S. Hrg. 109–617

NOMINATION OF ROBERT I. CUSICK

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF ROBERT I. CUSICK, TO BE DIRECTOR, OFFICE OF GOVERNMENT ETHICS

MAY 18, 2006

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NOMINATION OF ROBERT I. CUSICK

THURSDAY, MAY 18, 2006

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:25 a.m., in room SD–342, Dirksen Senate Office Building, Hon. George V. Voinovich, presiding.

Present: Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. The Committee will come to order.

We are privileged to have Senator McConnell with us this morning to introduce Mr. Cusick.

I apologize for being late, but we had a vote this morning. We are anxious to have this hearing so that Mr. Cusick's nomination can be advanced to the floor so he can get to work.

Senator McConnell.

TESTIMONY OF HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

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

I am pleased to be here this morning to introduce to you an old friend, going back over 30 years, Robert I. Cusick, who is President Bush's nominee to be the next Director of the Office of Government Ethics.

We call him "Ric" and have been calling him that for, as I indicated, quite awhile.

His decades of experience in ethics and the law have well prepared him to lead the Executive Branch agency charged with strengthening public confidence in our government and government employees. The Office of Government Ethics takes care to prevent conflicts of interest on the part of government employees, fosters high ethical standards for government employees, and resolves conflicts or questions in these standards when they happen.

I hope that during the confirmation process the Committee will conclude what all of us in Kentucky already know, which is that Ric is absolutely ideally suited for a job like this.

He is currently a partner at Wyatt, Tarrant and Combs, one of our largest law firms. He is the Partner-in-Charge of Ethics Counseling for a firm of about 200 lawyers. He is also co-chair of the firm's Opinions and Standards Practice Group. He has been with

this prestigious firm for over 30 years, the main office of which is located in my hometown of Louisville, Kentucky.

Area public officials seek Ric out to consult with him on public officer ethics, and he is frequently asked to lecture on professional responsibility, confidentiality, and conflicts of interest.

Ric has served as an expert witness on ethics matters in both civil and criminal cases, and he has drafted ethics regulations for the Kentucky Supreme Court.

Prior to joining his law firm, Ric served his country as a Navy Judge Advocate here in Washington and at sea aboard the *USS America* of the Atlantic Fleet. Ric continued to serve as a Naval Reserve officer until retiring as a decorated Captain in 1998. He has taught Federal officer ethics in three States as a Naval Reserve officer.

He brings his expertise to many volunteer activities in the legal community. He currently serves as the chairman of the Ethics Rule Drafting Committee for the Kentucky Bar Association and has previously served as a member of that organization's Ethics Committee. He is a past member of the Board of Governors of the Kentucky Bar Association and a past member of the Kentucky Board of Bar Examiners.

He is a member of the Louisville, Kentucky and American Bar Associations, a member of the American Judicature Society and the ABA Center for Professional Responsibility.

He has been the chairman of the Louisville Bar Association Committee on Professional Responsibility. He served 8 years as chairman of the Jefferson County Ethics Commission, educating public officials on ethics issues. He received special commendation for his ethics work when the Kentucky Bar Association awarded him its Kentucky Bar Service Award.

He also received a Certificate of Merit from the Louisville Metro Council for his ethics work and received the Distinguished Service Award from the Louisville Bar Association.

In addition to that, Ric's neighbors have placed their trust in him by electing him a councilman for the City of Indian Hills, a small jurisdiction within our community. He is also active in his community as a trustee of the Harrods Creek Fire Protection District and as a Director of the Louisville-Jefferson County Public Defender Corporation.

A Louisvillian, as I indicated, he received his bachelor's and law degrees from the University of Louisville.

The President has made the right choice by calling on Ric to serve our government as a guidepost on issues of professional responsibility and ethics. His entire career has really prepared him for this assignment. This is the perfect person for this job.

He is a man of wisdom, character, and judgment who can be trusted to manage this office fairly and without prejudice.

So Mr. Chairman, I thank you very much for the opportunity to be here to introduce an old friend who, at the risk of being redundant, is the perfect appointment for this job. I mean, typically the appointments are hard to match up directly with the positions. But I think the President has certainly done that in this case, and I am proud to be here with him.

Senator VOINOVICH. I really thank you very much for coming here and introducing your friend.

I must say I am very impressed with the list of things that Mr. Cusick has done. As a matter of fact, it added to some of the material that I have read personally about Mr. Cusick. I really thank you for being here today.

Mr. Cusick, first of all, I want to say thank you for allowing yourself to be considered for Federal service.

Mr. CUSICK. Thank you, Senator.

Senator VOINOVICH. I am well aware of everything you have to go through in order to be nominated for a position. I must tell you we are trying to streamline that a little bit.

This Committee continues its work to reform the Federal workforce in order to address the challenge of the 21st Century, and I believe that the Office of Government Ethics is going to grow. While not widely known, the office does vital work to prevent conflicts of interest on behalf of government employees. The Office of Government Ethics has responsibility for reviewing the financial disclosure reports for high-level Executive Branch nominees and employees in order to ascertain conflicts of interest.

If that work is as fastidious as what we have to do, you have a lot of work ahead of you.

Mr. CUSICK. Yes, sir.

Senator VOINOVICH. The Office of Government Ethics issues advisory opinions to guide Federal agencies in response to questions about conflict of interest laws and regulations. The work of the Office of Government Ethics is imperative to foster and maintain the public's trust in its government. I think that is something that we all have to be worried about. We have to maintain the public's trust in government.

Mr. Cusick, you have filed responses to a biographical and financial questionnaire. You have answered pre-hearing questions submitted by the Committee. You have had your financial statements reviewed by the Office of Government Ethics, and without objection this information will be made a part of the hearing record, with the exception of the financial data which are on file and are available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Mr. Cusick, would you please stand and raise your right hand.

Do you swear that the testimony you are about to give to this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CUSICK. I do, Senator.

Senator VOINOVICH. Let the record show that Mr. Cusick answered in the affirmative.

I understand that you have members of your family here today?

Mr. CUSICK. Actually not my family, Senator, but a lot of people close to me, like family.

Senator VOINOVICH. Well, sometimes people that are close to you are even better than family.

Mr. CUSICK. Yes, sir. That has been my experience, as well.

Senator VOINOVICH. If you would, we would appreciate your introducing your friends here today.

Mr. CUSICK. Senator, my friend since kindergarten, Charlie Ricketts.

Mr. RICKETTS. Senator.

Senator VOINOVICH. Mr. Ricketts.

Mr. CUSICK. Deanna Pelfrey, a friend of well over 20 years. My assistant, Beverly Johnson. Danielle Pelfrey, who is a student at Georgetown Law School and her husband, Eric Duryea. Obviously Danielle is Danielle Pelfrey Duryea.

I have the members of the staff here from OGE. We have not known each other very long, and I am very flattered that they came, as well—Joe Gangloff, Jane Ley, Marilyn Glynn, Susan Propper, Shelley Finlayson, and Ethan Carrier, whom I met only today.

Senator VOINOVICH. That is wonderful. He has got a good memory for names. That is wonderful.

Mr. CUSICK. I sometimes wonder about that, Senator. Not every day do I have that.

Senator VOINOVICH. Well, I do not know if you are at that stage, but we all have our senior moments.

There are three questions that we ask all nominees. First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. CUSICK. No, sir.

Senator VOINOVICH. Do you know of anything personal or otherwise that would, in any way, prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. CUSICK. I know of no such thing, Senator.

Senator VOINOVICH. And last, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of congress, if you are confirmed?

Mr. CUSICK. I do.

Senator VOINOVICH. Thank you.

I would like to hear from you. Do you have a statement?

TESTIMONY OF ROBERT I. CUSICK,[1] TO BE DIRECTOR, OFFICE OF GOVERNMENT ETHICS

Mr. CUSICK. Senator, I am, it is hardly necessary to say, very honored that the President nominated me to the position of Director of the Office of Government Ethics. And I am also honored to be here today for the Committee's hearing on my nomination.

I think everybody in this room agrees that public office is a public trust. We have to go further than that though, I believe. Careful rulemaking, education and leadership of an ethical focus is essential to that public trust being observed. The Office of Government Ethics has been given the central leadership role in that task by Congress for the Executive Branch. And frankly, it would please me greatly to be trusted with the responsibility for that agency.

My experience as a Kentucky lawyer for over 38 years and as a retired Naval Reserve Judge Advocate, I believe, has prepared me for the challenge of leading the Agency. I have trained Navy units.

[1] The prepared statement of Mr. Cusick appears in the Appendix on page 10.

I have trained local officials in public officer ethics. I have been very active and involved in the Kentucky Bar Association in ethics matters and discipline matters. I have served as the ethics partner of Wyatt, Tarrant and Combs for many years, and that is a large firm of over 200 lawyers in three States.

I believe that it is essential to the ethical culture in a large organization to implement a system that trains, advises, and audits ethical compliance. I believe in systems like that. Unethical acts, I believe, are not always the result of venality. Although reading some newspapers might lead you to that conclusion. They can also grow in a culture of banality, in which people simply want to look successful or to conceal failure or to enhance personal relationships or to frustrate oversight. I believe the ugly examples of corporate unethical acts in the business pages of the newspapers should not be permitted in government.

