

**Senator Chuck Grassley**  
**Questions for the Record**  
**Derek Anthony West**  
**Nominee, Associate Attorney General of the United States**

- 1. During your hearing, I asked you if you believed that you had vigorously protected Mr. Newell’s interests. You responded that when you decide whether or not to defend a case, you look to various facts and numbers. But I specifically asked, and would like a direct response to my original question: did you vigorously protect Mr. Newell’s interests?**

**Response:**

As a general matter, my duty as the Assistant Attorney General of the Civil Division – consistent with my oath of office – was to protect the best interests of the United States, as distinct from the individual interests of any particular individual, particularly if that individual was represented by his or her own attorney. Indeed, it would be not be consistent with my Department responsibilities nor my understanding of the False Claims Act for me to subjugate the interests of the United States to any particular relator, which is why the Civil Division is required to conduct an independent inquiry into any allegations of fraud leveled by a relator. Of course, a decision by the Department not to intervene in a *qui tam* action does not end the case, because the relator is permitted to proceed with the litigation.

I am confident that my approach has served the interests of the United States well. During my four years as head of the Civil Division and Acting Associate Attorney General, the Department has enjoyed a strong partnership with *qui tam* relators in fighting fraud, waste, and abuse. Since January 2009, payments to relators in False Claims Act actions exceed \$1.7 billion (including more than \$1.3 billion during the three years that I was the head of the Civil Division). In the last four years, there has been a 50% increase in the number of *qui tam* lawsuits filed (from 433 in FY 2009 to 652 in FY 2012).

In a letter sent to the Committee in support of my nomination, Neil Getnick, a leading False Claims Act attorney and the Chairman of Taxpayers Against Fraud (a non-profit organization that champions False Claims Act and whistleblower laws), noted that I have “played a central role in protecting the American people and the federal government from fraud and abuse.” If confirmed, I will maintain my commitment to working with *qui tam* relators and their counsel to aggressively enforce the False Claims Act.

- 2. During your transcribed interview, you agreed that it would be highly inappropriate for the Justice Department to provide information to a *qui tam* defendant like St. Paul for purposes of knocking out a relator. But our investigation uncovered the fact that Mr. Perez offered assistance to St. Paul by providing information that would hurt Mr. Newell’s case and might even result in its dismissal.**
  - a. Do you still believe it would be inappropriate? Please explain your response.**

**Response:**

I believe the appropriate manner for a party seeking information from the Justice Department – whether that party is a *qui tam* defendant or anyone else – is to use one or more of the various statutory options available to that party. Depending on the circumstances, a party seeking information from the United States in a declined *qui tam* action may seek discovery from the United States, which is a non-party in declined cases, by serving a subpoena and submitting what is known as a *Touhy* request. In appropriate circumstances, a party may file a request pursuant to the Freedom of Information Act. My previous answer, which I reiterate here, was that if the City of St. Paul was interested in acquiring information from the United States for use in the *Newell* litigation, seeking discovery through the submission of a *Touhy* request would seemingly be the most appropriate procedure, and that the Department would typically expect an appropriate request before providing such information.

- b. Did you at the time, or do you now disagree with Mr. Perez’s decision to offer assistance to St. Paul in challenging Mr. Newell as the original source? Please explain your response.**

**Response:**

To my knowledge, Assistant Attorney General Perez did not offer to provide the City of St. Paul assistance in challenging Mr. Newell as an original source. In fact, when the City proposed a settlement of the *Newell* case on terms that would have required the Department to give the City information to support a motion to dismiss on public disclosure grounds, the Civil Division unequivocally rejected the City’s proposal. It is my understanding that the Department has not provided the City any assistance with its original source argument against Mr. Newell.

- 3. You’ve stated that “the character of society is often reflected by how it treats those at the dawn and in the sunset of life.” Could you please describe when you think the ‘dawn of life’ takes place?**

**Response:**

The quotation to which the question refers is a paraphrase of Hubert H. Humphrey, who, in the last speech of his life, said that “the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped.” By “dawn of life,” I was referring, like Humphrey, to children.

Under the leadership of Attorney General Holder, the Department has made it a priority to promote the safety of the most vulnerable members of our society. This commitment includes our efforts to protect children from experiencing and witnessing violence through initiatives like the National Forum on Youth Violence Prevention and the Defending Childhood Initiative. It also includes our efforts to protect seniors from abuse, neglect, and exploitation through

initiatives like the interagency Elder Justice Coordinating Council and the Department's Elder Justice Initiative. I have taken an active role in these programs, and if confirmed, I will maintain my commitment to protect the most vulnerable among us by fostering and supporting healthy families and safe communities.

- 4. Frequently an Administration may not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, you will be called on to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views.**

**If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a the statute or subject matter of the statute? Please explain your response.**

**Response:**

Yes. Consistent with the rule of law, the Department has long followed the practice of defending federal statutes so long as reasonable arguments can be made in support of their constitutionality, even if the Department disagrees with a particular statute as a policy matter. This longstanding bipartisan tradition accords the respect appropriately due to Congress and ensures that subsequent Administrations will faithfully defend laws with which they may disagree on policy or grounds. If confirmed, I will continue to discharge my responsibility to defend federal statutes in a manner that is consistent with the Department's established practice.

- 5. The U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision. If confirmed, will you commit to protect an individual's right to possess a firearm? If so, how?**

**Response:**

Yes. *Heller* is a binding, Supreme Court determination on the scope of the Second Amendment. Since *Heller* was decided, various court filings – including briefs filed by the Civil Division during my tenure as Assistant Attorney General – have made clear that the Department looks to that decision as supplying the relevant framework for evaluating Second Amendment issues. In *Heller*, the Supreme Court stated that while the rights guaranteed by the Second Amendment are not unlimited, there is a constitutional right to bear arms in one's home for self-defense purposes. Like all other officials in the Department, I have a duty to uphold the rights protected by the Constitution, which includes those rights reflected in the Second Amendment.

