

White Collar Update: The Department of Justice Under President Obama and Attorney General Holder: Priorities and Expectations

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Priorities within the United States Department of Justice are dictated in many ways by national and international events. After 9/11, the Justice Department shifted a great deal of resources and attention toward the fight against terrorism and protecting national security. Now that we are in the midst of a global economic crisis, we are likely to witness a shift in resources toward combating fraud and white collar crime, a greater focus on antitrust and consumer protection issues, and an increase in funds directed at state and local law enforcement initiatives.

Because Justice Department investigations and enforcement actions often take years to unfold, the Justice Department's real priorities will only reveal themselves over time. Until then, this article offers an assessment of the Justice Department's likely priorities under President Obama and Attorney General Holder.

During his first three months in office, President Obama and his administration have focused most of their time, energy, and political capital on the economy. Given the enormity of the global economic crisis we now face, it is hard to blame them.

However, with so much attention focused on the economy, we have heard relatively little about the priorities of the United States Department of Justice under newly confirmed Attorney General Eric Holder. The Justice Department is a complex agency consisting of 40 separate components, each with a unique mission and function. For example, the 93 United States Attorneys are appointed by the president to serve as the federal government's principal litigators in their respective jurisdictions. They enforce both criminal and civil laws, including civil rights, tax, antitrust, environmental, and civil justice statutes.¹ The Justice Department's major investigative agencies—the FBI, Drug Enforcement Agency, and Bureau of Alcohol, Tobacco and Firearms—work to prevent and deter crime and arrest criminal suspects.² Other programs under the Justice Department's umbrella provide law enforcement assistance to state, local, and tribal governments.³

Without a track record of enforcement actions by which to assess this Justice Department, much of what we can glean about its priorities is based on public statements then-Senator Obama made during the

campaign, executive orders, and other statements President Obama has issued since the election, the Department's 2010 budget request, and the backgrounds, and public statements of attorneys who have been appointed to key positions within the Department, including Attorney General Holder himself.

Obviously, much more will be known about the Justice Department's true priorities as it begins to flex its prosecutorial muscles. Until then, this article offers an assessment of its likely priorities, beginning with an assessment of certain policy positions that have already been rolled out.

Counter-terrorism and National Security Remain the Top Priority: Fundamental Policy Changes Are Underway, But Broad Assertions of State Secrets Continue

Following the terrorist attacks of September 11, 2001, the Justice Department's primary mission changed almost immediately from domestic law enforcement to promoting national security and defending against future terrorist attacks.⁴ Although that mission will remain the Justice Department's top priority for years to come, the pendulum is likely to swing back to its more traditional domestic priorities under President Obama.

In his top-line budget proposal released in February 2009, President Obama requested \$26.5 billion for the Justice Department in fiscal year 2010—a 3.5 percent increase over its fiscal year 2009 allocation.⁵ The administration's budget proposal would allocate \$8 billion for the FBI, including \$425 million in enhancements, and \$88 million for the Justice Department's National Security Division. These funds would be dedicated to protecting against and disrupting terrorist activity, counterintelligence, cyber security, and other national security threats.

A. Executive Orders Put An End to Controversial Policies On Guantanamo Bay Detention Facility and the Harsh Interrogation of Terrorist Suspects

On just his second full day in office, President Obama signed three executive orders that change course on some of the most fundamental, and controversial, Bush administration policies regarding the detention, interrogation, and prosecution of terrorist suspects, both at home and abroad. These executive orders reflect the president's stated goal of continuing "to prosecute the ongoing struggle against violence and terrorism . . . in a manner that is consistent with our values and our ideals."⁶

In his first executive order, President Obama made good on a campaign promise to close the Guantanamo Bay detention facility. The facility will be closed within the year (by January 22, 2010), and during that time, the status of each individual detainee will be reviewed by a committee consisting of Attorney General Holder, the Director of National Intelligence, the Chairman of the Joint Chiefs of Staff, and the Secretaries of Defense, State, and Homeland Security.⁷ This committee will determine whether individual detainees should be prosecuted, relocated to another detention facility, or given their outright release.

Decisions regarding the prosecution, relocation, or release of Guantanamo detainees has already proven to be a controversial issue. Just days before President Obama ordered Guantanamo to be closed, for example, Pentagon officials publicly announced that a number of previously released detainees have already returned or are suspected to have returned to terrorism.⁸ The relocation and/or release of the remaining detainees will inevitably require the cooperation of other countries willing to accept those who cannot return to their native countries for fear of persecution or torture at the hands of their native governments.