In the most fundamental sense, I think, government ethics can be characterized as ensuring that government decisions are informed by the public interest and not by private interest. There will always be debate in our democracy about alternative views of what the public interest is, sometimes acrimonious debate. But such views can be distinguished from private interest. And it is my belief that distinction is a large part of the job of the Office of Government Ethics.

Last week FBI Director Robert Mueller was quoted in the newspaper as saying that public corruption "tears at the fabric of democracy." I believe Director Mueller said that very well.

If confirmed, I will exert every effort within the jurisdiction of the Office of Government Ethics to see that official decisions are informed by the public interest. Thank you Senator.

Senator VOINOVICH. Thank you for that very thoughtful statement.

Have you had a chance yet to look at how many people you will have working with you?

Mr. CUSICK. Approximately 80 people, Senator.

Senator VOINOVICH. How long do you think it is going to take for you to determine whether or not that is enough to get the job done?

Mr. CUSICK. I think probably not too long, as the job stands right now. I believe if the responsibilities of the Agency were increased that both personnel and budget changes might have to be made. I think at the present time the balance between personnel and the task is a relatively good one, but it might not remain so if legislation adds to those responsibilities.

Senator VOINOVICH. One of the problems in government is in too many cases Congress asks agencies to do things that are important to the government but do not give them the resources to get the job done. I have always had a philosophy that if you ask somebody to do the job and you do not give them the resources to get it done, then you are basically saying that the job is not that important.

Mr. CUSICK. I favor that philosophy, Senator.

Senator VOINOVICH. All I would say to you is that, once confirmed to this position and you see what is going on, if you need some additional resources, you ask for them.

I think that the scandals in the corporate world has been very hurtful and contributed to what we saw happen to the stock mar-

ket. It seems that we are starting to get some faith back into those financial markets.

We must do everything that we can to uphold the public trust, and even to go beyond that. We should try and guard against not only doing things that are wrong but also to guard against doing things that appear to be wrong.

I am glad that you have had the experience that you have had in education and training.

I would be interested in how important you think it is? Have you thought about that in context of this new job that you are taking?

Mr. CUSICK. Senator, I think that education is really essential in this field. Unfortunately, the subject of ethics tends to be watered down by many people that think well, my intentions are good, I do not have to worry about that. I think it is far more complicated than that. And I think that education in ethics principles and rules is important in a number of ways.

One of the things it does is raise the level of public discourse about public official ethics.

I saw that happen in my homecounty of Jefferson County, where Louisville is located, when the first ethics ordinance was enacted. All officials above a certain level had to attend mandatory training every year. And we would have four sessions to make it accessible to people that worked night shifts and so forth.

I found that after those sessions I would get a lot of calls for the next several weeks from people who were thinking about issues that they had not actively analyzed before, saying would this be all right? Is this something I should recuse myself on? Can I approve my subordinate's action in this respect?

I really found that very satisfying to see that education in the rules and principles was having effect, was taking effect.

So yes, I think it is very important. I think it is also important for subordinates in government to see their senior leaders in that educational atmosphere. In other words, to understand that their senior leaders are being trained in that atmosphere that they will expect compliance with that kind of thinking.

I think that ethical leadership from the top down is essential to the ethical survival of an organization. If the message is sent, as clearly it has been sent in some private corporations we read about in the newspaper, that it is a secondary or a tertiary consideration and that the bottom line is everything, then people begin to think that way.

And that introduces cynicism into a company, it introduces cynicism into government agencies, and frankly it introduces cynicism into the public. And I do not think that is good for any of us.

Senator VOINOVICH. I agree with you, and I think that one of the best things that happened in Ohio with our continuing legal education was requiring that every 2 years lawyers had so many hours of ethics training.

I have one request of you. That is that after you have had a chance to get your feet on the ground, I would be interested in hearing from you your assessment of the ethics education system and any thoughts that you have on how it might be improved.

We have a big problem in the Congress. If we pass lobbying reform, there will be mandatory ethics training for Senators every

year. What I have found is that some of my colleagues have gotten in trouble because they have not paid attention or been reminded of the rules. In other words, it has not been held prominent in their minds, and as a result of it, they have done some things and many times just inadvertent.

Mr. CUSICK. That has been my experience.

Senator VOINOVICH. So, I would appreciate if you shared with me your assessment of OGE's training program. I do not have any further questions. I am honored that you are willing to take this job on, and I wish you all the best. We will try to get you confirmed as soon as possible.

Mr. CUSICK. Thank you, Senator.

Senator VOINOVICH. I am going to leave the record open today until 5 p.m. in case any of my colleagues want to submit questions to you for the record.

Mr. CUSICK. Thank you, sir.

Senator VOINOVICH. The hearing is adjourned.

[Whereupon, at 10:45 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR LIEBERMAN

Thank you, Madam Chairman. And welcome, Mr. Cusick, to you and your family. The Office of Government Ethics is a key player in maintaining the highest ethical standards throughout the Executive Branch. The director's job has been vacant since December 2003, and I am troubled the Administration waited a year and a half into the 109th Congress before nominating you to lead the office. I am pleased your nomination has been made and I hope it proceeds smoothly so the message going forward will be that ethics are at the core of everything we in public service do.

The OGE is responsible for establishing and maintaining a uniform legal framework of ethics for Executive Branch employees, supporting the ethics programs of each Federal agency through educational programs, advisory opinions, and review of agency ethics procedures, and overseeing the financial disclosure of Executive Branch employees. Only through the transparency of financial disclosure can we prevent conflicts of interest that undermine the impartiality of government decision-makers.

As Mr. Cusick noted in written responses to the Committee's questionnaire, "government ethics" should not be an oxymoron. Unfortunately, the headlines of the past year have given the American public more than a few reasons to question whether some Federal officials take their ethical obligation seriously.

David Safavian, the President's former top procurement officer, was indicted for lying about his dealings with lobbyist Jack Abramoff. Tony Rudy, a former aide to Congressman DeLay, pleaded guilty to conspiracy related to corrupt lobbying practices and admitted violating the prohibition of former Congressional staff from lobbying their previous bosses for one year. Mr. Abramoff pleaded guilty to fraud and conspiracy to bribe public officials, and his associate Michael Scanlon pleaded guilty to conspiracy to bribe a congressman and other public officials. Congressman Duke Cunningham pleaded guilty to accepting bribes. A former aide to Congressman Ney pleaded guilty to conspiring to influence the Congressman's actions through expensive gifts and travel. And a former aide to Congressman Jefferson pleaded guilty to bribing his former boss.

In no way do I mean to lay any of these ethical lapses at the feet of OGE. But in the context of today's hearing, these incidents remind us how a handful of selfish, corrupt individuals can inflict widespread damage on the public's confidence in the integrity of our government. We need strong leadership from OGE to make sure that Executive Branch personnel fully understand and fulfill their ethical responsibilities.

Public service is a privilege, and those who choose to pursue it must perform their duties in the public interest, not in their own self-interest. I look forward to hearing from Mr. Cusick today with his vision for making that maxim a reality.

Opening Statement of Robert I. Cusick
Nominee to be Director of the U.S. Office of Government Ethics
before the Senate Committee on Homeland Security and Government Affairs

May 18, 2006

Senator Voinovich and Members of the Committee

I am honored to have been nominated by President Bush to become the Director of the Office of Government Ethics and I am honored to appear before you this morning for this Committee's hearing on my nomination.

All of us in this room believe that public office is a public trust. Careful rulemaking, education and ethical leadership is essential to that trust being properly observed. The Office of Government Ethics has been given the central leadership role by Congress in that public trust for the Executive Branch of government. I would be pleased to be trusted with the responsibility for that agency.

My experience as a Kentucky lawyer for thirty-eight years and as a retired reserve Navy judge advocate. has prepared me well for the challenges of leading the Executive Branch ethics program. The subject of ethics, government ethics and legal ethics has held a special interest for me for over thirty years. I have trained Navy units in federal government ethics, trained government officials in my home county in Kentucky in public officer ethics and I have been particularly active in the Kentucky Bar Association in matters of legal ethics involving rule drafting, professional discipline and educational presentations. I have served as the ethics partner of Wyatt, Tarrant & Combs, LLP, a firm of over two hundred lawyers in three states for many years. If confirmed, this experience and dedication to high ethical principles will guide my leadership of the Office of Government Ethics.

It is essential to ethical culture in a large organization to implement a system that trains, advises and audits ethical compliance. I believe in systems like that. Unethical acts are not always the result of venality, they can also grow in a culture of banality in which people simply want to look successful, to conceal failure, to enhance personal relationships, or to frustrate oversight. The ugly examples of ethical failures which have filled the business pages of newspapers should not be permitted in government. In the most fundamental sense, government ethics can be characterized as ensuring that government decisions are informed by the public interest, not by private interest. There will always be debate in our democracy about alternative views of exactly what the public interest is, but such views can be distinguished from private interest. That is a large part of the job of the Office of Government Ethics.

