Prepared Statement of Ranking Member Grassley of Iowa
U.S. Senate Committee on the Judiciary
Nominations of John B. Owens, to be United States Circuit Judge for the Ninth Circuit
Matthew Frederick Leitman, to be United States District Judge for the Eastern District of Michigan
Judith Ellen Levy, to be United States District Judge for the Eastern District of Michigan
Laurie J. Michelson, to be United States District Judge for the Eastern District of Michigan
Linda Vivienne Parker, to be United States District Judge for the Eastern District of Michigan
Peter Joseph Kadzik, to be an Assistant Attorney General (Office of Legislative Affairs)
Wednesday, October 30, 2013

Madame Chairwoman,

I join you in welcoming the nominees who are here today with their families and friends. It is a milestone in each of nominees' careers, and a proud moment for their families.

Today's hearing is the 14th judicial nominations hearing this year during which we will have considered a total of 48 judicial nominees. This hearing record is especially remarkable when you compare this pace to the first year of President Bush's second term. At this stage in President Bush's second term, the Committee had held only 4 hearings for 8 nominees. In fact, for the entire year of 2005, the Judiciary Committee held only 6 hearings for 15 district and circuit nominees. Again, we have greatly exceeded that number – 14 hearings and 48 judicial nominees.

Today we consider a nominee to the 9th Circuit, and regarding this particular seat, a bit of history is in order. For nearly a decade, there has been some dispute over this seat. It became vacant on December 31, 2004 when Judge Stephen Trott, took senior status. I would note that Judge Trott was from Virginia at the time of his nomination. He moved to Idaho upon confirmation, where he maintained his chambers throughout his service on the Court. When Judge Trott took senior status, President Bush nominated Randy Smith, of Idaho, to fill the vacancy. The Smith

nomination was blocked by Senate Democrats because the California delegation asserted that the seat belonged to California.

Mr. Smith had his hearing in March 2006 and was voted out of Committee that May. But Senate Democrats repeatedly refused to grant the request to hold the nominee in the Senate during a recess, and demanded his nomination be returned to the President. Of course, at the same time, Senate Democrats were filibustering another nominee to the Ninth Circuit, William Myers. After a failed cloture vote and repeatedly returning his nomination to the President during recess periods, Myers was forced to withdraw.

Ultimately, after this dual track obstruction in the Ninth Circuit, the President withdrew Mr. Smith's original nomination and nominated him to the seat to which Mr. Myers had been nominated. Judge Smith was confirmed to this position in February 2007 by a vote of 94 – 0. Mr. Myers was never confirmed. After the Smith nomination was blocked, the seat remained vacant, with no nominee throughout the remainder of President Bush's second term and with no nominee throughout President Obama's first term.

That is the recent history of this seat. I am not suggesting that I know the right way to handle the situation here, but it is important to remember how the Democrats treated the last nominee to this seat – a seat, I would like to remind my fellow committee members, that does not 'belong' to any state. In fact, this seat has been filled by judges sitting in Idaho, California, Washington and Oregon.

But in 2005, one senior Judiciary Committee Member accused the White House of attempting to "steal a seat" by nominating Mr. Smith. Another Member said that she would not "sit by and let this happen… If I have to filibuster this judge I will do so". And that's essentially what happened, as I have outlined.

In addition to the judicial nominees, we are considering the nomination of Peter Kadzik, to be an Assistant Attorney General to head the Office of Legislative Affairs. He is presently serving as Principal Deputy Assistant Attorney General and in that capacity he heads that office.

I have concerns about Mr. Kadzik's history in dealing with Congressional oversight.

On May 14, 2002, the House Committee on Government Reform released a report on the White House's pardon of Marc Rich. That report details how the Committee received records on the Rich pardon from Mr. Kadzik's law firm, Dickstein, Shapiro, Morin & Oshinsky, which represented the billionaire tax fugitive in his quest for a pardon.

According to the Committee's report, those records reflected that Mr. Kadzik had worked on the pardon. Mr. Kadzik was called to testify at a hearing on the matter. According to the House Committee report, "Kadzik declined to testify voluntarily. Then, when he was informed that the Committee would issue a subpoena to compel his attendance at the hearing, he left Washington, mistakenly assuming that the Committee would not be able to serve him."

The record of the Committee's interactions with Mr. Kadzik's attorneys is well-documented. Through consultation with the House Committee, I was able to obtain the contemporaneous handwritten notes documenting the Committee's interactions with Mr. Kadzik's attorneys.