In his second executive order, President Obama established a taskforce to recommend new policies for "the detention, trial, transfer, release, or other disposition" of individuals apprehended during future counterterrorism operations.⁹ The taskforce is expected to report back to the president in July, and its recommendations will likely form the basis of new policies and procedures for dealing with terrorist suspects at home and abroad.

President Obama's third executive order prohibits the harsh interrogation and torture of terrorist suspects in the custody of the United States, and it orders the closure of overseas CIA detention facilities that have been linked with the government's controversial extraordinary rendition program.¹⁰ This order also sets up another taskforce to review and recommend new policies for detainee interrogation and transfers.

Human rights activists and Bush administration critics have welcomed these policy changes. They also have applauded the Justice Department's public renunciation¹¹ and disclosure¹² of nine legal memoranda that were authored in the wake of 9/11, which had been relied upon by Bush administration officials to justify extraordinary rendition, interrogation of terrorist suspects, warrantless wiretapping of domestic phone lines, and other controversial policies invoked in the name of national security.

B. Justice Department Continues to Assert State Secrets Privilege In Extraordinary Rendition and Warrantless Eavesdropping Cases

In stark contrast to their reaction to President Obama's first three executive orders, human rights activists and Bush administration critics have voiced outrage at the Justice Department's continuing assertion of the state secrets privilege in national security related litigation. They argue that President Obama's position is at odds with his continuing call for more transparency at all levels of government.

In Mohammed et al. v. Jeppesen Dataplan, Inc., five plaintiffs claim that they are victims of the CIA's extraordinary rendition program and seek damages from Jeppesen, a Boeing subsidiary, claiming that it operated flights to overseas CIA detention facilities (the same facilities President Obama ordered to be closed) where they were tortured.¹³ At trial, Justice Department attorneys argued that the plaintiffs' case could not be tried without jeopardizing national security. The trial court agreed, and the case was dismissed (prior to President Obama taking office) based on the state secrets privilege.

On February 9, 2009, the Ninth Circuit Court of Appeals heard oral argument in the Jeppesen case. Notwithstanding the change in administration, the Justice Department did not change its position on the state secrets doctrine, and it continued to argue that litigation on the extraordinary rendition program could not be tried without jeopardizing national security.¹⁴ The Ninth Circuit's opinion in this case could be a landmark in state secrets jurisprudence.

In an apparent effort to quell public criticism of the Justice Department's continuing assertion of the state secrets privilege in Jeppesen, Attorney General Holder directed Justice Department officials to review all pending litigation in which the government had invoked the state secrets privilege.¹⁵ It is no coincidence that the directive was issued on the date of the oral argument in Jeppesen. The result of that review remains unclear—especially in light of the Justice Department's assertion of the privilege just a few weeks later in another high profile challenge to one of the government's more controversial post-9/11 policies.

In *Al-Haramain vs. Bush* (now *Al-Haramain vs. Obama*), the Oregon chapter of the Al-Haramain Islamic Foundation claims that it was shut down in 2004 based on evidence gathered through warrantless wiretaps that linked the organization to al-Qaeda. Al-Haramain also claims that its allegations are supported by documents that were inadvertently disclosed by the government in discovery, which have since been returned to the government. The Justice Department has repeatedly moved to dismiss Al-Haramain's action based on the state secrets privilege. As in Jeppesen, they argue that allowing the case to proceed would jeopardize national security.

On January 5, 2009, the district court denied the government's third motion to dismiss and established a process for sharing information between the parties that it believed would protect classified information.¹⁶ Shortly after the decision was issued, however, the government filed an interlocutory appeal and asked for discovery (and the required disclosure of information) to be stayed pending appeal.

On February 27, 2009, the Ninth Circuit Court of Appeals denied the government's appeal and ordered litigation to proceed according to the district court's prior order.¹⁷ Just hours after the Ninth Circuit issued its decision, however, government attorneys filed another brief in the district court that seemingly ignores the previous orders of that court and the Ninth Circuit. In its brief, the government argues that it should not have to disclose any sensitive information to Al-Haramain's attorneys until the trial court performs an *in camera* review of the purported state secrets and rules on the government's assertion of privilege.¹⁸ The government also argues that it should be permitted to appeal any adverse decision on the state secrets privilege before having to disclose any information in dispute.¹⁹

These developments strongly suggest that additional appeals will occur before the Justice Department re-discloses any purported state secrets to Al-Haramain's attorneys. It also suggests that President Obama and Attorney General Holder have no immediate intention of relinquishing this argument and a broad



assertion of executive power concerning state secrets.

