

**Responses to Senator Charles Grassley
Questions for
Paul McNulty**

Mr. McNulty, in 1986, I authored amendments to the False Claims Act ("FCA") which enable private citizens who learn of fraud against the government - known as whistleblowers - to bring suits to recover money lost to the Treasury as well as additional damages. Since these amendments took effect, the False Claims Act has been instrumental in detecting and deterring fraud. In fact, 15 billion dollars have been recovered under the Act since 1986.

Because of the importance of the position to which you have been nominated, I want to ask you some questions about the False Claims Act.

- 1) Do you view the *qui tam* provisions of the act to be constitutional?

Response: The Department has filed briefs in support of the constitutionality of the *qui tam* provisions, and I am personally unaware of any reason why the Department should reconsider that position.

- 2) Will you vigorously enforce the False Claims Act?

Response: Yes I will. The Department of Justice is committed to uncovering fraud against the American taxpayer. The False Claims Act is the government's principal civil tool to recover federal funds that have been fraudulently obtained from government programs. I know from my experience as United States Attorney, just how effective the False Claims Act has been and can be. I have been advised that since the 1986 amendments there has been over \$15.5 billion in False Claims Act judgments and settlements, with over \$1.4 billion in FY 2005 and almost \$500 million for the current fiscal year to date.

Mr. McNulty, I am very concerned about the way the Department of Justice ("DoJ") has been administering the FCA. Though it has accomplished some good things, DoJ has consistently failed to use the FCA to its full potential. This is unfortunate, because the FCA is the federal government's premier tool for suppressing fraud against its various programs. In particular, I am concerned that the DoJ is not giving adequate resources to the enforcement of this critical fraud fighting tool.

- 3) I have introduced a bill, S.636, to require the Department to report on FCA settlements. Is there any portion of my proposal you cannot support? Please specify.

Response: I appreciate the Congress's role in oversight of the Department's enforcement of the False Claims Act and particularly your interest. I understand that S. 636 is directed at aiding that oversight. The Department already makes available to Congress a

great deal of information about its settlements, and we will continue to do so. The Department will work with you on any legislation addressing such reporting.

- 4) I have heard reports that DoJ has begun to decline more FCA cases because of resource shortages. Please give me a candid assessment of this situation.

Response: Managing finite resources will always be a challenge. Nonetheless, the Department is committed to reviewing each and every *qui tam* case that is filed and presenting it to the Agency whose program has been defrauded for its assessment as well. The number of cases the Department joins is a function of the strength of the cases filed by relators and the investigative results in those cases. Over a lengthy period of time that number has been in the 20 to 25 percent range. It necessarily varies from year to year. Nonetheless, since FY 2002 the number of cases in which the government has elected to intervene has actually been rising, and was over 25 percent in FY 2005. In large part, the Department's judgment as to intervention has been borne out by the statistics; there have been extremely few cases that were declined by the Government that produced significant recoveries.

- 5) Would you consider the establishment of a new branch in Civil Division for Affirmative Civil Enforcement (ACE), including the FCA?

Response: As you have noted, the Department has achieved a good measure of success in its False Claims Act enforcement efforts. The Civil Division and the United States Attorney's offices, working with relators and their lawyers, have used the False Claims Act and its *qui tam* provisions for bringing in over a billion dollars in five of the last six years. With the addition of eight new attorneys in the last few months there are now 77 attorneys in Washington and many more throughout the country who are dedicated full-time to investigating and litigating False Claims Act cases. The Civil Division's Commercial Litigation Branch, Fraud Section is led by an SES Branch Director and Deputy Branch Director, who work on affirmative civil enforcement cases full-time, under the supervision of both a Deputy Assistant Attorney General and the Assistant Attorney General, both of whom are closely involved in setting policy and making strategy decisions in significant cases. Moreover, substantial energy has gone into joint training and coordination between those in Washington and in the United States Attorneys offices. My experience as a United States Attorney is that Main Justice and the field cooperate with each other and work well together in the handling of False Claims Act cases and I believe the results support this.

- 6) What priority is the Attorney General giving to health care fraud cases, including FCA cases?

Response: As you know, Attorney General Gonzales has made the fight against health care fraud one of the Department's top priorities, and that message has been repeated to our attorneys time and again. It has been a top priority in my office in the Eastern

District of Virginia, as well. Our efforts in this area are vital to saving lives, stopping physical harm, and replenishing an increasingly strained health care payment system. Just last week, we gathered over 140 Assistant United States Attorneys from around the country to the National Advocacy Center where we trained them exclusively on health care fraud issues. I can assure you that the Department will continue to develop these cases, work proactively with our law enforcement partners to foreclose future fraud schemes, and diligently investigate allegations brought to us by *qui tam* relators as we proceed together in the fight against health care fraud. If confirmed as Deputy Attorney General, I will continue to do all within my ability to assure that these investigations and cases succeed.

- 7) Would you consider establishing a task force under your direction focused on the cases against pharmaceutical companies, with enhanced resources?

Response: Effectively, the Department has taken a task force approach to these cases. The cases, which are high profile, are under the direct supervision of the U.S. Attorneys in the districts where they are filed or being investigated and the Assistant Attorney General for the Civil Division. Significant health care fraud initiatives and matters are also monitored by an Associate Deputy Attorney General in my office. The Department has announced that there have been over 150 drug-pricing *qui tam* cases, the majority of which are still under active investigation. I'm informed that both in the districts where the cases have been filed as well as at Main Justice dozens of attorneys have been assigned to these cases. Indeed, the Civil Division has hosted two conferences (and is currently planning a third conference) for its attorneys, Assistant United States Attorneys from around the country, FDA personnel, state representatives and HHS attorneys and investigators to coordinate and move these cases along. In addition, substantial monetary resources have been set aside to establish databases accessible by government personnel working on these cases and for other investigative and litigative functions. To date the results have been impressive – over \$4.2 billion recovered for all federal, state, criminal and civil claims.

Mr. McNulty, I want to again stress that I expect the DoJ to allocate appropriate resources to the enforcement of the FCA. Once you are confirmed, I will be enquiring further about the specific resources that are dedicated to the FCA.

Response: I look forward to working with you.