Last week FBI Director Robert Mueller was quoted in the newspaper as saying that public corruption "tears at the fabric of democracy." I believe that was very well stated. If confirmed, I will exert every effort within the jurisdiction of the Office of Government Ethics to see that official decisions are informed by the public interest.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Robert Irwin Cusick, Jr. (informally known as "Ric")

2. **Position to which nominated:**

   Director, Office of Government Ethics

3. **Date of nomination:**

   February 13, 2006

4. **Address:** (List current place of residence and office addresses.)

   Office: 500 West Jefferson Street, Louisville, KY 40202

5. **Date and place of birth:**

   January 31, 1944, Nashville, Tennessee

6. **Marital status:** (Include maiden name of wife or husband's name.)

   I am unmarried

7. **Names and ages of children:**

   I have no natural children. I have a father-daughter relationship with Laura Marie Hill, who is twenty-eight years old and a broker with A.G. Edwards in Lexington, Kentucky. I have known Laura since she was five.

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   I graduated from Trinity High School, 4011 Shelbyville Road, Louisville, Kentucky in June, 1961, having entered in September, 1957.. I attended Bellarmine College (now University) in Louisville from September, 1961 through December, 1964, at which time I transferred to the University of Louisville College of Arts and Sciences from which I graduated in January, 1965. I received a Bachelor of Arts degree with Honors in History. I entered the University of Louisville School of Law in January, 1965 and completed my Juris Doctor degree in January, 1968. I was admitted to the practice of law in Kentucky on April 15, 1968

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Since college, I worked as a law clerk for Louisville Title Insurance Company during my first law school summer. My second law school summer, I worked in New York for the law firm of Everett, Johnson and Breckenridge on Exchange Place. That firm concentrated in United States and international tax matters. During the academic year in law school I worked as a research assistant for Dean James Merritt and as a writer/editor for Professor John Klotter of the Southern Police Institute of the University of Louisville.

Upon admission to the bar, I was aware that I would soon be on active duty in the military. I worked for about five months for the Legal Aid Society of Louisville in a pilot program which provided public defender services to minors charged in the Juvenile Court. This program preceded the establishment of a formal public defender service in Kentucky. During that summer, there were racial disturbances in Louisville and I was appointed to represent many young men who were arrested in those disturbances. This work was primarily courtroom defense representations.

In July 1968, I was commissioned in the Judge Advocate General's Corps in the Naval Reserve. I received orders to active duty in October, 1968. Late that month, I reported to U.S. Naval Base, Newport, Rhode Island. I attended Naval Officer Indoctrination School and then the U.S. Naval Justice School in Newport from which I graduated with distinction.

I reported for duty to the Office of the Judge Advocate General in Arlington, Virginia, in March, 1969 and served there until January, 1971. I worked primarily in litigation involving First Amendment issues, in-service conscientious objection, and officer performance. My work involved frequent close contact with the Department of Justice.

Late in 1970, I volunteered for sea duty, for which there is relatively little opportunity in the JAG Corps. I was ordered to duty as the Legal Officer of USS AMERICA (CVA-66) which was homeported in Norfolk, Virginia. I served in that capacity as well as in additional duty as Staff Judge Advocate for Commander, Carrier Task Group 60.1 until May, 1972. My duty at sea involved overall responsibility for disciplinary matters on the aircraft carrier (with a crew of 5200 men), counseling the Commanding Officer of the ship and the Rear Admiral who commanded the task group in matters of military, admiralty, and international law, and providing similar services to the ships that traveled with the AMERICA in her task group. I frequently was assigned ashore during visits in foreign ports as a representative of the admiral with local government authorities and as a claims officer dealing with foreign nationals who made claims of damage resulting from the port visit or actions of sailors. In May, 1972, I received orders to return to duty at the office of the Judge Advocate General in Arlington, Virginia. There I was assigned to the Administrative Law Division, which serves as counsel for the Secretary of the Navy, The Chief of Naval Operations, the Commandant of the Marine Corps, and their senior staff. I was released from active duty in November, 1972.

I returned to Louisville and became associated with the law firm of Tarrant, Combs and Bullitt as a litigator and became a partner there in January, 1977. In October, 1980, that firm merged with another law firm in Louisville, Wyatt, Grafton and Sloss, to form Wyatt, Tarrant & Combs, where I have worked as a litigation partner ever since. My practice has been generally, but not exclusively, defense oriented and has involved both civil and criminal cases. The bulk of my litigation experience has been in federal courts, primarily in Kentucky. While my litigation practice has varied widely, it has involved in particular legal ethics work and the law of underground mining, which is a major industry in Kentucky. I have handled defense litigation in every mine explosion which occurred in Kentucky since 1970, including Hurricane Creek, Scotia, Pyro and many smaller accidents.

I have been committed to ethics work since about 1975 when an ethics complaint was filed against me and quickly dismissed [**letter attached**]. I represent lawyers from time to time in ethics investigations, but reject those who have clearly violated the rules. I have been chairman of the Louisville Bar Association Committee on Professional Responsibility, a member of the Kentucky Bar Association Board of Governors (which has disciplinary duties), the basic author of the ethics procedural rules in Kentucky, and the chairman of the KBA committee currently revising the ethics rules in the context of ABA recommendations. I have served as an expert witness on the subject of ethics in both civil and criminal cases and have been a frequent lecturer on the subject of legal ethics in Kentucky. I was a certified trainer in federal ethics for the Navy as a Naval Reserve officer and have trained units in Indiana, Kentucky and Tennessee. My only employment for compensation has been as a partner in Wyatt, Tarrant & Combs, LLP. All of my Naval Reserve service of about eighteen years, with the exception of periods when I was ordered to active duty, was performed without pay.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

I have held the following unpaid positions:

Trustee: Harrods Creek Fire Protection District (a subdivision of state government)
Director: Historic Locust Grove, Inc. (formerly Regent, .i.e. president of the predecessor entity). Locust Grove is owned by Louisville Metro government.
Councilman: City of Indian Hills, the city where I live.
Director: Louisville and Jefferson County Public Defender Corporation
Bar Governor, Kentucky Bar Association Board of Governors
Member: Kentucky Board of Bar Examiners (a small stipend was paid)
Naval Reserve Officer.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

I have not been an officer or director of a private business.

Partner - Tarrant, Combs & Bullitt
Partner - Wyatt, Tarrant & Combs, LLP

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Member: Delta Theta Phi legal fraternity
United States Naval Institute
United States Navy League
National Institute for Historic Preservation
National Rifle Association
Institute for Global Ethics
Chairman: Jefferson County Police Foundation
President: Kentucky Youth Advocates
Director: Trinity High School Foundation, Inc.
Director: Louisville Bar Association

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

I have not held a partisan political office.

I have been chairman of the Jefferson County Ethics Commission, a bipartisan organization. I was originally appointed by a Democratic County Judge. Since 1995 I have been a councilman of the City of Indian Hills, a membership determined by a non-partisan election.

(a) I have not held office in a political party.

(b) I am a Life Member of the Republican National Committee and a member of the Republican Party of Kentucky. I have been in the past, and am now, campaign chairman for Janice Martin, an African-American district judge in Louisville, who is running in a non-partisan judicial race..

(c) **2000:** none over $50

2001: none over $50

2002: $150 Mitch McConnell, $75 Republican Party of Kentucky; $130.18 Franklin Jelsma; $72.48 Scott Crosbie for Mayor

2003: $200 Fletcher for Governor, $100 Fletcher for Governor, $186.10 Ben Chandler for Governor; $186.10 Fletcher for Governor

2004: $200 Fletcher for Governor, $100 Fletcher for Governor; $100 Republican National Committee, $200 Republican Party of Kentucky

2005: $750 Republican National Committee; $500 Northup for Congress, $750 Republican Party of Kentucky, $2,500 McConnell for Senate

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

In the Spring of 1968, I was awarded a teaching fellowship by the University of Illinois College of Law in the course of which I was to study for an LL.M. degree in jurisprudence and legal history. My draft board refused to grant a deferment for such study, so I forfeited the fellowship and joined the Navy.

I received a small scholarship as a freshman at Bellarmine College in 1961.

I received a full scholarship for my last year in law school as editor-in-chief of the law review.

I hold the following Navy decorations or ribbons: Navy Commendation Medal, Naval Reserve Medal, Naval Reserve Overseas Service Medal, National Defense Medal, Navy Expert Pistol Medal

I have received special recognition from the Kentucky Bar Association in the form of the Kentucky Bar Service Award. I have also received a Certificate of Merit from the Louisville Metro Council (for ethics-related work.)

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

-Student Note: *What did Griswold do for Doctors?*, The Journal of Family Law, Vol. 6, 1966,pp. 371 - 375.
-Article: *In-Service Conscientious Objection: Problems of the Growing Privilege*, JAG Journal, September - November 1970, p. 35.
-Dissenting Opinion: Moore v. Commonwealth, 771 S.W.2d 34 (Ky. 1989)

Above three items attached

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Please see attached.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

(a) I volunteered myself for the position of Director, Office of Government Ethics, in 2005 when I realized it was vacant.

