwise be Constitutional. The *Lochner* decision and several subsequent decisions addressing economic regulations would be examples of judicial activism, where the court substituted its own policy judgment for that of the legislature.

Valerie Plame

Question 13:

On August 13, 3005, David Margolis was assigned to supervise the special prosecutor's Valerie Plame investigation. Please confirm that if you become Deputy Attorney General that you not seek to end, limit, interfere, or influence David Margolis' supervisory role in this matter.

ANSWER: I am advised that Deputy Attorney General Comey appointed Associate Deputy Attorney General Margolis to assume the Plame investigation responsibilities that he had exercised as Deputy Attorney General prior to his departure from the Department. With a newly-confirmed Deputy Attorney General, the responsibility delegated to Mr. Margolis may be resumed by the Deputy Attorney General, unless the Deputy Attorney General is recused from the matter. As noted in my earlier answer to the Committee, because I have no non-public source information regarding this investigation, I am unable to conclude at this time whether I should recuse myself from this investigation. If I am confirmed, I will make that recusal decision on the basis of the standards normally applied to such decisions within the Department of Justice. Therefore, at this point I see no need to alter the relationship between the Office of the Deputy Attorney General and Mr. Fitzgerald, including Mr. Margolis' role. Even if I am not recused from this matter, I would rely heavily on Mr. Margolis' experience, insights and recommendations in resolving any matters pertaining to the investigation that came to the Office of the Deputy Attorney General for decision.

SUBMISSIONS FOR THE RECORD

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy
On Nomination of Timothy E. Flanigan
To Deputy Attorney General
July 26, 2005

The Committee today will consider the nomination for the position of Deputy Attorney General. The Deputy is a key player in the Department of Justice who serves in the number two position, advising and assisting the Attorney General in developing and implementing departmental policies and programs.

The person in this position provides supervision and direction to all units of the Department. In addition, the Deputy is authorized to exercise nearly all the power and authority of the Attorney General, and, in the absence of the Attorney General, acts as the Attorney General.

I list the responsibilities of the Deputy Attorney General to illustrate the importance of this position. The Deputy Attorney General may, under certain circumstances, be called upon to serve as the nation's top law enforcement officer. The current Deputy, James Comey, and his predecessor, Larry Thompson, both had extensive experience serving as prosecutors. The current nominee does not have any prosecutorial experience. He worked in the Office of Legal Counsel in the first Bush Administration, and spent some years in a white collar criminal law practice. I might not find this fact so troubling but for the fact that the serving Attorney General had no prosecutorial experience before being named to his position.

They are not alone. In addition, Alice Fisher, the individual named to serve as the head of the Criminal Division, has never worked as a prosecutor. If Mr. Flanigan and Ms. Fisher are both confirmed by the Senate, then not one of the top three leaders of the Department with responsibility for criminal law enforcement will have critical experience in that area.

I am concerned by the public reports that have suggested Mr. Flanigan played a key role in developing the Administration's policies regarding the interrogation and prosecution of terrorist suspects after September 11, 2001. These attacks were truly horrific in nature, and we all expected the Administration to move aggressively to ensure the security of the Nation and pursue the perpetrators. The White House, however, took steps that many in the Congress, and even many in the Executive branch, believed went too far – that we believed would not ultimately make us safer.

senator_leahy@leahy.senate.gov
http://leahy.senate.gov/

In November 2001, the President signed a military order to authorize military commissions to try suspected terrorists. The Administration argued that it did not need the authorization of Congress to establish the tribunals, which were called "kangaroo courts," by *New York Times* columnist William Safire, because they fell vastly short of the procedural protections guaranteed in our civilian courts and military courts-martial. News reports suggest that Mr. Flanigan and an adviser to Vice President Cheney drafted the order.

I am disturbed by the arguments put forward by the Bush Administration that so-called "enemy combatants" can be held indefinitely, without charge, and without access to legal counsel. Terrorist suspects should be prosecuted to full extent of the law, but that is not what has occurred in certain cases. Yassir Hamdi, once called an enemy combatant too dangerous to try in civilian courts was deported last year, after being held without charge for nearly three years. Jose Padilla remains in custody while legal battles over his status and treatment continue.

According to press accounts, Mr. Flanigan rejected the idea of using civilian courts to try terrorist suspects, believing that access to civilian defense lawyers and due process rights would hamper information collection. The nominee also purportedly rejected the notion that suspects designated by the President as enemy combatants should be granted access to counsel. According to *Newsweek* magazine, heated debates occurred between the White House and the Justice Department, based upon the fact that the Solicitor General's office feared that complete denial of counsel to enemy combatants would not withstand Supreme Court review. These accounts state that Mr. Flanigan "argued against any modification, urging that more suspects be designated as enemy combatants." ("A Court Pushes Back," *Newsweek*, Dec. 29, 2003.)

Finally, we understand from public comments he himself has made that Mr. Flanigan was involved in reviewing proposed interrogation techniques for terrorist suspects. He reportedly reviewed and discussed with DOJ lawyers the infamous "torture memo" signed by Jay S. Bybee, then the head of the Office of Legal Counsel. Mr. Flanigan was also reportedly involved in discussions of specific interrogation techniques such as refusing pain for injuries, feigning suffocation, simulated drowning (also called "waterboarding"), and other tactics. The CIA purportedly asked for specific advice on whether such techniques were legal. The so-called torture memo stated that for an action to rise to the level of torture it must be equivalent to the type of pain experienced in organ failure or death. It also argued that the President possess the authority to order the commission of torture and to immunize from prosecution those who commit such acts at his direction.

