

# NOMINATION OF JAMES E. JOHNSON

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## HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

JAMES E. JOHNSON, TO BE ASSISTANT SECRETARY OF THE TREASURY  
FOR ENFORCEMENT

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FEBRUARY 28, 1996

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Printed for the use of the Committee on Finance

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# NOMINATION OF JAMES E. JOHNSON, TO BE ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT

WEDNESDAY, FEBRUARY 28, 1996

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 12:55 a.m., in room SD-215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Moynihan, Baucus, Pryor, Rockefeller, Breaux, Conrad, Graham, Moseley-Braun, Chafee, Grassley, Hatch, and Simpson.

## OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. At this time, the committee is indeed pleased to welcome Mr. James E. Johnson, President Clinton's nominee for Assistant Secretary of the Treasury for Enforcement.

Mr. Johnson, if you would come forward, please. First of all, let me welcome you here.

Mr. JOHNSON. Thank you.

The CHAIRMAN. Let me apologize for the long delay. But we are pleased that we are getting to your nomination in an expeditious manner.

Mr. JOHNSON. Thank you.

The CHAIRMAN. First of all, I think you have some family here.

Mr. JOHNSON. Yes, sir, I certainly do.

The CHAIRMAN. Would you care to introduce them?

Mr. JOHNSON. Yes, please. Thank you.

Senator MOYNIHAN. When there is nobody left in the room, that means family. [Laughter.]

Mr. JOHNSON. There will still be quite a few people left. Starting on my left is my mother, Bertie Johnson. Next to her is my sister, Margaret Johnson. Next to my sister is my wife, Sigrid Gabler. Next to my wife is my brother, Derwin Johnson, and I have two cousins, Paula Ward and John Ward.

The CHAIRMAN. Well, it is, indeed, a pleasure to welcome your family. I know it is a very proud day for them as you assume a very, very important position in our government.

Mr. Johnson will be responsible for the day-to-day operation of Treasury's law enforcement bureaus, which include the U.S. Secret

Service, the Bureau of Alcohol, Tobacco & Firearms, the U.S. Customs Service, the Federal Law Enforcement Training Center, and the IRS Criminal Investigative Division.

Mr. Johnson will also have oversight for tariff and trade enforcement at Treasury. As I said, this is an extremely important and demanding position at our Treasury, and Mr. Johnson does, indeed, seem very well-qualified.

He is currently an Assistant U.S. Attorney and Deputy Chief of the Criminal Division for the Southern District of New York. I think I have heard of that. Mr. Johnson has been Assistant U.S. Attorney for 6 years. From November of 1994 through March of 1995, Mr. Johnson was detailed to the White House as the Assistant Director of White House Security Review.

Prior to joining the Justice Department, Mr. Johnson was a litigation associate at Plimpton, and he clerked for the Honorable Robert E. Keaton, the U.S. District Judge, after graduating with honors from Harvard Law School in 1986.

Mr. Johnson, it is, indeed, a pleasure to welcome you here.

Mr. JOHNSON. Thank you, sir.

The CHAIRMAN. The full text of your opening statement will appear in the record, but we would be happy to have any remarks you would care to make.

**STATEMENT OF JAMES E. JOHNSON, NOMINATED TO BE ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT**

Mr. JOHNSON. With the Chair's permission, I would like to make a brief summary statement.

First of all, Mr. Chairman, Senator Moynihan, and members of the committee, I am honored and privileged to appear before you today as you consider my nomination to be the Assistant Secretary of the Treasury for Enforcement.

At the outset, I wish to thank Secretary Rubin for recommending me to the President. I thank President Clinton for my nomination.

On a personal note, I would like to give special recognition to two members of my family, my wife, Sigrid Gabler, and my mother, Bertie Johnson.

It is as a result of their support, and that of my father, Ed Johnson, who is here in spirit, that I sit before you this morning.

Sig has been my partner and my best friend since college. She has seen me through law school and the various stages of my career. She is the extraordinary mother of our equally extraordinary daughter, Abigail, and has done all of that while working on her doctoral thesis at the University of Michigan.

Now, if there is a standard in my family for extraordinary mothers, if there is a standard anywhere, my mother surely established it. Together, she and my father taught my brother, my sister, and me to work hard, cultivate our faith, and serve the common good. My mother taught by precept and by example.

When I started high school, my mother had not yet earned her college degree. She had earned it, however, before I graduated. Before I finished Harvard College, she had earned her Master's degree. Before I graduated law school, she had been awarded an hon-

orary doctorate of music. She is now a doctoral candidate at Drew University.

She achieved all of this while directing youth and adult choirs throughout northern New Jersey, raising three children, and often working 7 days a week. She is an inspiration.

I would like to tell you a bit about my professional background. I have served for the past 6 years as an Assistant U.S. Attorney in the Southern District of New York and, since August of 1993, I have been privileged to serve as a Deputy Chief of the Criminal Division in that office.

I have personally prosecuted, or supervised the prosecution, of criminal cases brought by the Secret Service, the ATF, the Customs Service, and the IRS. I have routinely advised agents from most Federal law enforcement agencies in operations ranging from routine searches to the rescue of a group of kidnap victims.

Finally, as a member of Treasury's White House Security Review, I became quite familiar with the way the Secret Service ensures the security of the White House.

I believe this body of experience will serve me well if I am confirmed as Assistant Secretary of the Treasury for Enforcement.

As has been pointed out, if confirmed I will share responsibility for an oversight of a broad array of Treasury functions. Just a brief listing of the functions of the Treasury bureaus will show the importance of Treasury enforcement.

Treasury enforcement bureaus protect the President and Vice President, they secure our currency, they protect our borders from the flow of illegal drugs, they enforce Federal firearms, explosives, and arson laws, and train well over three-quarters of all Federal law enforcement officers. The scope is tremendous.

More than a year ago I was invited to serve on one of Treasury's review teams, the White House Security Review Team. As Assistant Director of the review, I learned a great deal about how the Secret Service protects the President, but I witnessed even more. I was able to confirm firsthand in Washington what I had come to learn as a prosecutor in New York: Treasury law enforcement officers serve this Nation with tremendous heart and courage. Their everyday acts of courage often go unremarked.

It is the Secret Service agent who makes the commitment to give his or her life to protect the President. It is the ATF agent who agrees to go undercover to help prosecute illegal gun traffickers in our inner cities. It is the Customs agent who tracks suspicious cargo, often for days on end, in the ongoing battle to stop the importation of illegal narcotics.

I would be honored to serve alongside these men and women. I consider it a privilege to have been asked to join in their leadership.

In closing, I am keenly aware of the broad responsibilities of this office. I am committed to maintaining the high standards of oversight practiced at the Department of Treasury. With the support of Secretary Rubin and the guidance of this committee, I believe I will meet that challenge. Thank you.

[The prepared statement of Mr. Johnson appears in the appendix.]

The CHAIRMAN. Well, thank you for a very eloquent statement.

Let me start out with three standard questions that I ask all nominees. Is there anything 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. JOHNSON. No, sir, there is not.

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

Mr. JOHNSON. No, sir.

The CHAIRMAN. 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. JOHNSON. Yes, sir, I agree to do that.

The CHAIRMAN. Senator Moynihan?

#### **OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK**

Senator MOYNIHAN. Thank you, Mr. Chairman. As you can imagine, we are very pleased indeed that the Assistant U.S. Attorney from the southern district of New York should be before us, and I welcome him and congratulate him.

Mr. JOHNSON. Thank you.

Senator MOYNIHAN. I have a statement I would like to place in the record, and it simply goes to one point about which Mr. Johnson has been very, very open. He is the first person in 20 years in the Senate from an administration who has recognized that at least we are trying to do this, which is to say this whole question of gun control.

Once again, we are in a political season and gun control is very much an issue. There are candidates running around waving shotguns in the air. It looked like a rifle to me, but was said to be a shotgun. Anyway, it did not work in Arizona.

The point I have made, on handguns in particular, is that we have a two century supply of handguns in this country, but we have a 3-year supply of handgun ammunition.

Any epidemiologist would say to you, the ammunition is the vector which should stop. Senator Chafee, a Marine Corps veteran, could tell you that when you run out of ammunition it does not much help to have a gun.

The Bureau of Alcohol, Tobacco & Firearms does tax ammunition, and has the power to learn about it and study it. It does not. It has been brain dead, I am sorry to say, for half a century. You could liven it up. You will have so many other things to do, I doubt you will get the opportunity. But if a moment arises in the day when you can do, will you try?

Mr. JOHNSON. Yes, Senator. I certainly will consider your concerns, and I will try.

Senator MOYNIHAN. You will never deal with the problem of handgun violence in the inner cities of the United States until you cut off the supply of handgun ammunition, because the guns are there. You follow the point?

Mr. JOHNSON. Yes, sir; I do.

Senator MOYNIHAN. Thank you very much.