(b) During the past thirty years I have been heavily involved in the study and application of legal ethics. I served eight years as chairman of the Jefferson County Ethics Commission which educated and supervised ethics issues for public officials. For many years I have been the ethics consulting partner for my law firm of about 200 lawyers. Public officials continue to consult me about public officer ethics issues even though I have no official ;position in the reorganized local government. I have drafted many ethics regulations for the Kentucky Bar Association and the Kentucky Supreme Court. I have taught federal officer ethics in three states as a Naval Reserve officer.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes. Pursuant to my partnership agreement with Wyatt, Tarrant & Combs, LLP, I will receive a sum, based on net profit, for each of the five fiscal years following my retirement. The amount will be calculated by a formula set forth in the agreement. Accordingly, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that would have a direct and predictable effect on the financial interests of Wyatt, Tarrant & Combs, LLP. Furthermore, pursuant to 18 U.S.C. § 203, Wyatt, Tarrant & Combs, LLP has agreed to reduce distributions to which I would otherwise be entitled to under the partnership agreement by billings in cases in which the U.S. is a party or has a direct and substantial interest.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have represented several clients in civil and criminal cases over the past ten years in which the federal government was the adverse party. Most of these representations have ended. The few that remain can be handled by other lawyers in the firm. None of these involve federal ethics issues. Pursuant to my partnership agreement with Wyatt, Tarrant & Combs, LLP, I will receive a sum, based on net profit, for each of the five fiscal years following my retirement. The amount will be calculated by a formula set forth in the agreement. Accordingly, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that would have a direct and predictable effect on the financial interests of Wyatt, Tarrant & Combs, LLP. Furthermore, pursuant to 18 U.S.C. § 203, Wyatt, Tarrant & Combs, LLP has agreed to reduce distributions to which I would otherwise be entitled to under the partnership agreement by billings in cases in which the U.S. is a party or has a direct and substantial interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

I have engaged in no such activity.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential

conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

I have never been disciplined or cited for a breach of ethics or professional conduct. In 1975, a complaint was filed against me by the Professional Responsibility Committee of the Louisville Bar Association based on the publication of a newspaper story in which I was mentioned in a positive context. This was prior to lawyer advertising being approved by the courts. In any event, I had noting to do with the story's publication and had not been interviewed for it. The Kentucky Bar Association, the body with disciplinary authority, dismissed the complaint **[letter attached.]** I went on to become a member of the LBA committee and its chairman for several years before being appointed to the KBA Board of Governors.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

My study of and involvement in ethics matters has been extensive for thirty years. If confirmed, I intend to perform the duties of Director in a very responsible manner.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Robert Irwin Cusick, Jr., being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

Subscribed and sworn before me this 27st day of February, 2006.

My Commission expires 11/18/08.

Notary Public

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 16, 2006

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Robert I. Cusick, who has been nominated by President Bush for the position of Director, Office of Government Ethics.

We have reviewed the report for possible conflicts in light of the functions of the Office of Government Ethics and the nominee's proposed duties. Also enclosed is a letter dated February 15, 2006, from Mr. Cusick to the agency's ethics official, outlining the steps which he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Cusick is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosures

U.S. Senate Committee on Homeland Security and Governmental Affairs
Responses to Pre-hearing Questionnaire for the Nomination of
Robert I. Cusick to be
Director, U. S. Office of Government Ethics

I. NOMINATION PROCESS AND CONFLICTS OF INTEREST

1. Why do you believe the President nominated you to serve as Director of the Office of Government Ethics (OGE)?

RESPONSE: When I became aware the position of Director was vacant, I contacted the White House, informed officials there of my experience and work in both legal and public officer ethics, and asked that I be considered for the position.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

RESPONSE: No conditions, expressed or implied, have been attached to my nomination.

3. What specific background and experience affirmatively qualifies you to be Director of the Office of Government Ethics?

RESPONSE: I have had a focused interest in legal ethics for about thirty years and have been extremely active in the Kentucky Bar Association in that particular field. In my capacity as a Naval Reserve judge advocate officer, I was a certified ethics trainer and was responsible for training both reserve and some active duty units in Kentucky, Indiana and Tennessee in executive branch federal ethics rules. I was appointed in 1994 by Jefferson County (Kentucky) government to chair and organize its Ethics Commission, the first such body it had established. I developed the training materials for public officials, personally presented most of the training sessions, and presided over the other activities of the commission. These included financial disclosures, conflict of interests analysis, recusal requirements, and explanation of public officer ethics rules to the public. When county government was reorganized in 2002, I was asked to assist a newly-formed ethics commission in metro government and commented at length in a televised session concerning extensive amendments to the ethics ordinance.

I am quite frequently asked to present ethics speeches or lectures to lawyers in certain specialized practice areas or concerning particular problems. I have been the Ethics Counseling Partner of my law firm (of about 200 lawyers) for many years and have encountered a very wide variety of questions from colleagues and clients. I have been retained by other law firms and by businesses seeking advice about ethical issues arising in their endeavors. I have served as the chair of the Kentucky Bar Association committee redrafting the ethics rules in light of revised ABA standards and was a principal author of the procedural rules by which bar discipline is enforced in Kentucky. I am a member of the ABA Center for Professional Responsibility, the portion of the ABA organization focused on ethics. On six occasions, including two capital murder cases, I have served as an expert witness on ethics issues. Over the course of thirty-five

years, I have been involved in the investigation of many ethics violations and breaches of fiduciary duties by corporate officers.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Director? If so, what are they and to whom have the commitments been made?

RESPONSE: I have made no commitments with respect to the policies and principles I will attempt to implement as Director, nor has anyone asked me to do so.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

RESPONSE: I am not aware of any issues, conflicts of interest, or the appearance thereof which would require my recusal or disqualification.

II. ROLE AND RESPONSIBILITIES OF DIRECTOR, OFFICE OF GOVERNMENT ETHICS

6. How do you view the role of the Director of the Office of Government Ethics? What are the major components of the Director's role and how would you direct your focus in fulfilling this role?

RESPONSE: I believe that observance of ethics laws and regulations should be pervasive in government. Each Cabinet Department and agency has its own substantive responsibilities which are quite different from one another. This suggests that ethical focus may be different when those responsibilities are in, for example, weapons procurement, benefits administration, health and safety protection, diplomacy, environmental concerns or human rights protection. Consequently, the contexts in which challenges to ethics can arise are different. Without this sensibility, ethics can become a well-remembered rubric rather than a decision-driving set of principles.

The Director's leadership role in federal executive branch ethics, of course, involves the administration of OGE itself, but I believe the Director has a duty not only to oversee those training, advice, and auditing functions, but to speak up and alert federal officials when developments in government present ethical issues recognized by federal laws. I saw in my home county how the level of discourse about public officer ethics was raised by training in the ethics ordinance. The Director should be part of that discourse.

7. What do you see as the major internal and external challenges facing OGE? What should OGE do to address these challenges? Describe the skills and experience that you have that will prove helpful in effectively managing the agency and meeting these challenges.

RESPONSE: I believe the major internal challenge to OGE will be the foreseeable retirement of certain senior staff members who are essential to its operation and represent long institutional memory and investment in federal ethics issues. Replacements must be brought along and selected in an orderly way to continue the effectiveness of the agency. Because of the relatively

small size of OGE, it may be appropriate to employ rotational assignments from other agencies in the evaluative process, to seek advice outside the government and to investigate sabbatical assignments from academia to afford opportunities for fresh perspectives. OGE has a history of effective liaison relationships with many departments of government, including military judge advocates, whose offices have some interests in common.

Externally, the challenge within government is to be effective as a respected entity with independent responsibility and authority within the executive branch, which is listened to by agencies of government the duties of which are more outer directed. Outside of government the agency's challenge is to be seen as serious and committed to its mission. Since being appointed, I have heard too many times the jibe that "government ethics" is an oxymoron. It is not. The people who say that are not as cynical as they sound.

8. How can your leadership as Director make a difference in ensuring that ethics is an integral part of agencies' cultures and day-to-day operations?

RESPONSE: I need to learn the agencies and their cultures better than I know them now. As a lawyer, I have dealt with the Justice Department and the Labor Department and sometimes with Health and Human Services. As a judge advocate, I am familiar with the Department of Defense. My experience working with police and fire agencies probably affords some cultural connectivity with the Department of Homeland Security. I think government ethics is a subject for lively discourse and attention at the top of an agency. I intend to stimulate that culture through education, audits and communication.

9. Please describe your experience in building and maintaining a high-performing workforce needed to achieve desired results (getting the right employees for the job and providing the training, structure, incentives, and accountability to work effectively).

RESPONSE: My work background is principally as a lawyer, not as a manager, but I have been responsible for the ethics issues in my law firm for many years. I have served over thirteen years as chairman of a fire protection district with taxing authority under state law. During the earliest part of my tenure, the district was protected largely by volunteers, but as needs changed and population grew it became necessary to form a combination department, part volunteer, part career. This represents a major cultural shift in the fire service and continues to require sensitive adjustments to personnel needs and expectations. The district presently operates on a budget of over two million dollars a year and I have been involved in all aspects of its management, including selection of executive and tactical employees. During my tenure the district acquired some of the most modern fire suppression equipment in the region, including a custom-designed fireboat which protects marine traffic in the area above the Falls of the Ohio.