Combating Financial Fraud and Abuse

The federal government has pumped hundreds of billions of dollars into the economy in recent weeks in an effort to stem the ongoing crisis. Given the unprecedented investment of taxpayer money into the system, as well as the government's failure to effectively regulate financial markets as the perceived cause of the crisis, officials at all levels of government will be expected to protect this investment.

A. More Resources for Fraud and White Collar Enforcement

At the federal level, this task will fall largely at the feet of the Justice Department, which will undoubtedly increase its white collar crime enforcement activity in connection with financial fraud and abuse. Politically, this would likely have a dual effect of raising revenue (through the significant fines, penalties, and civil settlements that often result from such actions) and restoring some investor confidence in the financial and regulatory system.

Statistics show that the overall number of corporate fraud and white collar enforcement actions declined significantly under the Bush administration.²⁰ Critics of the administration often attribute that decline to a shift in resources away from financial and white collar enforcement to areas that gained heightened attention after 9/11, including counterterrorism, immigration, and border patrol enforcement.²¹

President Obama and other elected officials are already looking for ways to reverse these trends. For example, the president's 2010 budget request for the Justice Department identifies financial fraud enforcement as the second most important priority, and it allocates funding for additional FBI agents, prosecutors, civil litigators, and bankruptcy attorneys "to investigate mortgage fraud and corporate crime and . . . protect investors, the integrity of the market, and the federal government's investment of resources in the nation's financial recovery."²²

Similarly, Senators Charles Schumer (D-New York) and Richard Shelby (R-Alabama) have introduced a bill that would add \$110 million to the Justice Department, SEC, and FBI budgets to increase financial fraud enforcement. In support of their bill, the senators have explained that 2,400 FBI agents were transferred from various divisions to counter-terrorism squads after 9/11 and have not been replaced.²³ As a result, the FBI has 625 fewer white collar enforcement agents compared to pre-9/11.²⁴ The senators' bill would provide funds for 500 new white collar FBI agents, 100 new SEC enforcement officials, and 50 new assistant U.S. attorneys.²⁵

President Obama's appointment of Attorney General Holder is another sign of the administration's commitment to greater financial and white collar enforcement.²⁶ Mr. Holder spent much of the last 25 years in government service, first as a corruption prosecutor in the Justice Department, then as a judge, and



finally as the second-ranking official in the Justice Department under President Clinton. For the last eight years, Mr. Holder worked as white collar defense attorney in the Washington, DC office of Covington & Burling. President Obama's appointment of Mr. Holder, a person with significant experience investigating, prosecuting, and defending white collar and corruption cases in both public and private practice, is likely connected in part to Mr. Holder's broad white collar experience.

It will be interesting to see how Attorney General Holder's private practice experience affects Justice Department policy under his watch. The Justice Department's amnesty program is one area where change may be forthcoming.

Mr. Holder recently represented Chiquita International Brands in a relatively high-profile enforcement action under the Foreign Corrupt Practices Act (FCPA), which prohibits domestic corporations from bribing foreign officials. In that case, Chiquita executives self-reported to Justice Department officials that the company had made "protection money" payments to a Colombian paramilitary group considered by the U.S. government to be a terrorist organization. Chiquita eventually entered into a settlement with the government and agreed to a \$25 million fine. Mr. Holder publicly criticized the size of the fine and the Justice Department's treatment of Chiquita executives, particularly because they self-reported their activity:

If what you want to encourage is voluntary self-disclosure, what message does this send to other companies? Here's a company that voluntarily self-discloses in a national security context, where the company gets treated pretty harshly, [and] then on top of that, you go after individuals who made a really painful decision.²⁷

While Mr. Holder's statement was in the context of the representation of a private client, nevertheless, his statement suggests that those who self-report financial and other white collar violations might be shown greater leniency in the future.

B. Industries to Watch

What industries are likely to be affected by the federal government's stepped up enforcement of fraud and white collar activity? For starters, we would expect any company or industry receiving taxpayer funds as part of the Troubled Asset Relief Program or any other stimulus package to be a target. This would obviously include banks, other financial service providers, and the auto companies. It also would include government contractors hired to participate in infrastructure projects, as well as companies receiving grants for clean energy development, education programs, and other priorities under the stimulus packages.