Mr. JOHNSON. Thank you.

Senator MOYNIHAN. Thank you, Mr. Chairman.

[The prepared statement of Senator Moynihan appears in the appendix, page 19.]

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. First of all, I want to say Mr. Johnson certainly has a very, very distinguished curriculum vitae here. Senator Moynihan, you will be pleased, I note that he is a graduate of both Harvard College and Harvard Law School. What House were you in at Harvard?

Mr. JOHNSON. I was in Leverett House.

Senator CHAFEE. Leverett. I had two sons graduate from Harvard, so I am interested in that institution.

The BATF, as you know, has been under considerable fire lately, I think probably justified. I concur in the remarks that Senator Moynihan made. I just do not see any leadership coming from that organization in connection with the proliferation of firearms, and the ammunition approach that Senator Moynihan has long espoused, which I think is a good one.

Perhaps you are not aware, but I have introduced legislation to ban the sale of all handguns in the United States, the import, the manufacture, the sale, the transfer, the gift, everything, of handguns, because I think it is just wreaking such havoc in our society.

I think the approach of Senator Moynihan of dealing with the ammunition is also a good one. But we do not get any assistance, or help, or guidance, or suggestions, or encouragement at all from the BATF, at least since I have been here, and I am in my 20th year.

Senator MOYNIHAN. You have been here 20 years.

Senator CHAFEE. 20 years. Recently, the USTR concluded an agreement with Russia on limiting firearm imports; perhaps you saw that. The USTR, being Mr. Kantor.

Do you think Customs and BATF can implement this agreement and prevent a flood of Russian gun imports into the United States?

Mr. JOHNSON. I believe that, if given the task and the responsibility, the Customs and the ATF can adequately respond to that challenge.

Senator CHAFEE. Well, you are the one we will look to in connection with that. Obviously we will look to your boss, but we will look to you, too.

I do want to say, I have just been handed a note that the NRA, National Rifle Association, has called the ATF agents jack-booted thugs because they think that the BATF has helped gun control too much. So, that is a compliment toward the BATF, I take it, to receive an accolade like that from the NRA.

Senator MOYNIHAN. Let's hear it.

Senator CHAFEE. But I do hope that you will do what you can in connection with this matter. In other words, you have a lot on your platter. You will have higher visibility at the BATF.

You have got Customs and you have got all the items that you ticked off here in your statement, but I hope that you will pay some attention to the BATF and what we might do in connection with the slaughter that is taking place in our Nation from handguns.

Mr. JOHNSON. Yes, sir, I will. I would simply like to say that I would reaffirm my commitment to communicate with this committee and to ensure that the bureaus under my control are responsive to the requests as well.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Johnson, if you are confirmed as Assistant Secretary for Enforcement, and we hope to do that today, or at least start the process—

Senator MOYNIHAN. It is looking good, in case you are wondering. [Laughter.]

Mr. JOHNSON. Thank you.

The CHAIRMAN. One of your responsibilities will be overseeing the Customs Service. I recently received a letter from Senator Domenici and a series of articles that appeared in the Albuquerque Journal newspaper in October of 1995 highlighting a wide range of problems involving the Customs Service along the southwest border, including corruption of Customs agents. It appears that this may not be an isolated incident. Just a few days ago, the Washington Post ran a story regarding allegations of corruption involving Customs agents in San Diego.

If these accounts are true, it would appear that the Customs Service has a very significant problem on its hands, particularly considering the authority we have invested in Customs to stop smuggling.

I will provide you with copies of this material and would ask that you review them and provide this committee, for the record, with a written response as to whether you view corruption as a serious problem in the Customs Service, and if so, what action you intend to take to remedy the situation.

I would appreciate any comments you may care to make at the present time.

[Mr. Johnson's response appears in the appendix, page 23.]

Mr. JOHNSON. In preparation for these hearings and in preparation for hopefully being confirmed for this position, I have met with Commissioner Weiss and I have been impressed by his integrity.

I would look forward to working with him to determine whether or not the problems that have been identified are systemic problems and whether or not there are certain reforms that need to be made. I would welcome the opportunity to respond in greater detail once I have seen these articles.

The CHAIRMAN. Well, we will look forward to your investigation and what it finds. It is obviously an extremely important matter and, if these charges are true, of great importance. So, I would appreciate your undertaking that investigation.

Well, rather than take more time—

Senator MOYNIHAN. Mr. Chairman, could I just ask to put one thing in the record at this point?

The CHAIRMAN. Certainly.

[The item appears in the appendix, page 20.]

Senator MOYNIHAN. The details of the agreement with the Russians on firearms and ammunition, it is interesting, and Senator Chafee would know, that it very specifically addresses the limitations of handguns, limitations of armor-piercing ammunition, and

speaks of the problem of ammunition generally. I do not think we have ever had an international agreement like this. It reflects, I think, some concerns in this committee, which should encourage us.

The CHAIRMAN. Mr. Johnson, we have had 11 members in attendance today, so I would like our committee to go into executive session to take care of some business.

[Whereupon, at 1:00 p.m., the hearing was concluded.]



# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED

### PREPARED STATEMENT OF JAMES E. JOHNSON

Mr. Chairman, Senator Moynihan and members of the Committee: I am honored and privileged to appear before you today as you consider my nomination to be the Assistant Secretary of the Treasury for Enforcement.

At the outset, I wish to thank Secretary Rubin for recommending me to the President. I thank President Clinton for my nomination.

On a personal note, I would like to recognize my family. My wife—Sigrid Gabler—and my mother—Birdie Johnson—are here with me today. It is as a result of their support, and that of my father, Ed Johnson, who is here in spirit, that I sit before you this morning.

Sig has been my partner and best friend since college. She has seen me through law school and the various stages of my career. She is the extraordinary mother of our daughter Abigail and has done all of that while working on her doctoral thesis at the University of Michigan.

If there is a standard in my family for extraordinary mothers, my mother surely established it. Together, she and my father taught my brother, my sister and me to work hard, cultivate our faith and serve the common good. My mother taught both by precept and by example. When I started high school, my mother had not yet earned her college degree. She had earned it, however, before I graduated. Before I finished Harvard College, she had earned her Masters degree. And before I graduated law school, she had been awarded an honorary doctorate of music. She is now a doctoral candidate at Drew University. She achieved all of this while directing youth and adult choirs throughout Northern New Jersey, raising three children and often working seven days a week.

I'd like to tell you a bit about my professional background. For the past six years, I have served as an Assistant United States Attorney in the Southern District of New York. Since August 1993, I have been privileged to serve as a Deputy Chief of the Criminal Division under United States Attorney Mary Jo White. She has underscored the importance of prosecuting cases with both vigor and integrity. I have personally prosecuted or supervised the prosecution of criminal cases brought by the Secret Service, the ATF, the Customs Service and the IRS. I have routinely advised agents from most federal law enforcement agencies during operations ranging from routine searches to the rescue of a group of kidnap victims. I worked with the Secret Service as it developed and implemented security arrangements for the 50th Anniversary Celebration of the United Nations General Assembly. Finally, as a member of Treasury's White House Security Review, I became quite familiar with the way the Secret Service ensures the security of the White House. I believe this body of experience will serve me well if I am confirmed as Assistant Secretary of the Treasury for Enforcement.

If confirmed, I will share responsibility for oversight of a broad array of Treasury Department programs and bureaus involved in civil as well as criminal law enforcement. A description of a limited number of the responsibilities demonstrates the importance of Treasury Enforcement. The Secret Service protects the President and Vice President and secures our currency. The Customs Service protects our borders from the flow of drugs, collects 23 billion dollars in revenue and enforces our international trade laws. The Bureau of Alcohol Tobacco and Firearms enforces federal firearms, explosives, and arson laws and collects nearly 14 billion dollars in revenue. The Federal Law Enforcement Training Center trains fully 78 percent of all federal law enforcement officers serving our country. The Financial Crimes Enforcement Network and the Office of Foreign Assets Control, both Treasury law enforce-

ment organizations, support the fight against money laundering and enforce trade sanctions, respectively. The regulatory components of ATF, Customs and FinCEN provide invaluable service to the country and to regulated industries to ensure compliance with a wide array of laws. Finally, Treasury Enforcement provides policy guidance to the Criminal Investigation Division of the IRS. The scope is tremendous.

Given the range of these duties, each Treasury Enforcement bureau has its own issues which have been and will continue to be addressed. The Department of Treasury, under the leadership of Secretary Rubin and former Under Secretary Noble, has enhanced the oversight of Treasury Enforcement Bureaus. For example, major undercover operations are not undertaken until the investigative plan has been reviewed by a multi-agency panel which includes representatives from the Department of Justice. In response to major incidents, the Treasury Department has undertaken comprehensive investigation of the facts and has identified areas of concern. Treasury has acknowledged problems and it has implemented recommendations for change.