I have also served in a management capacity as Regent (president) at Locust Grove Historic Home, a museum associated with George Rogers Clark. These duties involved budgeting, personnel evaluation and hiring, fund raising and property supervision. (The site, a National Historic Landmark, is actually owned by local government, but has always been managed in this way.)

My service as a City Councilman of the City of Indian Hills (a non-partisan position) has involved similar duties. My particular assignment has been oversight of the city police department, again involving similar management issues.

10. What are your views and experience with respect to fostering productive communication between management and employees to draw on the strengths of employees at all levels? What preliminary ideas do you have to promote such communication?

RESPONSE: While I do not yet know most of the employees of OGE, everyone who has worked for me as a sailor, a secretary, a lawyer, a firefighter or a police officer would likely agree that I am a communicator. I talk to the people who work for me. I want to know them. The relatively small size of OGE would seem to fit that style. I do not believe it disrupts the administrative chain of command to know the people in it. It is sometimes difficult to assess personal strengths only on paper. I have been saved from a mistake many times in my working life by the thought of a subordinate who felt free to voice it. I would not want to change that approach.

11. To become a high-performing organization, senior leaders need to drive continuous improvement and maintain an environment characterized by inclusiveness and diversity of styles and backgrounds. Based on your experience, what have you found to be the best approach for motivating employees to achieve excellence? What would be your approach for creating and maintaining a high-performing organization at OGE?

RESPONSE: In a similar vein, I believe that personal recognition, personally expressed, is essential to a spirit of inclusiveness and diversity. That recognition should not pass only through the chain of command, but should often be public, recognizable by persons at various levels. I believe my Navy background shows through here. Loyalty down is at least as important to an organization as loyalty up, particularly where the subject matter of the work is often expressive, verbal or written. Expectations of the Director should be clearly stated to managers, who often may be given the opportunity to be collaborative in establishing those expectations. While I would expect that staff work would often take employees away from the office, the Director or his designee should know where they are and why they are there.

12. What do you believe to be the major personnel management challenges facing OGE in the coming years, and what would be your plans, if confirmed as Director, to address those challenges

RESPONSE: This subject was addressed in the answer to Question 7.

13. If confirmed, do you foresee making any significant revisions to OGE's current organizational structure?

RESPONSE: If confirmed, I do not at present foresee making significant revisions to OGE's current organizational structure.

14. What experience have you had that would prepare you to assume the leadership and managerial responsibilities of directing OGE? Please identify the leadership and managerial functions that you believe the Director should be responsible for fulfilling, either personally or

through subordinates, and how you would anticipate ensuring that each of these responsibilities is discharged.

RESPONSE: I would refer here to my experience related in the answers to questions 9 and 10. I believe the Director of OGE should be more recognizable within the federal government. I believe the Director should be a public speaker, a participant in appropriate non-partisan groups and panels concerned with ethic matters. The Director should be comfortable in speaking with senior government officials concerning sensitive ethical issues.

My knowledge concerning the managerial function within the office is naturally limited at this stage. It is my impression that OGE has been managed well during the vacancy of an appointed Director. Senior subordinates are currently very active in advisory, consultative, and auditing functions. I would need to assess their personal strengths and accomplishments to determine where the Director's internal management effort can best be applied.

15. In your biographical information, you reflect interest in, and experience with, legal and corporate ethics. To what extent, and in what ways, do you believe this background will help you in understanding and discharging the responsibilities of OGE, if confirmed?

RESPONSE: My experience in legal and corporate ethics, as well as public officer ethics, includes having been confronted with innumerable questions, suggested answers from the questioner, misapprehensions regarding ethics requirements and attempts by the questioner at rationalizing a desired result whether that result is the ethical result or not. I expect that this experience has much in common with the way federal ethics issues are presented to OGE. OGE must exhibit a superior detailed knowledge of ethics requirements, the ability to analyze the facts surrounding an inquiry, and the authority to provide appropriate direction to the agency or questioner. If confirmed, I believe I will find the problems and the way they are presented and resolved not altogether new. Moreover, I am very familiar with taking positions that may be at odds with what the questioner wanted to hear and monitoring whether my advice has been put into effect.

16. In an article in *JAG Journal* written in 1970, you wrote "At the heart of the administrative and legal problems surrounding in-service conscientious objection is the undisguised dislike and lack of respect by military authorities for conscientious objectors ... A strong negative attitude exists towards homosexuals or child molesters (concerning which there is considerable military administrative law) also, but these aberrant tendencies do not present a challenge to the moral authority or rectitude of the military profession."

Please provide any comment you wish to on this excerpt.

RESPONSE: I continue to believe that my quoted statement in *JAG Journal* was correct. When I wrote the article thirty-six years ago, feelings ran very high among some officers against in-service conscientious objectors who were often seen as trying to avoid orders they had sworn to obey. The point I wished to make then was that officers who participate in personnel decisions in the course of their duties usually do not confront a direct moral challenge to their mission or that of the service to which they belong. The officers who made these quasi-judicial

decisions were line officers, not judge advocates. I found it necessary to devote particular attention to reinforcing their objectivity in this particular context.

III. POLICY QUESTIONS

17. OPM Director Linda Springer is currently promoting new career paths in the federal government whereby some federal employees no longer work 40 hours a week for 20 years, but rather on a part-time basis or for a short period of time to either gain experience or lend expertise before returning to the private sector. Given this deviation from the traditional federal career pattern, what challenges does this pose for OGE?

RESPONSE: Obviously, there will always be tension between the strictures of ethical compliance and the willingness of individuals outside the federal government to enter federal service at all, particularly on a short term basis. There are currently in effect more limited ethical rules for Special Government Employees who provide less than 130 days service. OPM can look to OGE for examples of how these rules are applied and how they work out in practice. Section 208 of the Ethics in Government Act would continue to apply to short term employees. It may well be that if "new career paths" proliferate, additional rule-making may become appropriate.

18. The federal government is increasingly relying on a multisector workforce to meet agency missions. Federal, state and local civil servants (whether full- or part-time, temporary or permanent); uniformed personnel; and contractor personnel often work on different elements of program implementation, sometimes in the same workplace, but under substantially different governing laws; different systems for compensation, appointment, discipline, and termination; and different ethical standards. What challenges does this pose for OGE in preventing conflicts of interest and improving the public's confidence that government actions are taken in accordance with the highest ethical standards?

RESPONSE: Public confidence in the federal government may be negatively affected by a tendency on the part of the public not to distinguish between government employees and contractors when two different standards of ethics are observed by each group. The federal government must address conflicts of interest on the part of individual contractor employees and not just the contractor itself. Those employees should have a sense of accountability, the need to avoid personal favoritism, and the need to avoid creating the appearance of unethical conduct while serving as a contract employee. While the rules may not need to be identical to those applicable to government employees, adherence to some rule set is appropriate. This might be partially accomplished by the government requiring contractors to adopt explicit codes of conduct applicable to their employees. It would be appropriate for OGE to open a dialog with OMB and other agencies familiar with the work of their own contractors concerning these contractor issues.

19. Based on your experience, what is your view about how effectively federal government ethics programs are being implemented? Do you have suggestions about how these programs could become more effective? Please explain.

RESPONSE: Since I lack experience inside the executive branch, I do not think I can reliably evaluate how effectively federal government ethics programs are being implemented at present.

If confirmed, I would consider gathering the necessary information and answering this question to be part of the Director's responsibilities. At the present time, I would suggest that public ethics considered as an element of executive leadership rather than merely as a matter of compliance is more likely to be effective in a large organization.

20. How would you measure the performance of agency ethics programs in fostering ethical conduct at agencies? What qualitative and performance measures should be used by ethics offices throughout the federal government for assessing and reporting on their performance? Are any changes needed in this regard? Should these measures be publicly reported, such as in agencies' annual performance and accountability reports?

RESPONSE: Since an important purpose of fostering ethical conduct is to discourage misconduct and corruption, it is very difficult to characterize qualitative and performance measures which should be used. It is difficult to measure the absence of such conduct, but if it is nearly complete, then it is tempting to compliment the ethics program. Conversely, the existence of the occasional ethics violation or high profile incident of corruption does not *necessarily* support criticism of an ethics program. It is one of the tasks of OGE to monitor and attempt to evaluate agencies' programs. I support the idea of calling attention to particularly effective educational and monitoring techniques in agencies' reports as well as to notable failures of ethical compliance by employees of agencies of the executive branch. Raising the standard of official discourse about ethics is encouraged by both positive and negative reports.

21. What is your view as to the adequacy of independence of the Designated Agency Ethics Officials (DAEOs)? Is it appropriate that the responsibility for selecting DAEOs resides with agency heads, or should OGE have responsibility for selecting DAEOs and managing and directing their activities? Are any other approaches or actions needed to enhance the DAEO's independence?

RESPONSE: I recognize the importance of independence of the Designated Agency Ethics Official. At the present time, I do not have the knowledge to assess the adequacy of that independence in what must be highly variable situations. Experience teaches that independence is almost surely inadequate in at least some cases. Identifying which cases those are should be part of OGE's mission. While it is interesting to consider what might be achieved if OGE selected and managed the activities of all DAEOs, I would approach this cautiously. First of all, it suggests a fundamental change in the organizational structure of the executive branch. Second, the DAEO selected in that way might have less practical access to needed information. Third, many DAEOs act in such a capacity as a collateral duty while carrying out other responsibilities in an agency. This situation suggests a management problem for both OGE and the home agency.

