



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 2010

The Honorable Frank R. Wolf
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Wolf:

This responds to your letter, dated March 3, 2010, concerning the Department's response to Senator Grassley's request for certain information about political appointees and detainee matters. Enclosed please find our response to Senator Grassley's follow-up letter of February 26, 2010. That response covers many of the issues raised by your letter.

We also enclose a recent statement signed by a range of leading lawyers, including many former Bush Administration political appointees who worked on detainee policy and litigation. That statement reads, in part, as follows:

The American tradition of zealous representation of unpopular clients is at least as old as John Adams's representation of the British soldiers charged in the Boston massacre. People come to serve in the Justice Department with a diverse array of prior private clients; that is one of the department's strengths.

The War on Terror raised any number of novel legal questions, which collectively created a significant role in judicial, executive and legislative forums alike for honorable advocacy on behalf of detainees. In several key cases, detainee advocates prevailed before the Supreme Court. To suggest that the Justice Department should not employ talented lawyers who have advocated on behalf of detainees maligns the patriotism of people who have taken honorable positions on contested questions and demands a uniformity of background and view in government service from which no administration would benefit.

We respectfully suggest that your analogy to "attorneys for the Mafia" is misplaced. The lawyers referenced in our response to Senator Grassley bring to the Department a broad range of experience. The detainee-related briefs that they filed, all in cases that involved "novel legal questions," represent but a small portion of their professional work product. To preclude such lawyers from any involvement in detainee policy or litigation due to the filing of these briefs would do a disservice to the government. Such preclusion would be comparable to barring any

The Honorable Frank R. Wolf
Page 2

lawyer who ever filed a brief in support of a death-sentenced convict from ever working on any litigation or policy issue involving violent crime. Neither the standards of ethics and professional responsibility (as noted in our letter to Senator Grassley) nor the government's interest in attracting and employing excellent lawyers mandates such a broad rule. Accordingly, that has never been, and is not, the Department's policy. Rather, the Department hires skilled lawyers who are dedicated to its mission and assigns them to projects based upon their abilities and the Department's needs.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich". The signature is fluid and cursive, with the first name "Ronald" and last name "Weich" clearly distinguishable.

Ronald Weich
Assistant Attorney General

Enclosures



U.S. Department of Justice

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Washington, D.C. 20530

March 15, 2010

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letter, dated February 26, 2010, concerning the Department's response to your request for certain information about political appointees and detainee matters. An identical letter is being sent to each of the Senators who joined in your letter to us.

The Department recognizes that many issues concerning detainees are highly contentious and the subject of strongly held views and good-faith disagreements. We welcome debate on these important issues and on the merits of the Department's decisions. We are sure you would agree, however, that there is no place in that debate for unfounded attacks upon the loyalty and integrity of Department employees.

Your letter expresses concern that the Department's February 18, 2010 response noted the number but not the names of appointees who had previously worked on detainee-related matters. The fact that a lawyer has filed a brief in a particular case on behalf of a detainee or amicus, however, is a matter of public record, as are the names of the Department's political appointees. This information was thus generally available to any interested person.

In preparing its response, the Department canvassed political appointees from those components that are responsible for conducting litigation, providing legal advice, or formulating policy related to detainees. With regard to the other offices mentioned in your latest letter, the only components with such responsibilities that have lawyers serving as political appointees are the United States Attorneys' Offices. We did not canvass these offices because the only lawyers who serve as political appointees in them are the United States Attorneys themselves, whose work history was previously reviewed in detail by the Senate before it voted to confirm them.

The Department respectfully disagrees with your contention that our letter was "nonresponsive" because it was "largely a recitation of public laws and model rules." Feb. 26 Letter at 1-2. That recitation was directly responsive to your request for "the Department's criteria for recusing an individual who previously" worked on detainee-related issues. Nov. 24 Letter at 2. Moreover, that discussion addressed a central misconception underlying your inquiry. As our February 18 response explained, the fact that a lawyer worked on a detainee-

related matter before joining the Department (or came from a firm that did so) does not automatically disqualify him or her from working on all such matters for the government. To the contrary, the relevant recusal and disqualification standards focus on the particular facts and circumstances of an attorney's former and current representations, and thus do not ordinarily result in blanket issue recusals or disqualifications. Your letter identifies no statute, regulation or rule that suggests otherwise. Thus, your concern that individuals who worked on detainee-related matters (or worked at firms that did) are only subject to "selective recusals," and thus may, in some circumstances, "remain eligible to work on these issues," is simply misplaced. Feb. 26 Letter at 1.

Because the ethics standards and rules of professional conduct do not mandate the type of blanket recusals or disqualifications that your letters suggest are required, there is no justification for your request for, among other things, a list of all "detainee-related cases and/or policy issues" that these appointees have undertaken, and a list of all appointees who are recused from working on specific detainee-related matters. This request is extremely unusual, if not unprecedented. As we previously noted, lawyers often join the Department's Antitrust or Tax Divisions after years of representing corporate clients against the government in antitrust or tax cases. We are aware of no instance in which this or any other Committee has requested detailed information about the work performed at the Department by such appointees or the matters from which they were recused. Put simply, the political appointees who are the subject of your letters work on a wide range of issues. Like all Department lawyers, they must abide by stringent ethics statutes, regulations, and policies and professional responsibility rules, in which they are aided by the Department's career ethics and professional responsibility officials.