The health care industry is also likely to remain the subject of intense government scrutiny in the coming years. From a recovery standpoint, this industry has been the largest source of government revenue in every year since 2000 for investigations and litigation under the False Claims Act. For example, the Justice



Department secured \$1.34 billion in settlements and judgments in fiscal year 2008 pursuing allegations of fraud against the government; the health care industry accounted for an astonishing \$1.12 billion (or 84 percent) of that amount.²⁸ In fiscal year 2009, two major settlements—one with Bristol-Myers Squibb over off-label drug marketing allegations, and another with Merck & Company over allegations of anti-kickback violations—netted \$515 and \$345 million in recoveries, respectively.²⁹

In his first address to the Joint Session of Congress, President Obama reiterated a pledge often heard on the campaign trail to "root out the waste, fraud, and abuse in our Medicare program . . ."³⁰ The details of the president's health care plan have yet to materialize, but even greater emphasis on False Claims Act enforcement is likely to be a pillar of that plan.

Domestic Crime Enforcement Programs Enhanced by Stimulus Funds

The federal stimulus package (a/k/a the American Recovery and Reinvestment Act of 2009) was signed into law on February 17, 2009. The law allocates almost \$4 billion to the Justice Department to enhance various state, local, and tribal law enforcement programs. These funds have already started to flow, and their benefits will be spread across a wide array of law enforcement initiatives.

For example, \$1 billion in stimulus funds have already been made available to local governments across the country to hire and retain career law enforcement officers.³¹ These funds are allocated through the Community Oriented Policing Services (COPS) Program, and the Justice Department estimates that they will save or create 5,500 law enforcement jobs nationwide.³² President Obama noted in his address to the Joint Session of Congress that these funds have already saved 57 police officer jobs in the City of Minneapolis.³³

The stimulus package allocates an additional \$2.7 billion for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, which supports a wide range of activities to control crime and improve the criminal justice system. JAG funds will be made available to grant applicants for various judicial, corrections, treatment, and justice sharing initiatives—e.g., combating drug and gang-related related crime, Internet crimes against children, and domestic violence.³⁴ The stimulus package also allocates \$225 million to the Office on Violence Against Women to develop and support the capacity of state, local, tribal, and nonprofit entities to respond to violence against women.

The Obama administration has set up a Web site (www.recovery.gov) to report when, how, and where these stimulus funds are actually spent.

Civil Rights Enforcement Expected to Increase Under First African American President and Attorney General



The Justice Department's Civil Rights Division is the primary institution within the federal government with responsibility for enforcing federal statutes that prohibit discrimination on the basis of race, sex, handicap, religion, and national origin. President Obama's 2010 budget request includes \$145 million to strengthen this division's enforcement activities.³⁵

Commentators are optimistic that the country's first African American president and attorney general will address numerous perceived racial disparities in the criminal justice system. These include, among other things, an end to racial profiling and a change in laws tied to purported disproportionate prison sentences for minorities, particularly as they pertain to sentencing disparities for individuals caught with crack versus powder cocaine.³⁶ Attorney General Holder earned a reputation as a hard-nosed, law and order prosecutor in his early days at the Justice Department, and although he once lobbied for tougher minimum sentences for drug offenders, he has reportedly changed his position with respect to nonviolent criminals.³⁷

Discrimination in employment and housing will be another interesting civil rights issue to watch. Studies on the housing crisis suggest that there is a disproportionate concentration of high-risk loans and foreclosures in minority communities across the country, especially in the Twin Cities.³⁸ Options will likely be limited in taking action against those who contributed to these alleged disparities, but going forward, the Justice Department will seek ways to more actively enforce the anti-discrimination provisions of the Fair Housing Act, the Equal Credit Opportunity Act, and the Community Reinvestment Act, which outlaw racial disparities in home mortgage lending.³⁹

Antitrust Enforcement

On the campaign trail, then-Senator Obama vowed to "reinvigorate antitrust enforcement" and criticized the Bush administration for what he described as "what may be the weakest record of antitrust enforcement of any administration in the last half century."⁴⁰ He often noted that from 2001 to 2006, the Federal Trade Commission (FTC) and Justice Department challenged proposed mergers at less than half the rate of such challenges during President Clinton's second term.⁴¹ He also noted that the Justice Department failed to bring a single monopolization case under the Bush administration.⁴² The president has not had much time to act on his promise to reinvigorate antitrust enforcement, but early signals suggest that he intends to follow through.