I believe the DAEO should have the absolute right to communicate with OGE in any unclassified matter (and in classified matters with appropriate safeguards), without fear of reprisal from the agency to which the DAEO is assigned. In any event, concern over the independence of the DAEO, while appropriate, should not distract us from the critical role of the agency head in fostering ethical standards.

22. Compliance with ethical rules is a minimum standard of conduct. It is important for ethics programs to emphasize ethical behavior and leadership in addition to addressing compliance issues. What are your views on the role of OGE in helping department and agency leaders instill an understanding of the importance of ethics programs and requirements, and spearheading efforts to adopt ethical principles throughout the organization?

RESPONSE: OGE has a teaching role that reaches beyond the details of statutes and regulations. An organization that really embraces ethical behavior as a marker of leadership, rather than just compliance, is engaging, whether it thinks so or not, in a kind of systems analysis. A department or agency whose systems encourage ethical leadership will find that its employees select ethical ways of doing their jobs. As they do, there is less likelihood of waste and fraud, greater individual pride in the organization and greater public confidence in the organization. That is the kind of organization a senior executive branch official wants to lead and the kind in which employees want to participate. While financial disclosure requirements are undeniably burdensome and at times tedious, they are an example of a *system* which encourages ethical behavior. OGE should explore what other systemic changes might work a similar effect.

23. We understand that OGE has issued over 1,400 advisory opinions – currently about 300-400 per year. Of those issued each year, about 40 are designated as "information advisory opinions." What is your view of the objective of these "information advisory opinions"? What, if anything, do you think should be done to ensure that these opinions are more broadly understood and used?

RESPONSE: I understand that "information advisory opinions" are examples of those which address ethics questions which are frequently asked or reflect common fact patterns which produce ethical problems. They are available to the public on OGE's website. At the present time, I am not adequately informed about how broadly they are understood.

24. OGE periodically reviews the effectiveness of agencies' ethics programs and seeks improvements. What is your opinion of OGE's record in conducting such periodic reviews, including the scope, thoroughness, frequency, and effectiveness of these reviews? What, if any, improvements with respect to agency reviews are necessary?

RESPONSE: This question addresses what I will call the "audit" function of OGE. I frankly have no information at the present time to enable me to answer the question. I know that OGE has set goals for itself in completing such audits.

Ethics Requirements

25. Based on your experience with, and observations of, the federal government's ethics program, are there aspects of that program that you believe are particularly problematic? For example, are there important requirements that are not being adequately enforced or complied with, or do current requirements leave significant loopholes that should be closed? Are there important requirements that are difficult or impossible to understand or apply in practice, or that are unreasonable or unenforceable?

RESPONSE: My actual experience in the federal government's ethics program is limited to my experience as an ethics trainer as a naval officer and general reading. I am not currently

aware of important ethical requirements in the executive branch that have not been adequately enforced, or that are unreasonable or unenforceable. I agree that some ethical principles require particularized training and interpretation to be understood. That is the task of the DAEOs and OGE. It is not my impression that ethical restrictions currently in force are unduly obscure or burdensome. I believe that the application of government ethics rules to employees of government contractors has perhaps not kept pace with the growing use of such contractors in recent years. This is both a substantive and an appearance problem.

26. There are several current legislative proposals that would extend the one year "cooling-off-period" pertaining to lobbying, by former Members of Congress/congressional staff and by former federal employees, to two years. What is your opinion of these proposals?

RESPONSE: I favor the extension of the "cooling-off-period" to two years. I believe the public in general is very suspicious of the practice of lobbying one's former colleagues at a time when it is reasonable to think one has insider knowledge of the subject's current beliefs, attitudes and concerns on a particular subject of lobbying. Extension of the period to two years would not fix the problem altogether, but would evoke greater public confidence. The longer period would allow time for not just the people, but the issues to cool.

27. Given concerns regarding the "revolving door" between federal officials and government contractors, do you believe that the amount of time that must elapse before a contracting officer could start working for a company to which the officer awarded a contract is a significant issue? Why or why not? If so, is the current one-year period specified in law sufficient? Why or why not?

RESPONSE: I believe the "revolving door" issue between federal officials and government contractors is a significant one. It allows a federal official to exercise government authority to favor one contractor over another for reasons other than those which pertain to the best interest of the government. It also frustrates, to a degree, before-the-fact financial disclosure as a system to avoid conflict of interest. Even where the selected contractor is one that is most consistent with the public interest, the details of the contract can nevertheless be affected by the issue in a way that is difficult to detect. The current one-year post-employment restriction is a positive measure but is not a certain cure for the problem. The same might be said of a restriction of two years. A much longer post-employment restriction might well be more effective, but it is my judgment that such a restriction might produce problems of its own and is not a favored solution.

28. In 2002, OGE submitted recommendations to streamline the financial disclosure requirements of Executive Branch nominees—the forms that you recently completed being an example of this—to help simplify the Presidential appointment process.

a. What is your opinion of OGE's 2002 recommendations?

b. Do you agree that these requirements should be modified, and, if so, what kinds of modifications do you believe should be made?

c. What impact, if any, do you believe modifying the financial disclosure forms would have on the Presidential appointments process?

d. If these requirements are changed, how do you ensure that sufficient information about the nominee's or employee's finances is retained so that potential conflicts of interest can be ascertained?

e. What specific recommendations would you make to improve the financial disclosure process? Please explain

RESPONSE:

a. I generally agree with the 2002 OGE recommendations. I think that ethical analysis can be accomplished with a lesser degree of detail than that currently required on the financial disclosure form. OGE submitted similar recommendations in 2005.

b. I believe that at the present time the number of categories are simply unnecessary for determining whether a conflict of interest exists.

c. I do not believe that modifying the financial disclosure requirements as recommended by OGE would have much impact on the Presidential appointments process. It would, of course, lessen the perceived burden on individual nominees.

d. Even though I believe that ethical analysis can be completed with a somewhat simplified form, I think there is a larger interest of government which should be considered beyond that which is adequate for OGE analysis. Financial disclosure, broadly considered, also serves the interest of transparency in government and provides what I consider an archival record of personal financial interests the usefulness of which may become evident in the future. Therefore, there may be a public policy interest in transparency and in an archival record which reaches beyond what is adequate for OGE's purposes.

e. I think the recommendations made by OGE are appropriate. They were made by persons with far greater experience than my own in making such judgments. My own recent experience in making such financial disclosures convinced me that the level of detail demanded in several instances was unnecessary to an ethical analysis. I do not suggest, however, that an understandable dislike for financial disclosure on the part of many persons should be given much weight. I would suggest that the Congress consider whether the interests in transparency and in an archival record justify the continuation of the disclosure requirements in their present form. This is a question which I believe lies beyond the jurisdiction of OGE

29. Do you see any advantages or disadvantages of modifying the financial disclosure requirements for the Executive branch without making corresponding modifications to the requirements for the Legislative and Judicial branches?

RESPONSE: I have no detailed knowledge of the disclosure forms for the legislative and judicial branches. The issue seems to me to be the same: Does the disclosure form provide

sufficient detail to determine whether a conflict of interest exists? If, with the streamlining, it does so, then such a change might benefit the legislative and judicial branches as well. The different functions of the branches cause legislative and judicial officers to encounter conflicts in a different context than executive officers and it may be felt that what I referred to earlier as the transparency and archival factors are considered to be of different degrees of importance.

30. There are approximately 950 federal advisory committees with 62,000 members. These committees are established to provide advice to decision makers on a wide variety of policy issues. Because these committees can influence federal policy and are composed of experts within and outside of government, the Federal Advisory Committee Act (FACA) established requirements to provide for transparency in the work of these committees. In May 2004, GAO issued a report entitled, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (GAO-04-328, April 16, 2004). GAO expressed concerns regarding the conflict-of-interest reviews of certain participants of these committees and recommended that additional OGE guidance would help agencies better ensure that federal advisory committee members were free from conflicts of interest.