We need to get to the bottom of this and understand how Mr. Flanigan responded to these issues. Did he agree with the Department's interpretation of the torture statute at the time the memo was issued in August 2002? Did he argue against what the Department eventually determined to be flawed reasoning? What did he think of that memo's assertion of unchecked Executive authority, the so-called "commander in chief override"? I questioned the Attorney General at length on this point in his confirmation

hearing and he refused to state directly that he disagreed with the memo's legal analysis on this topic. I hope Mr. Flanigan will state clearly that he disagrees with this disturbing assertion. It is not enough to say that the memo in question was withdrawn, as it represented Administration policy for well over two years.

Clearly, there are important areas to explore in today's hearing and our subsequent review of the nominee.

In my review of the nominee's writings and public statements, I was interested to find one particular piece of testimony he gave regarding judicial philosophy. This statement was made in 1997 when he testified before the Judiciary Committee on the topic of judicial activism. These words are especially relevant in light of the pending Supreme Court nomination process. In his statement, Mr. Flanigan described proposals for the Senate to consider in addressing "the problem of judicial activism":

> First among these, in my view, is [the] need for the Judiciary Committee and the full Senate to be extraordinarily diligent in examining the judicial philosophy of potential nominees. In evaluating judicial nominees, the Senate has often been stymied by its inability to obtain evidence of a nominee's judicial philosophy. In the absence of such evidence, the Senate has often confirmed a nominee on the theory that it could find no fault with the nominee. I would reverse the presumption and place the burden squarely on the judicial nominee to prove that he or she has a well-thought out judicial philosophy, one that recognizes the limited role of federal judges. Such a burden is appropriately borne by one seeking life tenure to wield the awesome judicial power of the United States.

I welcome Mr. Flanigan to the Committee today and I hope that he will provide the members of this Committee with candid responses to our questions.

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ENNSYLVANIA

COMMITTEES:
JUDICIARY
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GOVERNMENTAL AFFAIRS

United States Senate
WASHINGTON, DC 20510-3802

December 27, 2004

The Honorable Alberto R. Gonzales
Counsel to the President
The White House
Washington, DC

Dear Judge Gonzales:

In addition to the subjects we have already discussed relating to your confirmation hearing, I would appreciate it if you would review the applicable law and be in a position to comment on the extensive Congressional authority to conduct oversight on the Department of Justice.

This broad Congressional authority was summarized as follows in a 1995 Congressional Research Service analysis:

> [A] review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer Raids and Teapot Dome to Watergate and through Iran–Contra and Rocky Flats, demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry. All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.
>
> In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar

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"sensitive" materials. Congressional Research Report, "Investigative Oversight: An Introduction to the Practice and Procedure of Congressional Inquiry" pp. 23-24 (April 7, 1995).

Sincerely,

Arlen Specter

AS/db

SENATOR WARNER'S STATEMENT TO THE JUDICIARY COMMITTEE
ON THE NOMINATION OF TIMOTHY FLANIGAN
TO SERVE AS DEPUTY ATTORNEY GENERAL OF THE UNITED STATES
July 26, 2005

Chairman Specter, Senator Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, I thank you for holding this confirmation hearing for a native Virginian, Tim Flanigan. I am proud to present him today to the Committee as the President's nominee to be Deputy Attorney General. He is an outstanding nominee, and I am pleased to support him.

Before I go into his qualifications, though, I would like to first recognize Tim's family members who are here today in support:

* his wife Katie;
* Tim and Katie had 14 children together. 13 of them are here today, many with their own spouses. Becky, Pat, James, Tim, Liz, Maureen, Kevin, Mark, John, Rachel, Molly, Sarah, and Melanie are all here. Tim and Katie's other child, Emily, is on a church mission and couldn't be here today, but I am sure she is here in spirit.
* Finally, Tim and Katie's grandchildren are here too, Samantha and Jessica.

Now, back to the introduction.

The Deputy Attorney General position is a very important one, tasked with a tremendous amount of responsibility. As we all know, the Deputy Attorney General is second in charge at the Department of Justice. And, as the second in charge, the Deputy plays an indispensable role in advising the Attorney General and helping him implement Department of Justice policies. While always a challenging task, this position has taken on added importance since September 11th, as this country has faced, and will continue to face, new legal frontiers in the war on terror. Given this reality, it is paramount that America have someone of the highest qualifications to fill this role.

Nearly two years ago, I came before this Committee to introduce and recommend Jim Comey for this job. Soon afterwards, his nomination was reported favorably from this Committee, and he was confirmed by the full Senate by voice vote. Undoubtedly, Jim Comey served this country with distinction as Deputy Attorney General. And, while Tim Flanigan certainly has big shoes to fill, I know that Tim is eminently qualified, and I am confident he is up to the task.

Certainly, his legal resume and experience are impressive.

After graduating from Brigham Young University, Tim went onto my law school alma-mater, the University of Virginia, to earn his law degree. He then clerked for Chief Justice Warren Burger of the United States Supreme Court.

In 1992, he was unanimously confirmed by the Senate to serve as the Assistant Attorney General for the Office of Legal Counsel at the U.S. Department of Justice. In this capacity, Tim was a principal legal advisor for then President George H. W. Bush, the Attorney General, and the heads of the various executive branch agencies.

Subsequent to working for the first President Bush, Tim worked in private practice as a partner at a number of well-known and well-respected law firms, including McGuire Woods and White & Case, practicing at the latter until he accepted President Bush's offer to serve as Deputy Counsel and Deputy Assistant to the President. During his time in the White House, Mr. Flanigan focused extensively on national security issues and the war on terror.

In 2002, Mr. Flanigan left the Administration and returned to private practice, joining Tyco International Inc., as Senior Vice President and General Counsel. In this capacity, he is responsible for corporate and international legal functions for Tyco, including corporate governance and compliance programs.

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

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