The notes show that Government Reform Committee staff first had contact on Friday, February 16, 2001, with Richard Conway, Andrew Zausner, and Henry Cashen, all colleagues of Mr. Kadzik's at Dickstein Shapiro. Committee staff had several interactions with Mr. Kadzik's attorneys throughout the next week. Then, on Friday, February 23, 2001, at 5:25 pm, Committee staff left a message for Mr. Conway stating that Mr. Kadzik would be called to testify at a Committee hearing the next Thursday, March 1, 2001.

According to contemporaneous notes, Mr. Conway returned the call on Monday, February 26, and spoke again with Committee staff later that day. In the second conversation, Mr. Conway said Mr. Kadzik's schedule reflected that he planned to fly to California on Wednesday. Committee staff reiterated that Mr. Kadzik would be required to attend the Thursday hearing. That day, the Committee Chairman sent Mr. Kadzik a letter notifying him that he would be called to testify.

The next day, on Tuesday, February 27, Mr. Conway contacted Committee staff at 11:47 am to say that he had informed Mr. Kadzik about the hearing, but that Mr. Kadzik still intended to go to California instead. Mr. Conway spoke with Committee staff again at 2:55 pm, according to contemporaneous notes. According to the Committee report, Mr. Kadzik sent a letter to the

Committee at 7:40 pm that night declining to testify. Notes from Government Reform Committee staff show that they then tried to reach Mr. Conway, Mr. Zausner, and Mr. Cashen. Committee staff left messages for all three of the Dickstein Shapiro attorneys on Tuesday February 27, stating that Mr. Kadzik would be *required* to attend the Thursday hearing.

The next morning, Mr. Kadzik's flight was scheduled to leave for California at 11 am. At 8:19 am, Mr. Conway and Mr. Zausner telephoned Government Reform Committee staff. According to contemporaneous notes, Mr. Conway and Mr. Zausner stated that neither of them was authorized to accept service of the subpoena. These notes make absolutely clear that attorneys for Mr. Kadzik were aware of the subpoena, and that they refused to cooperate in facilitating service of the subpoena informally.

At 9:29 am, Committee staff spoke with Mr. Cashen. That was followed by a third call, this time with just Mr. Zausner. According to the notes, Mr. Zausner told Committee staff that Mr. Kadzik had said he had to go to California. These three contacts were all before Mr. Kadzik's scheduled flight at 11 am.

The notes also indicate a fourth call with Mr. Kadzik's attorneys at 11:15 am. Committee staff asked Mr. Zausner for Mr. Kadzik's flight information and told him that the Committee would have to serve the subpoena in California. Mr. Kadzik was served by a U.S. Marshal at 1:58 pm on Wednesday, and ultimately flew back to Washington that night to testify at the hearing on Thursday.

Mr. Kadzik and his attorneys' initial refusal to cooperate required the Committee to expend the time, effort, and resources to effect service in person through the U.S. Marshals. That is an extraordinary level of non-cooperation, even if Mr. Kadzik had not additionally boarded a plane for California, further frustrating the Committee's attempt to serve him. That level of resistance from a reluctant witness sometimes occurs, but committees of Congress ought to able to expect better conduct from a professional member of the bar, let alone from someone seeking Senate confirmation.

The Government Reform Committee's May 14, 2002 report, which documented this entire episode, concluded: "While the Committee was able to serve Kadzik and receive testimony from him, his attempts to avoid compulsory process were unseemly."

Upon reviewing the initial report, Mr. Kadzik sent the Government Reform Committee a letter on March 13, 2002. In his letter, he claimed: "First, and most importantly, at no point before I boarded an airplane to California on February 28, 2001, did any member of the Committee's staff inform me or any attorney with my firm that the Committee would subpoena me to attend the hearing."

The final report called that claim "utterly false." The Government Reform Committee had 24 contacts with Mr. Kadzik's attorneys leading up to the subpoena. The Committee Chairman promptly responded to Mr. Kadzik on March 15, 2002, documenting the Committee's interactions with Mr. Kadzik's attorneys. Both Mr. Kadzik's letter and the Chairman's reply were attached as exhibits to the May 14, 2002 report.