More than a year ago, I was invited to serve on one of Treasury's review teams: the White House Security Review Team. As an Assistant Director of the Review, I learned a great deal about how the Secret Service protects the President. But I witnessed even more. I was able to confirm firsthand in Washington, what I had come to learn as a prosecutor in New York: Treasury law enforcement officers serve this nation with a tremendous amount of heart and courage.

Their every day acts of courage often go unremarked. It is the Secret Service agent who makes the commitment to give his or her life to protect the President. It is the ATF agent who agrees to go undercover to help prosecute illegal gun traffickers in our inner cities. It is the Customs agent who tracks suspicious cargo—often for days on end—in the ongoing battle to stop the importation of illegal narcotics. All of these men and women are prepared for their tasks at the Federal Law Enforcement Training Center.

I would be honored to serve with these men and women. I consider it a privilege to have been asked to join in their leadership.

In closing, I am keenly aware of the broad responsibilities of this Office. I am committed to maintaining the high standards of oversight practiced at the Department of Treasury. With the support of Secretary Rubin and the guidance of this Committee, I believe I will meet that challenge.

#### THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 27, 1995

### PRESIDENT CLINTON NAMES JAMES E. JOHNSON TO BE DEPARTMENT OF TREASURY ASSISTANT SECRETARY FOR ENFORCEMENT

President Clinton today announced his intent to nominate James E. Johnson, of New Jersey, to be the Department of Treasury Assistant Secretary for Enforcement.

Mr. Johnson has been Assistant United States Attorney for the Southern District of New York since March 1990. He also serves as the Deputy Chief of the Criminal Division of the U.S. Attorney's Office in New York City. From November 1994 to March 1995, Mr. Johnson was Assistant Director of the White House Security Review which was conducted for the Secretary of the Treasury. Mr. Johnson was a litigation associate with the law firm of Debevoise & Plimpton in New York City from 1987 to 1990. From 1986 to 1987 he was a law clerk for United States District Judge Robert E. Keeton in Boston, Massachusetts. Mr. Johnson graduated cum laude from Harvard University in 1983 with a B.A. in social studies. He graduated cum laude from Harvard Law School in 1986 where he earned a J.D.

As Assistant Secretary for Enforcement, Mr. Johnson is responsible for the day-to-day operations of the Department of Treasury's law enforcement bureaus which include the United States Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, the United States Customs Service, the Federal Law Enforcement Training Center, and the Internal Revenue Service's Criminal Investigation Division. Mr. Johnson will also have oversight responsibility for the Department of Treasury's tariff and trade enforcement.

**SENATE FINANCE COMMITTEE  
OUTLINE OF INFORMATION REQUESTED BY NOMINEES**

Please provide three copies of your typed responses to Kelly Cordes, Chief Clerk, 219 Dirksen Senate Office Building, Washington, D.C. 20510.

**A. BIOGRAPHICAL:**

1. Name: James Edward Johnson
2. Address: 128 6th Avenue, Apartment 4, Brooklyn,  
New York 11217
3. Date and place of birth: December 29, 1960, Montclair, New  
Jersey
4. Marital status: Wife: Sigrid Carrie Gabler
5. Names and ages of children: Daughter: Abigail Michelle Johnson, Age  
2
6. Education: Harvard Law School, Cambridge,  
Massachusetts, August 1983 through June  
1986, J.D., cum laude.  
  
Harvard College, Cambridge,  
Massachusetts, September 1979 through  
June 1983, B.A., cum laude
7. Employment record: March 1990 to the Present:  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
One St. Andrew's Plaza  
New York, NY 10007  
  
March 1990 through August 1993: Trial  
Attorney (line AUSA)  
  
August 1993 to February 1994: Acting  
Deputy Chief, Criminal Division  
  
February 1994 through present: Deputy  
Chief, Criminal Division  
  
November 1994 through March 1995:  
Assistant Director, White House Security  
Review, United States Department of  
Treasury  
(Detail from US Department of Justice)

November 1987 through February 1990:  
Litigation Associate  
Debevoise & Plimpton  
875 Third Avenue  
New York, New York 10022

August 1986 through August 1987:  
Law Clerk  
Honorable Robert E. Keeton  
United States District Judge  
District of Massachusetts  
306 US Post Office/Courthouse  
Boston, MA 02109

August 1983 through June 1987  
Pre-Law Advisor  
Leverett House  
Harvard College  
Cambridge, MA 02138

May 1986 through July 1986  
Summer Associate  
Bingham Dana & Gould  
150 Federal Street  
Boston, MA 02110

February 1985 through March 1986  
Harvard Legal Aid Bureau  
1511 Massachusetts Avenue  
Cambridge, MA 02138

January 1985 through May 1985  
Research Assistant  
Professor Christopher Edley  
Harvard Law School  
Cambridge, MA 02138

May 1984 to August 1984  
Summer Associate  
McCarter & English  
4 Gateway Center  
100 Mulberry Street  
Newark, NJ 07102

June 1983 to August 1983  
English Teacher  
Higher Achievement Program  
19 I Street NW  
Washington, DC 20001

## 8. Government experience:

March 1990 to the Present:  
 Assistant United States Attorney  
 United States Attorney's Office  
 Southern District of New York  
 One St. Andrew's Plaza  
 New York, NY 10007

March 1990 through August 1993: Trial  
 Attorney  
 August 1993 to February 1994: Acting  
 Deputy Chief, Criminal Division  
 February 1994 through present: Deputy  
 Chief, Criminal Division  
 November 1994 through March 1995:  
 Assistant Director, White House Security  
 Review, United States Department of  
 Treasury  
 (Detail from US Department of Justice)

August 1986 through August 1987:  
 Law Clerk  
 Honorable Robert E. Keeton  
 United States District Judge  
 District of Massachusetts  
 306 US Post Office/Courthouse  
 Boston, MA 02109

## 9. Memberships:

Association of the Bar of the City of New  
 York  
 42 West 44th Street, New York, NY  
 Membership Committee, 1989-90  
 Committee on the Judiciary, July 1994  
 through present

Association of Harvard and Radcliffe  
 African American Alumni

## 10. Political affiliations and activities:

I am a registered Democrat.

## 11. Honors and Awards:

United States Department of Justice,  
 Outstanding Achievement Award

United States Attorneys Office,  
 Exceptional Performance Award

## 12. Published writings:

Johnson, Recent Publication: School Desegregation Plans That Work, 20 Civil Rights-  
 Civil Liberties Law Review 545 (1985).

## 13. Speeches:

- Montclair Kimberley Academy Student Body Fall Gathering, Montclair, NJ. September 1995. I was the keynote speaker for student gathering. A written copy of the speech is not available. I spoke without a prepared text and did not have talking points.
- Sponsors for Educational Opportunity, New York, NY. July 1993, July 1994 and June 20, 1995. I was one of the featured speakers addressing a group of predominantly minority college students interested in pursuing legal careers. Written copies of my speeches are not available. On each occasion, I spoke without a prepared text and did not have talking points.
- St. Mark's United Methodist Church, Montclair, New Jersey. June 1993, June 1994 and June 1995. On each occasion, I presented scholarships to members of the congregation who were graduating from high school. Written copies of these speeches are not available. On each occasion, I spoke without a prepared text and did not have talking points.
- Montclair Kimberley Academy, Cum Laude society induction ceremony. April 9, 1995. I was the featured speaker at the induction of high school seniors into MKA's Honor Society. Written copies of this speech are not available. I spoke without a prepared text and did not have talking points.

## 14. Qualifications:

Since March 1990, I have been an Assistant United States Attorney in the Southern District of New York. From November 1994 through March 1995, I served as an Assistant Director of the White House Security Review. The training and experience I received in both positions have prepared me to be Assistant Secretary of the Treasury for Enforcement. In those two positions I have become familiar with many of the law enforcement issues that typically come before the Office of Enforcement and I have developed direct working relationships with many of the Bureaus that will come under my oversight.

Since August 1993 I have served as Deputy Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York. As Deputy Chief, I am called upon routinely to decide whether cases should go forward, whether particular investigative techniques are appropriate, and how crises, in the field as well as in the Courts, should be handled.

Over the last two years I have developed strong working relationships with the Secret Service and routinely confer with the managers in the New York field office about criminal investigations and protection issues and the training of the agents. During the recent celebration of the United Nations' 50th Anniversary, I spent time in the Secret Service Command center and remained on call 24 hours per day while most of the dignitaries were in New York. My ability to contribute to that effort was enhanced by the four months I spent in the Office of Enforcement as Assistant Director of the White House Security Review Team. That experience gave me an intimate understanding of the Secret Service's protective functions.

The Secret Service is not the only Treasury bureau with which I have had a great deal of experience. As a Deputy of the Criminal Division, I have worked routinely with ATF and Customs agents. I have developed a solid working relationship with the New York office of the ATF and frequently speak with the agents and managers there about unfolding investigations and the training of the agents. I am often called by Customs special agents seeking my approval for certain investigations and have authorized charges in some of the most significant Customs cases brought in the Southern District.