Specifically, GAO expressed concerns regarding agencies appointing members to these advisory committees as "representatives" to provide advice on behalf of the government. In particular, GAO noted that conflict-of-interest reviews are required only for federal or special government employees, but not for representatives. GAO recommended that OGE clarify its guidance with respect to the use of representatives. OGE agreed that some agencies may have misidentified certain advisory committee members as "representatives" as opposed to special government employees and issued memorandums on the subject on July 19, 2004 and August 18, 2005.

a. The primary source for OGE guidance defining representative appointments is a 1982 OGE Informal Advisory Opinion (82 x 22). GAO recommended that OGE revise its 1982 guidance in several respects. In response, OGE issued a Memorandum to Designated Agency Ethics Officials on July 19, 2004 (DO-04-002) and an additional Memorandum to Designated Agency Ethics Officials on August 18, 2005 (DO-05-012), addressing, among other things, the clarifications recommended by GAO. Do you believe that OGE should revise its 1982 Advisory Opinion, as GAO recommended, or do you believe that OGE's issuance of these two Memorandums is sufficient? Please explain.

b. GAO also recommended that OGE direct federal agencies to review their representative appointments to federal advisory committees as their two-year charters expire to ensure that members are properly appointed and reviewed for conflicts of interest. Do you agree with this recommendation? Please explain.

c. GAO further recommended that OGE and GSA: (1) direct agency committee management officials to consult with agency ethics officials in making appointment decisions, (2) revise the Federal Advisory Committee Act management course material, and (3) require agencies to ensure, among other

things, that representative members receive ethics training. Do you agree with these recommendations? To what extent do you believe OGE has addressed this recommendation

RESPONSE:

a. Since the 1982 Advisory Opinion referred to was premised upon specific offices and specific facts presented at the time, I do not feel much would be accomplished by revising it now. I believe that OGE has adequately addressed the issue since that time.

b. I agree with the GAO recommendation that federal agencies review their representative appointments to federal advisory committees as indicated in the question. I understand that OGE has encouraged federal agencies to do this, though I have some question that OGE has the statutory authority to *direct* the agencies to do so.

c. The referenced substantive suggestions that GAO made seem reasonable and appropriate to me. I believe, however, that the appropriate authority in the matter is GSA rather than OGE.

31. In a recent report on the Department of Homeland Security's (DHS) Science and Technology Directorate, GAO indicated that OGE planned to examine, among other matters, the transparency and accountability issues in DHS's ethics program raised by GAO's findings (GAO-06-206). Do you agree with the recommendations in the report? Are you knowledgeable about the status of OGE's first ethics program review of DHS? As OGE Director, would you conduct similar ethics program reviews at other federal agencies?

RESPONSE: I am not informed of an ethics program review currently underway at DHS, though I certainly would agree that ethics program reviews at federal agencies are appropriate and useful. I understand that OGE plans to issue a rule relevant to some of the issues in the GAO report

32. Some advocates have urged that, to help discourage science advisory boards becoming slanted through appointment of members with biased views, ethics rules for science committees be strengthened by: broadening the array of financial interests reported by potential science advisors; tightening the restrictions on participation by those with conflicts of interest; and improving public access to information about advisory committee members.[1] Others argue that excessive and unnecessary disclosure requirements can discourage qualified scientists from being willing to serve on advisory committees. What changes, if any, do you believe are needed in the financial-disclosure standards that apply to members of science advisory boards?

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[1] Center for Science in the Public Interest press release, "Lax Ethics rules Undercut Science Advice, Say Groups; Ast Issue: Industry Influence Over Federal Advisory Committees" March 10, 2003, at: http://www.cspinet.org/integrity/press/200303101.html

RESPONSE: Members of scientific advisory boards certainly should not be excluded from making financial disclosures. At present they fill out the short confidential financial disclosure form which appears to capture most possible conflicts. I understand that some agencies do ask for additional information. My understanding of what I see as a problem is not yet sophisticated, but I believe that up to date information is essential to agency personnel when considering information received from such board members. While some scientists will feel burdened by it, it is likely in my judgment that more information should be sought from them. For example, some agencies do require disclosure of drug company financed research in which scientists may be engaged at their home lab or institution.

33. In cases in which an official has entered into a recusal agreement involving the official's former clients and current clients of the official's former business partners, there have been instances where up-to-date information has not been available to the agency. How important do you believe it is that the agency's ethics personnel have accurate and up-to-date information regarding those clients? Please explain. If you agree it is important, how should this need for accurate, up-to-date information be satisfied?

RESPONSE: When an official is pending appointment, existing financial disclosure requirements require identification of his clients from whom he has received $5000 or more in compensation within the preceding two years. Truthful disclosure of that information is important and is used to put in place appropriate screening measures in the recusal agreement. The actual mechanism of disclosure is somewhat fact-specific for an individual and his business situation, but a computerized list of clients that matches the $5000/two year standards is an effective means of providing this information.

34. When OGE reviews the financial disclosures and draft ethics agreements of nominees, do you believe that OGE should satisfy itself that the information necessary to ensure the nominee's compliance with, and the policing of, the ethics agreements—including up-to-date information regarding the current clients of a former partner from whom the nominee would be recused—will be available? How would you as Director accomplish this?

RESPONSE: As I understand the current system, the disclosures and draft ethics agreements are required of nominees, but his or her truthfulness is relied upon. OGE does not currently look behind these declarations of the nominee. The question raises the issue of how much OGE should look behind what the nominee discloses and promises. At the present time, it is not staffed to do this, and as observed elsewhere in this document, has no investigators. It is appropriate to observe, however, that 18 U.S.C. 1001 applies to such statements and that false statements can expose a person to prosecution by the Department of Justice.

35. How would you, as Director, respond to congressional requests for access to documents and information regarding individual ethics cases or regarding OGE's advice, opinions, or conclusions about such cases? Under what circumstances, if any, might you refuse such requests?

RESPONSE: I would respond positively to formal congressional committee requests for access to documents and information in individual ethics cases.

36. Under section 102(a)(6)(B) of the Ethics in Government Act, a nominee does not have to disclose information on Form 278 about the source of compensation in excess of $5,000 if such information "is considered confidential as a result of a privileged relationship, established by law, between such individual and any person."

a. Under what kind of circumstance do you believe an omission from disclosure under this provision should be acceptable? For example, when, if ever, should a lawyer be allowed to omit disclosing information about a former client because the lawyer and client entered into a confidentiality agreement? How should OGE act to determine whether that standard has been correctly applied?

b. If a filer uses this authority to omit information from disclosure, do you believe the filer should be required to state on the form that information is being omitted? Should the filer be required to inform OGE or the employing agency that information is being omitted? Do you believe that applicable laws or regulations should be changed to impose or clarify any such requirement?

c. What would you do as Director to ensure that any omissions under this authority are proper?

d. If confirmed, what would you do as Director to ensure that, when information is properly omitted, recusal agreements are entered into and subsequently policed to avoid conflicts of interest?

RESPONSE: I am very wary of the cited provision and was surprised when I saw it on my own financial disclosure form.

a. There is a substantial body of law delineating both confidentiality and privilege to which reference may be made. Only rarely is the identity of a client properly considered confidential. OGE can inquire into the circumstances of the representation to judge whether such a claim is properly invoked.

b. Yes. OGE should review the validity of the assertion of such authority. OGE has recommended that 5 U.S.C. app. 102 be clarified.

c. I consider that the invocation of a confidential source of compensation exception is a serious matter which should evoke heightened scrutiny by OGE and an employing agency concerning that particular person. I would suggest that any recusal agreement entered into in such a situation be reviewed more carefully by the agency.

37. In 1996, in response to a congressional letter requesting that OGE investigate allegations of a potential violation of ethics requirements, the then-Director expressed the opinion that:

"[OGE] is not an investigatory agency. Rather it serves in an advisory and policy-making role for the executive branch. Investigations of possible misconduct by employees of the executive branch are carried out by the Inspector General of the agency which the employee serves and/or the Department of Justice." (OGE Advisory Opinion 96 x 19, October 18, 1996.)

Please explain whether you agree with this statement and why.

RESPONSE: I agree with the accuracy of the quoted statement. OGE does not have statutory subpoena power, the staff structure or the budget to conduct investigations of allegations of ethics requirements. I have as yet no actual experience with the effectiveness of OGE's relationship with the relevant Inspectors General or the Justice Department in requesting that investigations be carried out. Having said that, I believe that OGE's having no independent investigative capability or resources could be used as a reason to question the seriousness of its mission or commitment. Knowing that highly capable investigative resources are widely distributed in the executive branch, their absence at OGE is, at least, notable.

38. Section 402 of the Ethics in Government Act authorizes the Director of OGE to order corrective action on the part of agencies and employees that the Director deems necessary.

a. Please describe the circumstances under which, and the manner in which, you would exercise such authority, and the circumstances in which you would not exercise such authority.

b. What actions would you take when a violation of the ethics requirements occurs and the head of the agency involved fails to take disciplinary action? What actions do you believe OGE has the authority to take under such circumstances?

c. What action would you take when OGE determines that a violation of the ethics requirements may have occurred, but the head of the agency involved fails to conduct the additional investigation that OGE believes is required? If the agency declines to take an action that OGE deems warranted, what steps would you then take as Director to ensure compliance?

RESPONSE:

a. If corrective action is necessary as to, for example, having in place and operating appropriate systems to ensure ethical conduct, such as financial disclosure or training programs, I would contact the agency head, point out and detail the violation and urge the establishment of such measures immediately. I would give the executive in charge an opportunity to correct the systemic violation and if such action was not promptly taken, direct that it be done pursuant to Section 402 of the Act. If the violation involves a serious alleged breach of ethical standards, I would contact the agency head and direct that the allegations be investigated and disciplinary action taken as appropriate. If this were not done, I would report the failure in writing to the President.

b. If the head of an agency fails to take disciplinary action as appropriate within a reasonable time or is unwilling to act in the matter, I believe the Director can order divestment, filing of financial disclosures or placement of assets in a blind trust if that is appropriate under the circumstances. The Act also permits the Director to investigate and hold hearings subject to appropriate due process considerations, and make findings concerning violations included in certain subsections of Section 402 of the Act. Such findings are to be delivered to the agency head, or to the President if the agency head is involved in the violation.

c. As I read the statute, in any instance where OGE determines that a sufficiently egregious ethics violation has likely occurred, but the agency head fails to conduct the investigation OGE believes is required, that matter is to be referred in writing directly to the President.