Moreover, we disagree strongly with your apparent belief that, simply by virtue of prior representations or amicus filings, Department appointees will approach their work for the United States on detainee matters with "bias or preconceived beliefs," Nov. 24 Letter at 1. That belief is contrary to the longstanding traditions of our Nation's legal profession and of this Department. As Chief Justice John Roberts explained to this Committee during his confirmation hearings:

[I]t's a tradition of the American bar that goes back before the founding of the country that lawyers are not identified with the positions of their clients. The most famous example probably was John Adams, who represented the British soldiers charged in the Boston Massacre. And he did that for a reason, because he wanted to show that the revolution in which he was involved was not about overturning the rule of law, it was about vindicating the rule of law. Our founders thought that they were not being given their rights, under the British system, to which they were entitled. And, by representing the British soldiers, he helped show that what they were about was defending the rule of law, not undermining it. And that principle, that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of a client, is critical to the fair administration of justice.

Lawyers who join the Department's Antitrust or Tax Divisions after years of representing corporate clients against the government in antitrust or tax cases are not categorically barred from subsequently representing the government on antitrust or tax issues based on the unfounded theory that they would approach such issues with bias or preconceptions. The same is true of the political appointees referenced in our response. The vast majority joined the Department after years of representing a wide range of clients at some of the nation's top law firms. Moreover, most of them worked for the Department in prior administrations, during which they rendered distinguished service. And all of them have taken an oath to defend the Constitution of the United States against all enemies, foreign and domestic. There is absolutely no basis for suggesting that any appointee has failed to comply with these solemn obligations because of any "bias or preconceived beliefs" he or she developed from representing a detainee, filing an amicus brief in a detainee-related matter, or working at a firm that represented a detainee.

Indeed, the manner in which you and the other signatories to your letter approached the confirmation process reflected an understanding of these longstanding traditions of the legal profession. The most senior of the five appointees who previously represented a detainee is Tony West, the Assistant Attorney General for the Civil Division, which defends the government in habeas cases brought by detainees held at Guantanamo Bay Naval Station and at Bagram Airfield in Afghanistan. The fact that Mr. West had represented John Walker Lindh, who was detained in Afghanistan, was well-known to the members of this Committee. Yet no Senator questioned Mr. West, either at his confirmation hearing or in written follow-up questions, about his prior representation of Mr. Lindh or whether it would interfere with his duties in the Civil Division. Instead, every member of the Committee voted to send his nomination to the full Senate, and none voted against his confirmation on the Senate floor, where he was approved by a vote of 82 to 4.

The Department's basic recusal procedures about which your letter inquires have been in place for many years, and are currently administered by the same career ethics officials who have rendered advice to Department lawyers during prior administrations. Political appointees receive training upon arrival regarding the ethics statutes, regulations, and policies that apply to them, and all lawyers in litigating divisions and leadership offices receive further training annually on standards of conduct and professional responsibility issues. Attorneys do not participate in matters from which they are recused. If a matter on which they are recused arises unexpectedly, attorneys simply excuse themselves from meetings or ask to be deleted from email distribution lists. Accordingly, the Department has never perceived a need for a centralized recusal database. These procedures have served the Department well for decades, and your letter identifies no problems in their application.

Finally, we note that it has been recently reported that the Attorney General served as an *amicus curiae*, along with former Attorney General Janet Reno and other former colleagues, in litigation involving José Padilla, in order to provide the courts with the perspective of former federal officials with significant law enforcement and intelligence experience. However, he did not act as counsel, either to a party or to an *amicus*, in any detainee-related matter.

The Honorable Charles E. Grassley
Page 4

In closing, we note that the Attorney General stands by the Department's decisions regarding detainee-related litigation and policy, and he is happy to appear before the Judiciary Committee, as he will next week, to explain and defend those decisions as he and other Department officials have done on numerous occasions. While we welcome a good-faith debate on the merits of those decisions, we expect that we will find common ground in rejecting groundless aspersions on the character and integrity of the Department's employees as they serve this nation.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Weich". The signature is fluid and cursive, with the first name "Ronald" and last name "Weich" clearly distinguishable.

Ronald Weich
Assistant Attorney General

BROOKINGS

Statement on Justice Department Attorney Representation of Guantánamo Detainees March 8, 2010

The past several days have seen a shameful series of attacks on attorneys in the Department of Justice who, in previous legal practice, either represented Guantánamo detainees or advocated for changes to detention policy. As attorneys, former officials, and policy specialists who have worked on detention issues, we consider these attacks both unjust to the individuals in question and destructive of any attempt to build lasting mechanisms for counterterrorism adjudications.

The American tradition of zealous representation of unpopular clients is at least as old as John Adams's representation of the British soldiers charged in the Boston massacre. People come to serve in the Justice Department with a diverse array of prior private clients; that is one of the department's strengths.

The War on Terror raised any number of novel legal questions, which collectively created a significant role in judicial, executive and legislative forums alike for honorable advocacy on behalf of detainees. In several key cases, detainee advocates prevailed before the Supreme Court. To suggest that the Justice Department should not employ talented lawyers who have advocated on behalf of detainees maligns the patriotism of people who have taken honorable positions on contested questions and demands a uniformity of background and view in government service from which no administration would benefit.

Such attacks also undermine the Justice system more broadly. In terrorism detentions and trials alike, defense lawyers are playing, and will continue to play, a key role. Whether one believes in trial by military commission or in federal court, detainees will have access to counsel. Guantánamo detainees likewise have access to lawyers for purposes of habeas review, and the reach of that habeas corpus could eventually extend beyond this population. Good defense counsel is thus key to ensuring that military commissions, federal juries, and federal judges have access to the best arguments and most rigorous factual presentations before making crucial decisions that affect both national security and paramount liberty interests.

To delegitimize the role detainee counsel play is to demand adjudications and policymaking stripped of a full record. Whatever systems America develops to handle difficult detention questions will rely, at least some of the time, on an aggressive defense bar; those who take up that function do a service to the system.

Signatories:

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