Finally, my experience as a trial attorney -- prosecuting organized crime cases, tax cases, medicare fraud cases, narcotics cases, and violent crimes cases -- gives me a hands-on sensitivity to criminal justice issues that will inform my approach to policy considerations that come before the Office of Enforcement.

C. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

Not applicable. My present employer is the United States Government.

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

No.

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

No.

4. If confirmed, will you serve your full term of office?

I understand that, if confirmed, I would serve at the pleasure of the President of the United States. Subject to the President's continuing approval, I anticipate serving out this term and any future term of President Clinton's.

D. POTENTIAL CONFLICTS OF INTEREST:

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last ten 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.

None.

4. Describe any activity during the past ten years in which you have engaged for the purpose of directly or indirectly influencing or affecting the administration and execution of law or public policy.

Other than the positions routinely taken as an Assistant United States Attorney, I have not engaged in any activity for the purpose of directly or indirectly influencing or affecting the administration and execution of law and public policy.

5. Explain how you will resolve any potential conflict of interest including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

If, in the future, I become aware that a potential for a conflict of interest might arise in connection with the performance of my official duties, I will promptly consult with Treasury ethics counsel.

6. Written opinions should be provided directly to the Committee by the General Counsel of the Agency by which you have been nominated and by the Director, Office of Government Ethics, Office of Personnel Management concerning potential conflicts of interest or any other legal barriers to your serving in this position.

#### E. TESTIFYING BEFORE CONGRESS:

1. Are you willing to appear and testify before any duly constituted committee of the congress on such occasions as you may be reasonably requested to do so?

Yes.

2. Are you willing to provide such information as is requested by such committee?

Yes.

#### F. OTHER:

1. Provide the full details of any civil or criminal proceedings in which you were a defendant or any inquiry or investigation by the Federal, State, or local agency in which you were the subject of the inquiry or investigation?

I was never a defendant in any civil or criminal proceeding. Nor was I ever a target of a civil, criminal or administrative investigation by any Government agency except as follows: I have been the subject of many background checks in connection with my government service. The results of those checks have always been favorable to me.

2. Give the full details of any proceeding, inquiry or investigation in which you were the subject of the proceeding, inquiry or investigation.

See Response F1.

3. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

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

None.

James G. Duran  
Signature

November 25, 1991  
Date

SENATE FINANCE COMMITTEE  
OUTLINE OF INFORMATION REQUESTED BY NOMINEES

SUPPLEMENT

1. Describe the White House Security Review and the Nominee's Role in the Review.

The White House Security Review (the "Review") was commenced at the direction of then-Secretary of the Treasury Lloyd Bentsen in response to two assaults on the White House Complex: the September 12, 1994, crash on the South Lawn of a Cessna piloted by Frank Corder (the "Corder incident"); and the October 29, 1994, shooting at the White House Complex by Francisco Duran (the "Duran incident").<sup>1</sup> The directive to conduct an exhaustive review was adopted by Secretary of the Treasury Robert E. Rubin when he succeeded Secretary Bentsen. The Review was conducted under the direction of Ronald K. Noble, Under Secretary of the Treasury (Enforcement). It consisted of an advisory committee composed of six citizens widely respected for their professional integrity and achievement and a staff, a Review Team from Main Treasury and a Secret Service investigative team. At its conclusion, the Review prepared a classified report of more than 500 pages, with a 260 page Appendix. In the Report, the Review made specific recommendations, including seven that were publicly disclosed, for enhancing security at the White House.

Initially, the scope of the Review was limited to a review of air security issues at the White House. Following the Duran incident, the scope of the Review was expanded. Then-Secretary Bentsen directed the Review to examine: (i) the facts surrounding both the Corder and Duran incidents; (ii) the dangers posed to the White House complex and protectees therein to air or ground assaults; (iii) the adequacy of the procedures used by the Secret Service to address these dangers; (iv) the effectiveness of established mechanisms for communicating to the Secret Service such intelligence concerning possible air and ground assaults as has been received by all relevant federal and state authorities; (v) the feasibility of techniques and measures to enhance the ability of the Secret Service to safeguard the White House Complex; and (vi) the need to keep the White House open and accessible to the American public without jeopardizing valid security concerns. In late December 1994, four additional incidents were reported as possible security breaches at the White House. Although included in the investigation of the Review Team, they were not the main focus of the Review.

<sup>1</sup> The bulk of the description of the White House Security Review and its work is taken from Department of the Treasury, Public Report of the White House Security Review.

As a detailee from the Department of Justice, I served, along with seven other lawyers and a staff of specialists, as part of Main Treasury's Review Team. I was an Assistant Director assigned, along with another member of the Review Team, to investigate ground security issues. My task involved, among other things, the review of procedures and training of Secret Service agents, as well as Uniformed Division Officers, who serve in and around the White House Complex. I also reviewed structural security issues and technological security issues at the White House complex.

2. Identify Political Contributions and activities.

A review of my check registers and cancelled checks dating from December 1985 to the present, reveals two contributions. On or about May 15, 1986, I contributed \$50 to the Mel King for Congress campaign. On or about June 20, 1995, my wife contributed \$15 to the Democratic National Committee. I do not recall making any other contributions. I have not rendered service to any political candidate, party or committee during the last ten years, throughout the bulk of which I have been either a federal prosecutor or a judicial clerk.

  
James E. Johnson

December 2, 1995  
Date

## PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

For a decade and a half now, I have been trying to advance the proposition that an epidemiological approach is needed to address the problem of gun violence in America. I have put it that *guns don't kill people, bullets do*.

The idea is that we have a two-century supply of handguns already in circulation. Those guns last almost indefinitely. The supply of ammunition, however, is limited. We have perhaps a four-year supply. I believe it is fair to say that this view has never really taken hold at the Bureau of Alcohol, Tobacco, and Firearms. I wish this were not the case.

Since 1982, I have proposed some 17 different pieces of legislation in hopes of banning, more heavily taxing, or more strictly licensing the most dangerous varieties of ammunition. In all those 14 years, I have had only two small—although important—successes.

In 1982, the Patrolman's Benevolent Association of New York City asked for my help getting a certain kind of armor-piercing ammunition outlawed. It was called the "Green Hornet," a Teflon-coated round capable of penetrating the kevlar flak-jackets then beginning to be worn by police officers. The police were understandably concerned.

I immediately introduced legislation to ban it. By 1986, we had enacted the first ever statute to ban a class of bullets. It forbade the manufacture and sale of any round made with a solid steel core, which is what gave the Green Hornet its armor-piercing capability.

Then in 1993, it came to my attention that a new Swedish round—which, like most ammunition, had a soft lead core—was capable of penetrating police body armor due to its heavy steel jacket. The "M39B," as it was called, did not fall within the definition of "armor-piercing" in the 1986 statute.

After some considerable effort, I was able to get a provision into the 1994 Crime Bill to update the 1986 ban and outlaw the new Swedish-made rounds.

As Assistant Secretary for Enforcement, you will have to concern yourself with, *inter alia*, the enforcement of Title 18 Section 921(a)(17) of the United States Code, which is the Law Enforcement Officers Protection Act of 1986, as amended.

It won't be easy because the ammunition manufacturers have a way of staying a step ahead of you. For instance, notwithstanding our previous efforts, there are still other armor-piercing rounds available today for legal purchase. I dare not say which bullets they are, but the FBI knows, and so does the BATF. Fortunately, to my knowledge, nobody has yet fired one at a law enforcement officer.

Senator Bradley and I have been working to write yet another bill to ban these bullets based on their performance rather than their physical composition; the Administration also expressed support for such a bill some time ago.

[SUBMITTED BY SENATOR MOYNIHAN]

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D.C.  
20508**

**FOR IMMEDIATE RELEASE  
Sunday, February 11, 1996**

**Contact: 95-16  
Anne Luzzatto  
Dianne Wildman  
Kirsten Powers  
(202) 395-3230**

**USTR KANTOR ANNOUNCES AGREEMENT WITH RUSSIA ON  
FIREARMS AND AMMUNITION EXPORTS TO THE UNITED STATES**

USTR Michael Kantor announced today a new trade agreement with Russia which will prevent a flood of Russian gun imports that the FBI has determined would be attractive to criminals. "This agreement will make our streets safer," said Kantor, "particularly by keeping inexpensive, easily concealable handguns out of our market."

The agreement prohibits the export from Russia of firearms that have not been specifically listed in the agreement. The agreement also allows the U.S. to take unilateral action if the overall level of firearm imports from Russia poses a threat to U.S. domestic security or foreign policy interests.

USTR Kantor said, "This agreement clearly promotes the President's domestic and foreign objectives -- fighting crime in the U.S. and normalizing relations with Russia." The new arrangement will replace the current restrictions on Russian firearms imports under the International Traffic in Arms Regulations (ITAR) developed during the Cold War.

