Responses to Questions for Christopher A. Wray
Nominee to be Assistant Attorney General
of the Criminal Division, U.S. Department of Justice

Senator Patrick Leahy, Ranking Minority Member

1. Mr. Wray, you have had a meteoric career. After essentially four years as an assistant attorney general in a local U.S. attorney's office, you are being nominated to head the Criminal Division for the United States Department of Justice. I know how Senator Sessions and other Senators on both sides of the aisle have tended to value trial experience for nominations. When I was chairman we did proceed to confirm a number of relatively young and inexperienced nominees sent to us by President Bush. We confirmed J. Strom Thurmond, Jr., to the United States Attorney for the District of South Carolina and David Bunning to be a United States District Court Judge for Kentucky, for example. The only information we have about your experience we got about a week ago when you submitted a questionnaire to the Committee. In that questionnaire you note that you tried 8 jury cases to a verdict. In one or two you were the sole counsel– apparently in what you describe as the "Platinum Printing" case and in the Miller counterfeiting and murder-for-hire case.

   Previous appointments to this important post included Mike Chertoff, who had been the U.S. Attorney in New Jersey; Bob Mueller, who had 12 years as an Assistant U.S. Attorney, including 6 as the first assistant in Boston and a stint as Acting U.S. Attorney; Ed Dennis, who had been a U.S. Attorney for 5 years in Philadelphia, an Assistant U.S. Attorney for 5 years, and Chief of the Narcotics Section of the Criminal Division for 3 years; Lowell Jensen, who had been a District Attorney for 12 years and in the DA's office for 26 before he was named.

   I was a young man when the people of Chittendon County elected me State's Attorney so I want to be fair to you and to give the President every benefit of the doubt when it comes to his executive branch nominations. I wish Republicans had treated President Clinton's nominees that way. I want to give you an opportunity to expound on how your trial experience qualifies you to head the Criminal Division of the United States Department of Justice and direct and supervise the thousands of prosecutorial decisions and important policies that have to be made by that Assistant Attorney General.

   I welcome the opportunity to explain why, if confirmed, I would bring the right experience, integrity, judgment, temperament and perspective to lead the Criminal Division. I have had the fairly unique experiences of seeing — and understanding well — the Department's criminal enforcement efforts from three important vantage points: as a defense lawyer, as a career prosecutor on the front lines in a U.S. Attorney's Office, and as part of the Department's senior leadership for the past two years, spanning the September 11th attacks and their aftermath.

   During my years as an Assistant United States Attorney, I personally prosecuted a

wide variety of federal criminal cases, including such offenses as securities fraud and public corruption, gun trafficking, murder-for-hire, racketeering and narcotics, kidnaping, immigration, counterfeiting, church arson, and many more. I have handled criminal cases through all stages of the process, from grand jury investigations, to jury and bench trials, sentencing, and appeals.

As Principal Associate Deputy Attorney General, I have had substantial leadership and oversight responsibilities relating to the Criminal Division and the U.S. Attorney's Offices before, during, and after the September 11th terrorist attacks. From that position, I have seen closely nearly all of the major issues confronting the Criminal Division and the U.S. Attorney's Offices during this particularly critical and unprecedented stage in their history. For well over a year, I have been attending and participating in daily threat briefings by the FBI and CIA with the Attorney General, Deputy Attorney General, and FBI Director. As Principal Associate Deputy Attorney General, I have had involvement in strategic and tactical decisions in nearly every significant terrorism case or investigation handled by the Department since September 11th, from the Eastern District of Virginia to the Southern District of New York, from Buffalo to Portland, Seattle, Chicago, Detroit, and others. I have had the privilege of developing excellent, personal working relationships with most of the current 93 U.S. Attorneys, the current leadership of the Criminal Division itself, the current heads of the other Main Justice components, the current leadership of the FBI, ATF, DEA, SEC and other key law enforcement agencies.