6. **As you may know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector. I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture. I would like to get a commitment from you that the Antitrust Division will pay heightened attention to agribusiness transactions. Can you assure me that agriculture antitrust issues will be a priority for DOJ if you are confirmed? Please explain your response.**

**Response:**

I understand that agriculture is an important part of the nation's economy, and I take seriously the concerns that agricultural producers have expressed about competitive problems in those markets. Working with my colleagues in the Antitrust Division, I am committed to the Department's active involvement in the agricultural sector and to protecting competition in that sector through aggressive antitrust enforcement, where warranted.

In 2010, the Department held a series of workshops focused on competition in the agricultural sector. The workshops helped us improve our understanding and knowledge of agricultural markets, fostered a closer working relationship with the Department of Agriculture on issues relating to competition, and improved our relationships with farm organizations and state Attorneys General on issues of antitrust concern in the agricultural sector.

The Antitrust Division plays a leading role in protecting our agricultural markets from the harm of anticompetitive mergers and conduct. The Division has attorneys and economists who focus on agricultural matters, including mergers and conduct aimed at acquiring or exercising market power. In addition, the Division has a dedicated Special Counsel for Agriculture, who is engaged with the agricultural community to identify and uncover potentially anticompetitive activity, and who works with the litigating sections to evaluate and investigate complaints.

If confirmed, I will continue to work with the Antitrust Division and others in the Department to police anticompetitive mergers and conduct in agricultural markets. We will not hesitate to take appropriate enforcement action to maintain open, competitive markets.

**7. I have been concerned about the Department’s lack of responsiveness to requests for information necessary for us to conduct oversight.**

- a. If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?**

**Response:**

If confirmed, I will work with the Department’s Office of Legislative Affairs (OLA) in matters relating to my areas of responsibility, to provide appropriate information to Congress in a timely manner.

- b. Will you work to ensure that responses are not held up due to lengthy “clearance” processes at subordinate agencies such as the FBI?**

**Response:**

I agree that the Department’s internal clearance process should proceed as expeditiously as possible, while ensuring that the Department’s responses to congressional requests are accurate and reviewed by those with the relevant knowledge and expertise. If confirmed, I will work with OLA to make the process by which the Department responds to congressional oversight requests as efficient as possible.

- c. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?**

**Response:**

I believe that the Department should strive to provide Congress with accurate information in a timely manner. At the same time, I understand that the Department’s disclosures of information may be constrained by the law and long-standing policies pertaining to individual privacy and other institutional interests.

- d. Will you pledge to work with Ranking Minority Members of Committees on any oversight request?**

**Response:**

If confirmed, where it is appropriate for me to participate in the Department’s response to oversight matters, I will work with OLA and Committees of Congress, including Ranking Minority Members, to be responsive to such matters.

**8. Please explain how, if confirmed, what efforts you will take to enforce the False Claims Act?**

**Response:**

Thanks in large part to the leadership of Chairman Leahy and Ranking Member Grassley, the False Claims Act (FCA) is one of the federal government's most powerful tools in rooting out fraud, waste, and abuse. During my tenure in the Department over the last four years, we have made unprecedented strides in protecting taxpayer dollars and the integrity of government programs through vigorous enforcement of the FCA. Since January 2009, the Department's total recoveries under the FCA exceed \$14 billion. This is the largest four-year total in the Department's history and is more than a third of the total recoveries since the FCA was significantly amended in 1986. In FY 2012, the Department secured nearly \$5 billion in settlements and judgments in cases involving fraud against the government, eclipsing the previous annual record by more than \$1.7 billion. If confirmed, I will continue to prioritize aggressive enforcement of the FCA and will work closely with my federal and state partners and with *qui tam* relators to use the tools available to us to protect taxpayer dollars and government programs from fraud.

**9. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?**

**Response:**

As required by the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), the Department annually reports to Congress the number, status, and disposition of pending or resolved federal court cases arising under the whistleblower protection laws. This report includes the number of individuals in the Department who are disciplined and the types of discipline administered for violations of the whistleblower protection laws.

**10. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be it from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?**

**Response:**

Though the FBI does not fall within the Associate Attorney General's reporting chain, I recognize the importance of whistleblowers in improving the effectiveness and efficiency of the Department's operations. This critical role is acknowledged through training provided to Department employees, including FBI employees, at least every two years, as required by the No FEAR Act. The training explains the rights and remedies available to Department employees and makes clear that retaliation for protected disclosures will not be tolerated.

The Director of the Department's Office of Attorney Recruitment and Management (OARM) has the authority to adjudicate claims of whistleblower reprisal brought pursuant to the FBI whistleblower regulations. The Director of OARM is responsible for (1) ensuring that current and former FBI employees are protected from reprisal for reporting allegations of wrongdoing and (2) ordering appropriate corrective relief in cases in which OARM determines that an unlawful reprisal has occurred.

In addition, the Department created a Whistleblower Ombudsperson position in the Office of the Inspector General (OIG) last year. The OIG Whistleblower Ombudsperson focuses on training and educating Department employees about the role and importance of whistleblowers, as well as their legal rights and protections against retaliation. The Ombudsperson is also responsible for alerting Department officials and managers to the possible repercussions of retaliation against those who make protected disclosures and ensuring that OIG reviews and addresses whistleblower complaints in a prompt and thorough manner.

**11. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?**

**Response:**

The Department appreciates those who make protected disclosures and recognizes the importance of ensuring that our employees do not face retaliation as a result of making such disclosures. If confirmed, I look forward to working with others in the Department, as needed, for that purpose.