The types of weapons which are permitted under the agreement are collectors' items or rifles that have a purely hunting or sporting purpose. The collectors' items are all more than 50 years old, have been certified as collectors' items by a state or federal museum and are associated with a significant historical event or figure. The agreement prohibits the importation of ammunition that may be able to pierce armor.

AGREEMENT LIMITING EXPORTATION OF RUSSIAN FIREARMS AND AMMUNITION  
TO THE UNITED STATES

FACT SHEET

**Prohibition on All Firearms Attractive to Criminals**

The Agreement does not allow the importation of any firearms that would be attractive to criminals.

**Positive List**

The Agreement restricts imports of firearms only to those on a limited lists. No other firearms may be imported except by mutual agreement of the United States and Russia.

**Handguns**

Allows only the importation of specific Olympic-style target pistols (used in sporting competitions) and certain "curios and relics" (collectors' items). The "curios and relics" are all more than 50 years old, have been certified as collectors' items by a state or federal museum and are associated with a significant historical event or figure.

**Rifles**

Allows only the importation of specific hunting and sporting rifles, including sporting rifles used in Olympic competition.

**Ammunition**

Prohibits the importation of ammunition that may be able to pierce armor. (7.62X25mm caliber)

**Safeguards**

Protects against threats to public safety from a large influx of firearms or ammunition by allowing the United States to take any actions necessary to protect domestic security.

**U.S. Laws on Firearms and Ammunition Continue to Apply**

All U.S. laws and regulations governing the importation of firearms and ammunition continue to apply, including safety requirements and laws banning assault weapons and small handguns from any country.

## Question and Answer for Senator Moynihan

**Question 1:** What is the status of the Administration's efforts to remove these bullets from sale to the public, and what recommendations would you make to the Congress to assist you in this effort?

**Answer:** *Under the Gun Control Act, the importation and manufacture of armor piercing ammunition is generally prohibited, as well as distribution by importers and manufacturers. Licensed firearms dealers who willfully distribute such ammunition are subject to license revocation. However, the possession of armor piercing ammunition is not prohibited.*

*H.R. 2386 "Saving Police Officer's Lives Act of 1995", was introduced by Mr. Schumer of New York. The Administration strongly supports H.R. 2386. This bill would authorize the Secretary of Treasury to promulgate such regulations as the Secretary deems necessary to prohibit the manufacture and importation of armor piercing handgun ammunition which serves no substantial sporting purpose. Specifically, the bill requires the Secretary to conduct a study, in consultation with law enforcement officials, industry members that manufacture ammunition, protective gear research community, and groups selected by the Secretary that represent the sporting use of firearms, into whether the current "composition based" standard on prohibited handgun ammunition should be complemented by a "performance based measure," and to promulgate any regulation relating thereto. This legislation has been endorsed by the law enforcement community.*

**Status:**

*On August 28, 1986, the President signed Public Law 99-408 (100 Stat. 920) which imposed restriction on the manufacture, importation sale of armor piercing ammunition.*

*On December 4, 1986, ATF published Industry Circular 86-15. Industry Circular 86-15 defined the term "armor piercing ammunition", provided a list of armor piercing ammunition, and outlined the provisions of the law including the regulatory provisions establishing recordkeeping requirements for all armor ammunition dispositions and procedures for approval to receive armor piercing ammunition for testing or experimentation. This Industry Circular was disseminated to all Federal Firearms Licensees (FFL), and others concerned.*

*In 1988, ATF published the Summer Issue of the FFL Newsletter. The newsletter reiterated that Industry Circular 86-15. The FFL Newsletter is distributed to all Federal Firearms Licensees. In 1989, the FFL Newsletter contained an article entitled, "Armor Piercing Ammunition - Update". This article informed licensees that .38 Special caliber PMC Ultra Mag ammunition was not armor piercing.*

*On February 2, 1994, ATF issued an open letter to all FFLs advising licensees that effective immediately 7.62 x 39mm steel for ammunition has been reclassified as armor piercing ammunition.*

*As part of ATF's normal inspection program manufacturers of armor piercing ammunition are inspected to ensure compliance with the law and regulations and that unauthorized persons and entities are not acquiring armor piercing ammunition.*

*No license is required for an individual to make ammunition for personal use, or to possess or deal in ammunition. Unlicensed individuals are prohibited from manufacturing armor piercing ammunition for sale or distribution or from using or possessing armor piercing ammunition in a crime of violence or drug trafficking crime as provided in 18 U.S.C. § 929 (a) (1).*

March 5, 1996

The Honorable William V. Roth, Jr.  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

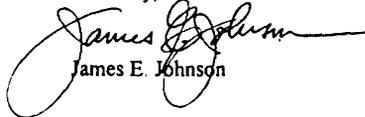
Dear Mr. Chairman:

I write in response to your request that the Treasury Department respond to the letter, dated February 20, 1996, from Senator Pete V. Domenici, in which Senator Domenici raised concerns about Customs' performance along the Southwest Border. Senator Domenici included both a letter from Mr. Mike Gallagher, a reporter for the Albuquerque Journal, and a series of articles about the United States Customs Service that Mr. Gallagher wrote for the Journal in October 1995. This response is, necessarily, a preliminary one. As I learn more in the post, I expect to address these issues in greater detail in the coming months.

Except for the responses to questions 5 and 8, the attached answers are based in large measure on information provided to me by the Customs Service. The Customs Service grouped the concerns raised by Mr. Gallagher into three general areas: (1) The success of Customs in interdicting drugs along the southwest border; (2) Customs' resolve in combatting internal corruption along the southwest border; and (3) the success of Customs' air interdiction program along the southwest border. Following the thematic responses, I have included Customs' answers to the specific questions posed by Mr. Gallagher in his January 10, 1996 letter to Senator Domenici. Finally, I have also enclosed a copy of an editorial which Commissioner George J. Weise wrote in response to Mr. Gallagher's articles.

I trust that this response addresses the concerns you have raised. I look forward to working closely with you and the other members of the Committee on these issues. Please do not hesitate to contact me if you or your staff have further questions or concerns.

Sincerely,



James E. Johnson

Enclosures

## PART I: THE THREE AREAS OF CONCERNS IN MR. GALLAGHER'S ARTICLES

## 1) Customs' Interdiction of Drugs Along The Southwest Border

The Customs Service has made significant progress in interdicting drugs along the Southwest border, principally because of Operation Hard Line. Operation Hard Line just completed its first year of implementation. The results of this fiscal year are summarized in the enclosed report on Hard Line. Customs will extend this program to the entire Southern Tier of the United States. As part of Hard Line, the President's FY97 budget for Customs proposes an additional \$65 million and 657 additional Customs personnel for the Southern Tier, to combat drug smuggling. Below, are Hard Line's accomplishments in its first year of operation. The data set forth below compare the seizures in Fiscal Year 95 with those of the previous fiscal year.

- Total amount of drugs seized (pounds) on Southwest border is up 24 percent.
- The amount of cocaine seized is up 19 percent.
- The amount of heroin seized is up 108 percent.
- The amount of marijuana seized is up 25 percent.
- The number of overall drug seizures in commercial cargo (all drugs) is up by over 100 percent.
- A record number of cocaine seizures in commercial cargo was made. (In fact as late as February 6, 1996, 1,250 pounds of cocaine were seized in a commercial shipment in Nogales, Arizona.)
- The amount of cocaine seized from smugglers circumventing legal ports of entry was up 49 percent from the previous year, and the amount of marijuana seized was up 24 percent.

In addition to this progress on seizures, Hard Line has reduced the incidents of port running by over 40 percent since January of last year.

Hard Line made this progress through strengthening of the ports of entry. We briefly summarize below the key components of Hard line. By reallocating resources, Customs was able to begin implementing Hard Line immediately. Subsequent Congressional appropriations of \$39 million enabled Customs to accelerate the initiative.

Operation Hard Line proceeded along many fronts. Ports of entry were remodeled to include pneumatic and hydraulic bollards, stationary bollards, jersey barriers, and tire-deflating devices - in short, an array of anti-port running technology that would make it much more difficult for any smuggler intent on speeding through a port of entry to get very far. Customs also began to shift existing staff by transferring to the Southwest border 117 Special Agents from other areas of the country. Customs officials at ports of entry increased the pace of inspections by scouring the lines of trucks and cars waiting to cross with the full array of "pre-primary" inspection techniques. These techniques included questioning drivers, using devices known as "busters" to locate secret compartments in trucks, and employing drug-sniffing canines handled by Customs canine officers throughout parked traffic.