I have also held significant management responsibilities while Principal Associate Deputy Attorney General. I have served as the Department's representative on the President's Management Council, working with the Office of Management and Budget and chief operating officers from other Cabinet agencies in the implementation of the President's management initiatives. I have also borne significant responsibility for the Department's own Strategic Management Council, for the implementation of most cross-cutting management initiatives in the Department, and for the Department's overall budget of approximately $23 billion and more than 100,000 employees.

Finally, my experience as a defense attorney before joining the Department would provide me with another valuable perspective if confirmed as head of the Criminal Division. As a former defense attorney representing clients facing either Department investigation or prosecution, I understand well both the power entrusted to law enforcement and the importance of using it wisely and appropriately.

2. There have been reports in the media that senior level, experienced prosecutors with the Department are being marginalized in favor of political appointees with views more in line with the politics of this Administration. Despite precedent to the contrary, the Administration has refused to investigate these allegations. What views do you have on the role of career prosecutors within the Department of Justice and the U.S. Attorney's Offices? Will you pledge to investigate these allegations if they are made to your office?

Career prosecutors form the backbone of the Department. They provide institutional knowledge, judgment and valued experience. I have a special appreciation for their role since I myself served as a career prosecutor in the U.S. Attorney's Office in Atlanta from 1997 to 2001. During my service in the Deputy Attorney General's Office, I relied heavily on the advice and counsel of career prosecutors and, if confirmed, I would continue to do so. In my view, it would be shortsighted not to look to their leadership and expertise.

With respect to the Criminal Division in particular, as you know, a reorganization of the Division occurred under the leadership of Assistant Attorney General Michael Chertoff. That reorganization responded to the Attorney General's post-September 11 directive for the Justice Department to focus its resources on top law enforcement priorities, including the war on terrorism and corporate fraud. The changes also placed a renewed emphasis on litigation. Some personnel changes occurred within the Division, but to my knowledge no experienced prosecutors were "marginalized in favor of political appointees." Indeed, each of the Criminal Division's 19 sections and offices continues to be managed by experienced career prosecutors. I understand that Division officials briefed your staff last year regarding the reorganization and personnel changes. If confirmed, I would be happy to review any specific allegations that have come to your attention, and take any appropriate action in response.

3. Upon graduation from law school, you clerked for Federal appeals court judge Michael Luttig. According to the Nation, Judge Luttig only hires law clerks who belong to the Federalist Society or have "comparable conservative credentials." Are you or were you a member of the Federalist Society or any similar special interest group? What would you say are your "conservative credentials?"

I am unfamiliar with the article you quote, but I believe that Judge Luttig hired me based on my qualifications, such as my academic record at Yale Law School and Yale College, and my leadership position on the *Yale Law Journal*. I became a member of the Federalist Society during my first year in law school, in approximately 1990, and have maintained my membership since that time.

4. In the recent Inspector General report concerning the Administration's treatment of aliens detained in connection with the 9/11 investigation, you were quoted as telling the BOP "not to be in a hurry" to provide 9/11 detainees with access to communications, including legal calls and visits. (A) Is this accurate? (B) After you offered this advice, a "communications blackout" was imposed on the detainees, during which time they were unable to obtain or consult with counsel. To your knowledge, did the instructions you gave to BOP cause this blackout? (C) The Inspector General's report goes on to describe numerous ways in which the right to counsel of the 9/11 detainees was "severely limited," including attorneys being incorrectly informed that their clients were not at the facility. Do you approve of the BOP's conduct in this regard? If not, how do you think it should have been different?