It is clear that Mr. Kadzik's attorneys were informed both the day before and the morning of his flight that he would be required to attend the hearing. They had known at least a week earlier that the Committee planned to call him to testify. Mr. Kadzik's attorneys were obviously aware of the subpoena before he boarded the flight, since they refused to accept service of the subpoena informally on his behalf. Thus, the most charitable reading of these facts possible for Mr. Kadzik would be that his claim, that there were no contacts with his attorneys about the subpoena, was made without any basis for knowing whether or not it was true. And that can only be believed either if he failed to consult with his attorneys or if his attorneys failed to inform him of their contacts about the subpoena.

In Operation Fast and Furious, the Inspector General documented this exact type of problem with the Office of Legislative Affairs at the Justice Department. That office made representations to Congress that were false, and at best, the result of a failure to find out whether the claim was true before writing it down and sending to Congress. It later had to withdraw the letter later for its inaccuracies. Now, it appears to be well documented that Mr. Kadzik engaged in the same conduct with a congressional committee in another controversy. However, he has not yet withdrawn his inaccurate letter.

Whether in Fast and Furious or in Mr. Kadzik's case, shooting letters willy-nilly to Congress without checking on their accuracy is simply unacceptable. And that's just the most charitable interpretation of Mr. Kadzik's letter. Many might look at the same facts and seriously question whether there was an intentional attempt to evade service of a Congressional subpoena to avoid testifying at a contentious public hearing.

The Assistant Attorney General for Legislative Affairs is our official direct point of contact with the Department of Justice. We interact with his office more than anyone else in the Department. His job requires him to ensure Congress receives accurate and prompt information from the Department. I have serious concerns about whether this nominee's record demonstrates an ability to restore trust and confidence to the Office of Legislative Affairs.

Even in his current position at the Department, his office's conduct raises questions about his ability and willingness to fully respond to Congressional requests. Last week the Bureau of Alcohol, Tobacco, Firearms and Explosives was instructed by Mr. Kadzik's office not to brief my staff. After a phone call with the Office of Legislative Affairs, ATF staff walked out of the briefing citing supposed concerns about the Privacy Act, even though the Act authorizes disclosures to congressional committees and even though my staff had a Privacy Act waiver from the ATF whistleblower whose personal information was to be discussed. This sort of obstruction of Department components is extremely disturbing.

To get to the bottom of how this happened I sent Mr. Kadzik a letter asking four specific questions and requesting copies of all records and communications related to the briefing.

Mr. Kadzik's reply letter failed to answer the questions or provide the documents requested. Nothing in his response indicates that he intends to answer my questions or provide the documents. Instead, my questions and requests were simply ignored. These types of non-response responses are unacceptable and disrespectful of this institution. Specific questions and requests should be acknowledged, and if there is a reason not to answer or to withhold the documents requested, then those reasons should be explained in the reply.

This sort of interference with component agencies' communications with my office is not limited to ATF. On May 3, 2012, Senator Whitehouse and I wrote to the Government Accountability

Office to request a study of the extent to which the Drug Enforcement Administration policies and regulations may contribute to the growing drug shortage crisis with regard to controlled substances. In order for GAO to complete our request, GAO needs to analyze information in possession of DEA. This should not be a hard request, as GAO has a statutory right of access. However, it has been over a year and DEA has refused to provide GAO with access to the records necessary to complete our request.

DEA's refusal to honor its legal obligation to cooperate with GAO has unnecessarily delayed GAO's work and thwarted its ability to respond to our request. I tried to help resolve the dispute by requesting a meeting with the DEA Administrator and the GAO to discuss the issues. But the Justice Department's Office of Legislative Affairs under Mr. Kadzik's leadership instructed DEA not to even meet with me and GAO to discuss it. In refusing to meet with me, DEA cited a "DOJ policy" against meetings with Members of Congress and "third parties." Essentially, the DEA, due to this policy, refused to meet and discuss this issue with GAO present.

This makes absolutely no sense. The GAO is part of the legislative branch of government, not a "third party." Further, I have been a Senator conducting oversight of DOJ for 33 years and I have never heard of this third party policy. By statute, GAO has a broad right of access to agency records. Deputy Attorney General Cole has admitted to GAO that DEA has a legal obligation to comply, but Mr. Kadzik's office continues to obstruct my efforts to help GAO get access to the records it needs to do their work. Mr. Kadzik's office should not be interfering with my attempts to meet with the DEA administrator to resolve these issues with GAO. More importantly, DOJ's standoff with GAO risks wasting time and taxpayer's money on litigation with GAO that the DEA will eventually lose.

So, this is a troubling nomination, and I have questions for Mr. Kadzik.

Again, I welcome the nominees and their families to this hearing and look forward to the testimony.