Commissioner Weise took another important step last October in toughening the border against smuggling by instituting a policy that affected importers using the Line Release Program. Initiated on the southwest border in 1987, Line Release is a program in which commercial shipments are pre-screened for release but still subject to random full-scale inspection. Importers wishing to use Line Release must have a clean record and provide extensive information about themselves and the goods they are bringing across the border. Commissioner Weise's new policy, the Land Border Carrier Initiative, strengthened the Line Release Program by requiring Line

Release participants to provide information about the trucking companies and the drivers these companies used. The Commissioner's plan imposed a moratorium on all Line Release applications and required that by July 31, 1996, all Line Release participants would have to use Customs-approved trucking firms and drivers if they wanted to remain on Line Release. The approval process essentially requires trucking firms to give background information on themselves and their employees, to create, under the guidance of Customs, anti-smuggling safeguards at their warehouses and lots, and to open these facilities to unannounced inspection by Customs officials.

In the future, Hard Line will build upon its progress through technology and more resources. For example, the Customs prototype truck x-ray at Otay Mesa, California will be joined in 1997 by other, similar but more advanced systems at El Paso and Calexico. The technology is used to examine cars, pickup trucks, commercial carriers, trailers, and even boats. It has proved effective but, as with all new technology, will benefit from further refinement. Since August of 1994, the date when a Customs inspector first used this technology, the cargo x-ray has produced 75 drug seizures. Customs expects to have at least nine cargo x-rays operating across the border.

Operation Hard Line will also create new interdisciplinary squads of inspectors, agents, trade analysts, and intelligence specialists whose chief purpose will be to identify and monitor the actions of drug smuggling organizations. Customs strategists believe that by understanding these organizations, better assessments of smuggling activity will follow, as will nuts-and-bolts information such as which truck is carrying what drug headed for which port of entry. The anticipated result: Customs will more precisely target resources and will better provide timely information to inspectors on the line.

Finally, Customs will continue to significantly increase its staffing along the border in the near future. By the end of the year, a total of 160 additional agents and intelligence experts will have been relocated to the border. President Clinton's proposed Fiscal Year 1997 budget includes upwards of \$65 million and 657 new Customs positions, the majority of which are inspectors, agents, and intelligence analysts. These positions would be filled over the next two years across the entire southern border.

## 2) Customs' Resolve In Combating Internal Corruption Along The Southwest Border

The majority of the acts of corruption in Mr. Gallagher's article pre-dated Commissioner Weise's tenure at Customs. Moreover, independent reviews have shown that there is no systemic corruption within the bureau. Integrity issues have arisen with respect to a very small minority of Customs personnel. As to such personnel, Commissioner Weise and Customs continue to aggressively pursue all allegations of corruption. In addition, Commissioner Weise has entered into an unprecedented arrangement with the Federal Bureau of Investigation pursuant to which he voluntarily turned over to the FBI the investigation of persistent allegations of internal corruption along the California-Mexico border. Although Weise has faith in his Office of Internal Affairs, he referred the investigation to the FBI in order to remove any doubt as to the objectivity of the review. The FBI's investigation is working in unison with a federal grand jury investigation of these allegations in San Diego. (All of these allegations in California were thoroughly investigated on at least two occasions before Mr. Weise became Commissioner.)

As shown by Commissioner Weise's actions, Customs is vigilant and successful in policing its own. Customs Internal Affairs conducted a seven-month investigation which resulted in the arrest and recent conviction of two U.S. Customs Inspectors in El Paso. Each Inspector was convicted of one count of conspiracy to smuggle cocaine as well as three and four counts, respectively, of bribery.

Just a few years ago, an independent panel examined and analyzed corruption allegations against Customs. The panel determined that there was no pervasive level of corruption, only isolated instances; it found that Customs was free of systemic corruption. This finding was supported recently by "Project Solemn Honor."

In February, 1995, a working group consisting of 14 managers and field personnel, was assembled to launch Project Solemn Honor. This working group conducted extensive interviews of over 400 individuals, inclusive of FBI and DEA personnel, as well as U.S. Attorneys, and other enforcement personnel inside and outside of Customs. The findings of those interviews revealed that there was no pervasive corruption on the Southwest border. Corruption did exist, but it was in the form of isolated instances.

Customs has also set in place operational strategies to minimize the risk of corruption. These tactics include frequent and irregular rotation of inspectors, teams of inspectors roving on pre-primary inspections, and frequent and irregular post-primary blitzes to virtually eliminate the likelihood that a single inspector will be able to control the entry of a vehicle.

We address below three other integrity-related issues raised in Mr. Gallagher's article.

**Allegations against Michael Lappe' and alleged retaliation for whistle blowing against Ward Olson.**

On October 21, 1991, a former Special Agent, in a letter to Senator Domenici, levied a series of allegations against Michael Lappe, then Special Agent in Charge, Office of Investigations, El Paso, Texas. That letter was subsequently provided to the Department of the Treasury's Office of Inspector General. (The Treasury Inspector General ("IG") is independent of the Customs Service.) The Office of Inspector General conducted an extensive investigation. In addition to the allegations contained in Olson's letter to Senator Domenici, the investigation also addressed additional issues raised by Olson during the investigation. Prepared after 18 months of interviews, document review and analysis, the report of investigation, provided to the Customs Service in March 1994, did not identify any improper conduct by Lappe'. The report was returned to the Office of Inspector General in April 1994, with the notification that no action was warranted. All of the allegations against Lappe' contained in the October 24, 1995 Albuquerque Journal article were investigated by the Office of the Inspector General.

The complaining agent also filed a complaint of retaliation for whistle blowing with the U.S. Office of Special Counsel. Since the Office of Special Counsel has primary jurisdiction in whistle blower retaliation complaints, the Customs Service took no action. Customs is not aware of any action taken by the Office of Special Counsel relative to Olson's complaint.

**An August 9, 1993, incident in El Paso, Texas involving the removal of a quantity of cocaine from a storage facility utilized by the U.S. Customs Office of Fines, Penalties and Forfeitures, El Paso, Texas.**

This incident was investigated by the Special Agent in Charge, Office of Investigations and the Office of Internal Affairs, El Paso, Texas. The investigation and subsequent Grand Jury has resulted in the indictment of four individuals for conspiracy and possession with the intent to distribute and transport cocaine. The investigation has disclosed no involvement or culpability on the part of Customs employees. The trial of these individuals is set for March 18, 1996.

**An incident in Miami, Florida in which a quantity of cocaine was lost as the result of a "loose" surveillance.**

An investigation into the loss of a 150 kilos of cocaine was conducted by the Office of Internal Affairs and Office of Inspector General, U.S. Department of the Treasury. The final report was issued on June 21, 1995. The United States Attorney concluded that there was not sufficient evidence to file criminal charges against any Customs employees. The report by the Office of Inspector General, addressing the conduct of eight Customs Service employees, is currently being reviewed by the Office of Investigations, Discipline Review Board.

### 3) The Success Of Customs' Air Interdiction Program Along The Border

Customs' Air Interdiction program has shown great progress in preventing drug smugglers from using aircraft to cross the border. The Air program has forced smugglers to look more often to the ground for their smuggling routes. As proof, seizures by Customs and other agencies increased on the ground in the last fiscal year. The total amount of Customs' seizures of all drugs along the border increased by 24%. Between the ports, Customs and Border Patrol seizures of cocaine increased by 49%.

On the Air Program we address three issues raised by Mr. Gallagher.

#### 1) AEROSTAT EFFECTIVENESS:

Customs recognizes that the aerostat system, like all other radar systems, is not without weaknesses. When one compares the aerostats to the available alternatives, however, it becomes readily apparent that the aerostats are the most cost-efficient platforms.

In FY 1995, the aerostat radars cost \$630 per hour to operate. They operated 53,984 hours at a total cost of \$34 million. Customs would need almost 45 P-3 AEWs to provide this same level of radar coverage. At a cost of \$3,205 per flight hour, P-3 AEW coverage would cost over \$173 million -- 5 times the cost of the aerostats.

The recommended aerostat replacement, Relocatable-Over-the-Horizon-Radar (ROTHR), by its very design and operational limitations is not as capable of providing continuous full area coverage with the precision tracking capabilities required for intercept and interdiction efforts.

#### 2) VALIDITY OF AIR THREAT INDEX:

The Air Threat Index used by Customs to assess trends in the level of air smuggling activity across U.S. borders was developed by Stanford Research Institute in 1980. Since that time, the index has been fairly consistent with the observations of field and intelligence personnel. In recent years, however (since 1994), the index has shown a deviation with common field perception. In response to this deviation, Customs reevaluated the original Air Threat Index and has made some modifications to enhance its accuracy. Data for this new index is in the process of being collected. Plans are to use 1990 as the baseline for this new index. It is still the general consensus of counter-drug operational and intelligence specialists that general aviation smuggling activity across U.S. borders remains at comparatively low levels.

#### 3) IMPACT OF AIR PROGRAM BUDGET CUTS:

We have not noticed any appreciable cross-border aviation intrusions into the United States as a result of reductions in Customs Air Program budget. Although we have cut back on our aircraft numbers and flying hours, and have reduced the hours that our branches are on stand-by, we have been able to maintain the required alert along our U.S. borders.