(A) The relevant passage of the Inspector General's report is slightly ambiguous and would benefit from clarification in a number of respects. First, I do not recall having any three-way conversations with then-Director Hawk Sawyer and David Laufman, then the Deputy Attorney General's chief of staff. Rather, I had a handful of conversations with Ms. Hawk Sawyer myself, and I believe that Mr. Laufman separately did so as well. Second, and more importantly, the only conversations I recall having with Ms. Hawk Sawyer concerned individuals already convicted of terrorist offenses – "specific *criminal* inmates," to use the language of the Inspector General's report (p. 113) – *not* aliens being detained on administrative immigration charges in connection with the September 11 investigation, on whom the report is focused. Third, I do not recall ever using the phrase "not to be in a hurry" myself in speaking with Ms. Hawk Sawyer, nor do I ever recall her using that phrase with me even in the limited context of our conversations – again, convicted terrorists – much less in the context of immigration detainees. Moreover, as the Inspector General's report explains, "Hawk Sawyer *emphasized* that Department officials *never* instructed her to violate BOP policies, but rather to take their policies to their *legal* limit in order to give officials investigating the detainees time to 'do their job.'" (Emphasis added.) The report is accurate to the extent that it was clearly understood that the BOP was to exercise discretion within the law and BOP policy.

(B) Again, the only conversations I recall having with Ms. Hawk Sawyer regarding such matters concerned criminally convicted terrorists already in custody on 9/11, not immigration detainees. To my knowledge, any BOP limitations on communications with aliens detained on immigration charges were not imposed based on any instructions of mine.

(C) It is my understanding that the difficulties encountered by aliens detained in the Metropolitan Detention Center in Brooklyn (MDC-Brooklyn) were a result of various factors, including: aliens in removal proceedings have the right to counsel but must obtain such counsel on their own (unlike criminal defendants who have the right to appointed counsel at U.S. government expense); difficulty in obtaining an

accurate list of free legal services; the initial use of a category generally used to protect witnesses, which made it difficult for their attorneys to locate them; and many attorneys were located near Ground Zero and were, therefore, unreachable due to disruptions in utilities. Having the benefit of the Inspector General's report, I believe that there are steps that the BOP can take to improve the situation. In fact, the BOP first initiated those improvements following interim recommendations made by the Inspector General in July 2002.

5. In a memorandum opinion dated February 20, 2003, the Office of Legal Counsel ("OLC") advised the Deputy Attorney General regarding limitations on the INS's detention authority. Among other things, OLC concluded that it is permissible for the Attorney General to take more than the 90-day removal period to remove an alien even when it would be within the Attorney General's power to effect the removal within 90 days, provided the delay in removal is related to effectuating immigration laws and policies, including investigating whether and to what extent an alien has terrorist connections. Do you agree OLC's conclusion on this point and if so, please explain your reasoning.

The Office of Legal Counsel (OLC) is the Department of Justice component that considers and sets forth the Department's definitive legal position; OLC opinions are binding on the Department and the Executive Branch. Although I have not conducted independent research on the issue addressed in the February 2003 OLC opinion entitled "Limitations on the Detention Authority of the Immigration and Naturalization Service," I am generally familiar with the substance of the opinion and agree with OLC's analysis.

6. We can all agree that gun violence poses significant problems in our society. What are your views on firearms licensing and recordkeeping, and how will that translate into prosecution priorities within the Criminal Division?

During my tenure in the Deputy Attorney General's office, I devoted a significant portion of my time to the Department of Justice's Project Safe Neighborhoods initiative, which is designed to reduce gun violence across America. Project Safe Neighborhoods combines vigorous federal law enforcement with state and local partnerships to ensure that gun crimes are prosecuted in the appropriate venues. If confirmed as Assistant Attorney General for the Criminal Division, Project Safe Neighborhoods and the reduction of gun violence in America would remain one of my top priorities. With respect to prosecuting defendants for violations of existing firearms licensing and record keeping violations, the Criminal Division helps enforce those existing laws. In making prosecutorial decisions in this context, we are guided by the principle that federal and state law enforcement should work cooperatively to prosecute violent offenders and the most serious firearms crimes in the most appropriate jurisdictions.

7. In January, the General Accounting Office reported that, in fiscal year 2002, three-fourths of all so-called "terrorism convictions" by the Justice Department were misclassified in that they were not terrorism convictions at all. Similarly, in the first 2 months of this year, the Justice Department claimed to have filed terrorism charges against 56 people, although again at least 41 of the 56 had nothing to do with terrorism -- a fact the line prosecutors acknowledged. What steps will you take to ensure proper reporting and accountability of the cases being prosecuted in our federal courts?