39. Under 18 U.S.C. § 208(b)(1), a federal official who is negotiating for, or has an arrangement for, post-government employment may seek a waiver of conflict-of-interest requirements by showing that the conflict is not "so substantial" that it would "affect the integrity" of his or her work for the government. Some controversy has arisen over the exercise of this authority and in 2004, the White House issued a memorandum instructing that: *(1)* agency personnel may not grant waivers to Senate confirmed Presidential appointees for the purpose of negotiating for outside employment without first consulting with the Office of the Counsel to the President; and *(2)* each agency head should review existing delegations to be sure waivers are granted at an appropriate level.

a. What role, if any, do you believe OGE should play in working with the White House Counsel's Office and the agencies, in meeting the requirements of the 2004 memorandum?

b. What criteria do you believe should be applied in deciding whether to waive conflict-of-interest requirements to enable a federal officer or employee to negotiate for outside employment? What procedural safeguards and documentation should be required?

c. Under what circumstances, if any, do you believe that the granting of a waiver enabling an officer to negotiate for post-government employment should be made public?

RESPONSE:

a. I believe that OGE should have a consultative relationship with White House Counsel and the agency concerned in such a waiver situation.

b. Basically, I think such waivers are usually a bad idea as I believe they give an ethically ambiguous appearance even where the federal official tries to act ethically and appropriately. I cannot describe a fixed set of criteria which would be applicable in all cases, but it should be kept in mind that the waiver is for the individual's purpose, not the government's.

c. The document of waiver would probably be a public document in any event and I believe the granting of such a waiver should be made public.

40. There have been legislative proposals which would amend 18 U.S.C. § 208 to require that senior Executive Branch officials disclose to OGE any potential conflict of interest that may occur during the period they are negotiating outside employment. OGE, along with the Government official responsible for employment, could provide a recusal waiver, which would then be made public.

a. If such a law were enacted, do you believe OGE would have the resources to carry out these recusals?

b. Do you believe that OGE would have the relevant experience to carry out such recusals?

c. Do you believe that this would be an appropriate use of OGE resources?

RESPONSE:

a. No. At the present time I do not believe OGE has the resources to carry out these recusals.

b. OGE is not well situated to carry out such recusals. The agency itself is likely to have a more detailed body of information bearing upon whether, or to what extent, a conflict of interest exists as to a particular matter. An effort by OGE to gather these facts in the first instance could be awkward and inefficient. OGE has experience with waivers and is well situated to advise officials and agencies about recusals and waivers.

c. At present staffing levels, it would not work well for OGE to have this responsibility. Information bearing upon conflict of interests in the particular matter is in the possession of the relevant agency. Under the present system, the agency is supposed to consult with OGE in these circumstances.

Independence of OGE

41. Some believe that the Director of OGE must be insulated from political pressure, to avoid the Director being forced to compromise on necessary action or being encouraged to deviate from the normal application of ethical requirements with respect to a particular individual. Do you agree that the Director of OGE must act independently and free from political pressure? If so, how would you, if confirmed, maintain this independence and freedom from pressure?

RESPONSE: I am among those who believe that the director of OGE should be insulated from being forced to compromise on necessary action or encouraged to deviate from the normal ethical requirements as to a particular individual. I assume that is the reason underlying the five-year statutory term. The Director of OGE does not hold a partisan position, nor is the agency a partisan entity. The need for independent action in an agency with the mission of OGE is open

and obvious and is an important consideration in any OGE action. OGE must remain independent in thought and analysis. Of course, OGE is an agency of the executive branch and as such must by law submit regulatory and legislative proposals through OMB and the Department of Justice.

42. Generally, with respect to which, if any, of OGE's functions and responsibilities do you believe OGE and its Director should strive to serve the programs and interests of the Administration?

RESPONSE: I assume, and I believe history teaches, that it is in the interest of every President that his administration be ethical. That will remain my operating principle if confirmed. I do not believe the responsibility of the Director of OGE is consistent with being an apologist for any particular administration, even though OGE may find it necessary at times to disagree with a senior official of the executive branch.

43. With respect to which, if any, of OGE's functions and responsibilities would you as Director seek the guidance or approval of any officer or employee of the White House, the Executive Office of the President, or any other governmental agency? Please explain.

RESPONSE: The response to this question is largely comprised in the answer to questions 36, 37 and 38. I assume that some liaison is necessary with White House officials as to financial disclosures and conflicts analysis concerning Presidential nominees. The need for coordination with DOJ Criminal Division Office of Public Integrity and Office of Legal Counsel regarding consistent interpretation and enforcement of the ethics laws and regulations is likewise apparent. In general, however, it is clear that OGE renders, rather than seeks, guidance in ethics matters and has the statutory authority to refer actions it deems inadequate or ineffective to the highest levels of the executive branch, including, specifically, the President.

44. Is it ever appropriate for OGE to consult with the White House as part of OGE's determination of whether a federal officer or employee has complied with his or her obligations or of what action OGE would take if it determines the officer or employee has not complied? Is it ever appropriate for OGE to consult with the White House as part of its determination of what opinion or advice to give to an agency, officer, or employee with respect to interpreting ethics laws or other requirements? Please explain.

RESPONSE: If OGE determines that substantial evidence exists that an agency or senior official is engaged in a serious ethical breach, I believe it is appropriate to inform the White House of that determination. I would distinguish giving such notice to the White House from consulting with the White House regarding what opinion or advice to give with respect to interpretation of ethics laws and requirements. The latter is the statutory mission of OGE and should be carried out by OGE exercising its independent judgment.

IV. RELATIONS WITH CONGRESS

45. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes.

46. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes.

47. What is your experience in working with Congress or other legislative bodies for the authorization, funding, and oversight of government programs? Specifically, describe any experience you have in working on a bipartisan basis to identify statutory changes that can improve program efficiency and effectiveness, as well as in fostering and responding to legislative oversight.

RESPONSE: I have attended a few Congressional oversight hearings related to my private law practice. I have never testified before or submitted proposed legislation drafts to Congress. At the state level, I drafted amendments to a Kentucky statute which permitted certain fire districts to provide paramedical support services to the public in areas near Louisville where ambulance coverage was not optimal. These amendments were enacted by the General Assembly. Such medical support services are now commonly offered by suburban fire districts in the area and protocols have been established with the Metro Emergency Medical Service. I also testified before a state legislative committee concerning a matter in which I was counsel for the Kentucky Vietnam Veterans Memorial Foundation.

V. ASSISTANCE

48. Are these answers your own? Have you consulted with anyone in drafting these answers? If so, please indicate which entities.

RESPONSE: These are my own answers. I have consulted with OGE staff as to certain matters with which I have no prior acquaintance. The answers have been reviewed by White House legislative affairs staff members.

AFFIDAVIT

I, Robert I. Cusick, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF JEFFERSON)

Subscribed and sworn before me this 18th day of April, 2006.

My Commission expires: November 18, 2008.

Notary Public

Post-Hearing Question Submitted by
Senator Carl Levin
For the Nomination or Robert I. Cusick to be
Director, Office of Government Ethics
May 18, 2006

Prior to 1989 and the enactment of the Ethics Reform Act, P.L. 101-184, there were different financial disclosure requirements for each of the three branches of government. A major provision in the Ethics Reform Act strengthened financial disclosure by making the disclosure requirements uniform for all three branches. I continue to believe that the uniformity of the financial disclosure requirements for all three branches is important. In recent years, proposals have been put forward to change the financial disclosure provisions for only one branch of government. What is your view about changing the financial disclosure requirements for just one branch of government versus maintaining the current system of uniform financial requirements for all three branches?

Response:

This question is usually presented in the context of "streamlining" financial disclosure requirements. I believe that a streamlining of financial disclosure requirements is feasible in that the present requirements include a degree of specificity that is in excess of what is needed by the Office of Government Ethics to accomplish a conflict of interest analysis. I am sensitive, however, to the fact that the requirements serve purposes in addition to the purposes of OGE and that any change to them should be considered in that light. In my judgment, financial disclosure also serves the interests of transparency in government and provides archival information which may become relevant in the future

I have no detailed familiarity with the way financial disclosure requirements are used in the legislative and judicial branches of government. It may be that the interests of transparency and the creation of a limited archive may be of more or less significance in a particular case or in the legislative and judicial branches.. Judges usually can recuse themselves, while Members of Congress are usually expected to vote on an issue presented to them.

Maintaining the current system of uniform financial disclosure requirements for all three branches appears reasonable to me and certainly would not create a problem for OGE. While making such disclosures is undeniably burdensome for many people, if changes to those requirements are to be made, I think the drafters should act with sensitivity to the value of uniformity in any complex system and assess the impact on all three branches. Also, I do not believe that "streamlining" the requirements would speed up the Presidential appointment process.

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