As evidenced by the situation on the Southwest border, where the aerostat system is intact and remains in force, radar detected (or otherwise reported) cross-border intrusions by smuggling aircraft are low. The majority of suspect targets land just south of the U.S./Mexico border and utilize other means to bring the contraband across the border.

### PART II: THE ANSWERS TO MR. GALLAGHER'S QUESTIONS

1. **SUGGESTION:** The General Accounting Office has suggested several times that Congress look at combining Customs and Immigration functions at the ports of entry. Agents suggested that Congress take this suggestion seriously. It would help the agency responsible for the movement of cargo and people at the ports of entry establish priorities and reduce duplication of efforts and management functions. The smaller investigations branch of Customs, approximately 3,000 agents, could be assigned to a special branch of either Treasury or Justice to investigate violations of Customs laws.

**RESPONSE:** Over the years there have been several studies recommending some form of merger of the federal inspection agencies at our land border ports of entry. Since the last significant GAO report, entitled CUSTOMS SERVICE AND INS: Dual Management Structure for Border Inspections Should Be Ended, there have been 3 major initiatives undertaken to improve border management and the processes at the border. These initiatives are:

- ▶ The five recommendations from an OMB sponsored multi-agency work group, consisting of coordinated scheduling of shared duties; coordinated special operations at the ports; establishment of Port Quality Improvement Committees; cross- designation refresher training; and implementation of a cross-designation performance element.
- ▶ National Performance Review (NPR) Report; A report with implementation plan to test 91 separate border inspection process improvements developed by the federal inspection services under the auspices of the NPR. Work groups at 10 locations began development in February 1996.
- ▶ The Unified Port Pilot Project as outlined in the 1996 Treasury, Postal Service, and General Government Appropriations Bill. The Commissioner of Customs has designated two port directors to manage all federal agencies at two ports of entry, one on the northern border and one on the southern border. This test is slated to begin on May 1, 1996.

These three initiatives have been separately or concurrently proceeding for approximately three years. The improvement of cooperation and coordination between Customs and INS has been significant at the port level. Port Quality Improvement Committees have been the key to addressing local issues, processing improvements and outreach activities. Joint scheduling has become more efficient. Joint operations are coordinated. Cross designated inspectors are better trained. The NPR initiatives will be studied in the coming months and those that show promise will be pursued by all the agencies working together.

**2. SUGGESTION: Turn over all Internal Affairs functions to the Department of Justice. Use random polygraph examinations, financial background checks and transfers to ferret out corruption among inspectors and port personnel.**

**RESPONSE:** We are confident that the vast majority of Customs employees are honest, trustworthy, self-directed and creative, but acknowledge that Customs is not 100 % corruption-free. The suggestion, however, that its internal investigations should be transferred to the Department of Justice is highly impractical and would seriously undermine the Government's ability to investigate internal abuse and corruption.

Customs Internal Affairs follows up aggressively with respect to any employees who do not meet the bureau's standards of professionalism and integrity. The Office of Internal Affairs is staffed with dedicated, technically experienced investigators primarily recruited from the ranks of our Office of Investigations. The Office of Internal Affairs has strengthened internal safeguards, improved investigative methods, and enhanced use of a state-of-the-art computerized case management system. Additionally, the office has incorporated a number of checks and balances to assure its independence. Every allegation of misconduct, no matter how minor, is recorded and logged in our case management system. The logs are reviewed by first and second line field supervisors, and again by the headquarters staff, to assure that any legitimate allegation of misconduct is thoroughly investigated.

All formal investigations require the approval of first and second line field supervisors and are reviewed by a committee at the headquarters level to guarantee the thorough and objective investigation of any allegation of corruption. The final Reports of Investigation are again reviewed at the field and headquarters level to assure objectivity and independence.

In addition, pursuant to Treasury Directive Number 40-01, dated December 17, 1986, and Treasury Order Number 114-01, dated May 16, 1989, the Inspector General, U. S. Department of the Treasury, has oversight responsibility relating to the operations of the Customs Service Office of Internal Affairs. Any evidence of a lack of independence or objectivity on the part of our Office of Internal Affairs would be investigated by the Department of the Treasury.

With respect to the suggestion to use random polygraph examinations, financial background checks and transfers to ferret out corruption, the Customs Service, Office of Internal Affairs, has used, within the limits of the law, polygraph examinations and financial background checks as an investigative tool for a number of years. In addition, all Customs employees are subject to thorough background and financial checks prior to being employed, as well as thorough periodic investigations during their careers.

We do not condemn an entire work force just because of a few corrupt individuals. In fact, that is just one more reason why an agency needs an in-house internal affairs capability. The internal affairs function seeks out those corrupt individuals while respecting the professionalism and integrity of the overwhelming majority of Customs workers.

**3. SUGGESTION: Make it a federal crime for any federal law enforcement agent to lie to a Member of Congress.**

**RESPONSE:** Current federal law provides criminal penalties for those, including federal employees, who lie to or otherwise commit perjury against Congress. Applicable law includes 2 U.S.C. 192 (punishing, by imprisonment or fine, a witness's refusal to testify or produce papers upon having been summoned by Congress), 2 U.S.C. 194 (providing that the President of the Senate or the Speaker of the House shall certify the fact of a witness's failure to testify or produce papers as required in § 192, to the appropriate U.S. Attorney, who shall bring the matter before the grand jury), 18 U.S.C. 1505 (obstruction of proceedings before departments, agencies, and committees), and 18 U.S.C. 1621 (perjury generally). We also understand that there is current legislation that would render 18 U.S.C. 1001 (false statements generally) applicable to those who make false statements to Congress.

**4. SUGGESTION: Require Customs to undergo periodic (yearly) assessments by a congressionally funded panel of experts which could take sworn testimony from agents and Customs supervisors, review all law enforcement documents and investigations, and issue reports and appraisals on what type of job Customs and other federal law enforcement agencies are doing.**

**RESPONSE:** Congress currently has the oversight authority to assess and investigate Customs and all other federal law enforcement agencies on the job they are doing. Congress can take sworn testimony from agents and Customs supervisors, review all law enforcement documents and investigations, and issue reports and appraisals. Customs and Treasury welcome this oversight. This month alone, Customs officials are scheduled to discuss the bureau's operations before at least three Congressional Committees. The General Accounting Office also has the authority to investigate Customs at Congress' request.

**5. SUGGESTION: Agents suggested linking foreign aid and trade arrangements with narcotics source countries and transit countries with efforts to reduce narcotics smuggling and extradition treaties.**

**RESPONSE:** The Foreign Assistance Act of 1961, as amended, provides that the President will report to Congress as to whether certain nations are cooperating with bilateral and international drug enforcement and anti-money laundering efforts.

**6. SUGGESTION: Legislation is needed to protect agents who report wrongdoing to the Office of Inspector General ("OIG"). Currently if an agent goes to OIG with information about wrongdoing by a higher up, OIG will often give the agent's name to officials in Customs. This starts a process of retaliation that will force the agent to leave the agency or recant his or her statement.**

**RESPONSE:** Customs does not retaliate against whistle blowers. Indeed, as set forth above, Customs actively pursues allegations made by whistle blowers. As to current legislation, the Whistle Blower Protection Act of 1989 affords specific rights and remedies to anyone subjected to retaliation after reporting wrongdoing to the Office of the Inspector General.<sup>1</sup> Among other things, the Whistle Blower Protection Act protects employees from retaliation for disclosing to the Office of the Inspector General

... a violation of any law, rule, or regulation, or  
 (ii) mismanagement, a gross waste of funds, an abuse of  
 authority, or a substantial and specific danger to  
 public health or safety. . . .

5 U.S.C. 2302(b)(8)(I). Violations of this law can be prosecuted by the Office of Special Counsel. Additionally, the Office of Inspector General is authorized to conduct investigations in response to employee complaints of retaliation. See 5 U.S.C. Appx IG Act §§ 6, 7.

**7. SUGGESTION: OIG auditors and agents should have legal authority to bring administrative action against Customs agents and supervisors who interfere with OIG investigations. They should not have to rely on the agency to take the administrative action.**

**RESPONSE:** The Inspector General has such authority. The Inspector General Act of 1978 provides that:

It shall be the duty and responsibility of each Inspector General ...  
 (1) to provide policy direction for and to conduct  
 ... investigations relating to the programs and  
 operations of such establishment

5 U.S.C. Appx IG Act § 4(a)(1).

In section 4(a)(5) of the Inspector General Act, the Inspector General is required "to keep the head of the establishment and Congress fully and currently informed concerning ... serious problems ... [and] to recommend corrective action ...." Moreover, the Treasury Directive entitled "Responsibilities of and to the Inspector General" (TD 40-01) provides that "... the action official in receipt of the OIG Report of Investigation must then report to the OIG on the action taken." TD 40-01 Part II, section 1.g. Finally, this Directive also provides recourse for the Inspector General disappointed with the action taken by the acting official:

d. The IG shall review the action officials' response to IG Reports to determine whether corrective actions taken are generally appropriate to the findings of those Reports. If the IG determines that any particular action is inappropriate, the IG may consult with the office or bureau head to provide any critical comments, state future expectations, and hold bureau officials responsible for future disciplinary action.