The Department is committed to accurate reporting of, and accountability for, cases prosecuted in federal court. This reporting ensures, for example, that Congress is able to provide adequate oversight of the Department's activities, and ensures that the Department has adequate resources. To the extent that the GAO report identified various weaknesses in the current system, the Department is committed to taking every reasonable step to ensure that proper reclassification is completed and that future data entries are complete and accurate.

The Executive Office of United States Attorneys (EOUSA) oversees the collection of case reporting data from the U.S. Attorney's Offices around the country, and is responsible for reviewing and classifying the data submitted. I understand that EOUSA is working to ensure that case classification and conviction data entered into the case tracking system by the various United States Attorney's offices is supervised and validated. For example, EOUSA has amplified classification codes to better reflect post 9/11 case loads, and it has also sent several directives to the U.S. Attorney's Offices to ensure that data submitted is accurate. Although I have not been directly involved in this process, it is my understanding that these steps have already improved the data collection points. If confirmed as Assistant Attorney General, I would work with EOUSA to ensure that the reporting methods continue to improve, and would seek to ensure that any submission by the Criminal Division of information is accurate and timely.

With respect to any concerns that the Department is inaccurately classifying terrorism-related matters, I should note that the GAO report acknowledges on page 13 that 127 of the "misclassified" cases in fact fell under new anti-terrorism case categories. Only five of the 288 cases the GAO cited, or less than two percent, were unrelated to terrorism or our anti-terrorism efforts.

8. If confirmed as Chief of the Criminal Division, you will be responsible for the Capital Case Unit, which advises the Attorney General on all Federal death-eligible cases. What experience have you had in the prosecution of capital crimes?

As an Assistant United States Attorney, I personally prosecuted two death-eligible cases as well as a third murder which would have been death eligible if it had occurred after the effective date of the 1994 legislation expanding the availability of the federal death penalty. Ultimately, the death penalty was not sought in any of my three cases.

In addition, I served personally on the Attorney General's Review Committee on Capital Cases while Associate Deputy Attorney General in 2001. Since my appointment as Principal Associate Deputy Attorney General, I have continued to monitor the Department's capital case review process, and have reviewed most of the death-eligible cases that have come through that process - - - though less closely than when I was actually on the committee. In those roles, I have worked closely with both the Capital Case Unit itself as well as the U.S. Attorneys submitting death-eligible cases for review.

9. In February 2003, Attorney General Ashcroft ordered prosecutors in the Eastern District of New York to seek the death penalty against defendant Jairo Zapata, even though he had agreed to cooperate with the government and testify against others. As a former prosecutor, I was concerned that the Attorney General's insistence on seeking the death penalty against Zapata could impair the government's ability to convict other violent criminals. What are your views about the death penalty when a defendant accepts responsibility and agrees to provide substantial assistance to the government in the prosecution of other, more serious offenders?

While I cannot comment on the details of the Department's deliberations in a specific case, in my experience, we benefit greatly when criminal defendants accept responsibility and agree to provide substantial assistance to the government by helping the government charge more serious offenders. In fact, information provided by defendants has allowed us to go after some of the most serious criminals in the country, and has been critical, for example, in most of our prosecutions of the leadership of criminal organizations. I have used cooperating witnesses many times throughout my career, and I would continue to support their appropriate use if confirmed as Assistant Attorney General.

That being said, the mere fact that a defendant wants to cooperate with the government does not automatically mean that the defendant deserves a lesser sentence. For example, it may be inappropriate to enter into a plea agreement with a principal actor in a murder when there is already more than sufficient independent evidence to obtain the necessary convictions. In other cases, although a defendant professes to "cooperate" with the government, it is soon evident that the defendant is not being fully truthful with the government, and that his or her cooperation is effectively useless.