TD 40-01 Part II, section 3.d.

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The Inspector General Act specifically provides with regard to the identification of the individual filing a complaint that:

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation. See 5 U.S.C. Appx IG Act § 7.

8. **SUGGESTION:** Inspector Generals should have their performance appraisals done by an independent board of examiners and not the cabinet secretaries for the agencies they are supposed to police.

**RESPONSE:** From my present position and perspective, I can not speak to the precise suggestion offered. I, too, favor objective reviews of allegations of waste, fraud, and abuse; if confirmed, I would work diligently to promote such a goal.

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## Op-Ed Page

# Customs Takes Hard Line Against Drug Smugglers

By GEORGE J. WEISS  
U.S. Customs Commissioner

Contrary to the Journal's recent series disparaging the Customs Service's efforts against drug smuggling, the Southwestern border has not become a thoroughfare where smugglers can effortlessly move back and forth. Had your reporter made an effort to speak with me or others familiar with the work of the Customs Service, he would have seen a far different picture than the patchwork he created, relying on unsubstantiated and anonymous charges, stale rumors and even staler news accounts. He would have seen a Customs Service that is fighting back and winning. And he would have viewed Customs' fight against drugs much more realistically — namely, as a never-ending but deadly game of strategy and counterstrategy.

Do problems exist on the border? Of course they do. Will they be solved overnight? Short of establishing a police state and sealing the border, absolutely not. Free societies do not tolerate the Gestapo or the Berlin wall.

There is no disputing that 60 to 70 percent of the cocaine which is smuggled into the United States crosses the 2,000-mile Southwest border. This is a situation which took years to develop and will likely take years to successfully combat. The Journal cor-

rectly points out that smugglers had become so brazen as to simply speed through ports of entry in drug-laden automobiles. In 1994 alone, there were 827 such incidents of port running.

Nine months ago, I announced a plan to harden our ports of entry to make port running much more difficult. I am proud to report that this plan, known as Operation Hard Line, has reduced port running by 35 percent in just nine months.

Customs continues to seize more drugs than any other law enforcement agency in the nation. For instance, since the inception of Operation Hard Line, Customs drug seizures for the Southwest border are up across the board. Seizures of cocaine have increased by 15 percent, heroin by 67 percent and marijuana by 13 percent.

Customs is continuing to pump resources into Southwest border ports. Since 1988, we've increased the number of inspectors at the border by 50 percent. Through Hard Line we are assigning more than 100 experienced special agents to the border to conduct narcotics investigations.

Truck-size X-ray systems capable of scanning a 45-foot container in just minutes will be installed. The first is already in place near San Diego. The next will be installed at El Paso shortly. We install these systems with the expectation that Hard Line will force the smugglers to depend

more on trucks to carry drugs over the border than they have in the past.

We may not destroy the drug lords but we can seriously disrupt them. Operation Hard Line is a long-term campaign that will prove to be every bit as flexible and adaptable as the other things. We're committed to hitting them hard and often where it hurts -- in their profits.

Hard Line has earned the firm financial backing of Congress. For the fiscal years 1995 and 1996, Congress has agreed to provide Hard Line with \$38 million. Over the years, Congress has frequently and thoroughly investigated Customs from every conceivable angle. Nobody knows us better. It seems to me that the proof of Customs' reputation is in this funding. If we are doing such a bad job, you can bet that Congress would be reluctant to send dollars our way, especially in this era of spending cuts and budget balancing.

Customs air programs continue to produce results. Smuggling by private and commercial air was the method of choice in the Caribbean, Southeastern and Southwestern United States in the '70s and '80s. But our air program so successfully thwarted airborne smuggling that the traffickers now move mostly on the ground. Sometimes, they become so desperate, they move under it. We have uncovered three trans-border tunnels over the past four years, the

most recent being one our investigators found in Arizona. Obviously, if Customs border defenses were as porous as your story claims, smugglers wouldn't be going to the expense and effort of digging under us.

As the Journal points out, in fiscal year 1995, Customs employees have been tempted by the lure of large payoffs from drug lords. Eight Customs employees on the Southwest border were indicted and arrested as a result of Customs Internal Affairs investigations. Needless to say, these individuals are no longer Customs officers.

Earlier this year, I made the unprecedented move of requesting an investigation by the FBI into the lingering allegations of corruption against inspectors and managers in San Diego. A grand jury has heard testimony in these matters. I made this move not because I lacked confidence in my Office of Internal Affairs, but because I will go to any length to ferret out corruption. I also realized that conspiracy theorists and "doubting Thomases" would always see a whitewash from any internal investigation by Customs.

I am determined to resolve these allegations, which have already been previously investigated by federal prosecutors yet did not result in any indictments.

Customs prides itself on creating and maintaining an honest work force. However, in an agency with 19,000 full- and part-

time employees, we are not naive enough to believe that none will fall prey to temptation.

It is sad that your failure to present a fair and comprehensive study of the Customs Service will impact 99.9 percent of the men and women of the Customs Service, the 99.9 percent honest, hard-working, dedicated employees, whose integrity will be smeared by your work.

If there were startling revelations or hard facts presented that would help me build a better Customs Service, I would applaud your work. But I did not see anything new or novel in this series, except the failure to extend to me the courtesy of asking for my perspective as the head of the agency you are maligning.

Editor's note: Journal Investigative Reporter Mike Gallagher did request an interview with Customs Commissioner George J. Weise. Judy Turner of the Customs public affairs office said interviewing Weise was unnecessary and referred Gallagher to Customs El Paso special agent in charge George McNameey, who was quoted in the series. The Journal also filed lengthy Freedom of Information Act requests with Weise's office in January and February 1994. Customs has not released any information pursuant to those requests.

## Questions and Answers for Senator Hatch

**Question 1:** Tell this Committee how you intend to strengthen the agency's commitment to drug enforcement. And give us your forecast of a specific level of improvement that will occur from the increase in resources that you will seek from Congress.

**Answer:** *Customs longstanding commitment to drug interdiction is most recently reflected in Operation Hard Line, the Southwest border anti-smuggling program initiated by Commissioner George Weise. Hard line involved significant technical enhancements to the ports of entry and a significant shift of resources to the Southwest border to assist in the interdiction effort. I have enclosed a copy of Customs first year report of Operation Hard Line and I have summarized some of Customs conclusions below\* The percentages compare Customs seizures in FY 95 with those of FY 94.*

*The total amount of drugs seized on the Southwest Border is up 24 percent.*

*The amount of cocaine seized is up 19 percent.*

*The amount of heroin seized is up 108 percent.*

*The amount of marijuana seized is up 25 percent.*

*Customs more than doubled the previous year's total of overall drug seizures in commercial cargo (all drugs).*

*Seizures from cocaine smugglers circumventing legal ports of entry was up 49 percent.*

*Seizures from marijuana smugglers circumventing legal points of entry increased 24 percent.*

*I intend to help Customs build on this success. I have been informed that, by the end of this fiscal year, a total of 160 additional agents and intelligence experts will have been relocated to the border as a result of Operation Hard Line. I expect that Customs will extend the Hard Line program to the entire Southern tier of the United States. To respond to the threat in the Caribbean area. Customs has launched Operation Gateway to advance a comprehensive and unified securing of Puerto Rico, the U.S. Virgin Islands, and their surrounding waters and airspace from narcotics smugglers.*

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\*This document was made a part of the official files of the Committee.

## Questions and Answers for Senator Hatch

**Question 2:** Also, can you undertake greater drug enforcement actions without risk to Customs trade mandate?

**Answer:** *I believe that greater drug enforcement efforts are consistent with Customs role in enforcing trade laws and in facilitating legitimate trade. Effective enforcement, which involves better targeting of likely drug smugglers, can result in a decrease in the burden on those who have a well- established record of willingness to comply voluntarily with the law. The best system is only as effective as those operating it.*

*As I join in Treasury's leadership in this area, I will bear in mind the concerns your question raises.*

**Question 3:** Finally, in your judgment, does Customs need to have a "law enforcement" deputy, or assistant commissioner?

**Answer:** *I note that Customs has a Deputy Commissioner and Assistant Commissioner for Enforcement within its management structure. I consider these two top-level management positions sufficient. I understand that Customs recently restructured its management and those changes have already had salutary benefits. Of course, I would welcome any input or guidance that you or other members of the Committee might have as we pursue this task and all other related to Treasury's enforcement mission.*