The president's nomination of Christine Varney to lead the Justice Department's antitrust division sends a strong signal that more intense scrutiny of proposed mergers is forthcoming. Ms. Varney served as an FTC commissioner under President Clinton and was seen by many as an aggressive enforcer of antitrust law. The FTC and Justice Department share civil authority to enforce the antitrust laws (only the Justice Department has criminal enforcement authority), but the agencies have not seen eye-to-eye on antitrust policy over the past several years. Ms. Varney's familiarity with the FTC and her recent appointment to lead



the antitrust division may lead to a coalescing of policy perspectives and enforcement priorities in the coming years.

As an FTC commissioner, Ms. Varney was instrumental in developing antitrust merger analysis in markets that are heavily dependent on research and technology, even if the product at issue had yet to hit the market.⁴³ The underlying theory is that free and fair competition at the research and development level will encourage innovation and benefit consumers.⁴⁴ In private practice, Ms. Varney represented major technology and media clients, including eBay, DoubleClick, MySpace, and AOL. Given her background and interests, one would expect Ms. Varney to scrutinize mergers that affect innovation, produce vertical integration, and involve privacy issues.⁴⁵

Pharmaceutical company mergers in the offing, such as the \$68 billion deal between Pfizer, Inc. and Wyeth, Inc., or the \$41.1 billion deal between Merck & Company and Schering-Plough Corporation, may provide the Justice Department with its first major test of President Obama's commitment to step up merger enforcement.⁴⁶ The president specifically tied excess consolidation in the pharmaceutical, health care, and insurance industries to the skyrocketing cost of health insurance and prescription drugs, and he has been particularly critical of "anticompetitive agreements that artificially retard the entry of generic" drugs to the marketplace, such as reverse payments or reverse settlements (i.e., payments by brand name drug manufacturers to generic manufacturers to settle potential patent claims).⁴⁷ Proposed mergers in the energy, media, telecom, and Internet provider industries also are likely to receive stepped up scrutiny by antitrust regulators in years to come. On the campaign trail, Senator Obama suggested that recent mergers in each of these industries have had a negative impact on competition and consumers.⁴⁸

In addition to stepped up merger enforcement, antitrust experts foresee much greater emphasis on the enforcement of "single-firm" anticompetitive conduct under Section 2 of the Sherman Act. Section 2 actions typically involve allegations of monopolization, attempted monopolization, predatory pricing, tying, bundling, and exclusive dealing.

As noted above, Senator Obama was highly critical of the Justice Department's failure to bring a single monopolization case under the Bush administration. As a result, the president is expected to side with the FTC in its recent dispute with the Justice Department over Section 2 enforcement authority. In September 2008, a majority of the FTC commissioners criticized the Justice Department's 2008 Report on Single-Firm Conduct, which recommends far more stringent standards for triggering a Section 2 enforcement action. The commissioners described the Justice Department's report as a "blue print for radically weakened enforcement of Section 2. . ." and concluded that its analysis "would make it nearly impossible to prosecute a case under Section 2."⁴⁹ We expect the Justice Department to quickly implement Section 2 policies that are more in line with the FTC position.

- 1 See Overview, Justice Department Organization, Missions and Functions Manual, available at <http://www.usdoj.gov/jmd/mps/manual/overview.htm>.
- 2 Id.
- 3 Id.
- 4 See Justice Department FY 2009 Budget and Performance Summary, Part One: 2009 Summary of Request and Key Performance Measures by Strategic Goal at p. 1, available at <http://www.usdoj.gov/jmd/2009summary/pdf/fy2009-bud-sum.pdf>.
- 5 Press Release, Department of Justice FY 2010 Budget Request (Feb. 26, 2009), available at <http://www.usdoj.gov/opa/pr/2009/February/09-ag-169.html>.
- 6 Jeff Mason, Obama Orders Guantanamo's Closure Within A Year, Reuters, Jan. 22, 2009, available at <http://www.reuters.com/articlePrint?articleID=USTRE50K5M320090122>.
- 7 Executive Order-Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities, §§ 3-4 (Jan. 22, 2009), available at http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/.
- 8 David Morgan, Pentagon: 61 ex.-Guantanamo Inmates Return to Terrorism, Reuters, Jan. 13, 2009, available at <http://www.reuters.com/article/topNews/idUSTRE50C5JX20090113>.
- 9 Executive Order-Review of Detention Policy Options (Jan. 22, 2009).
- 10 Executive Order-Ensuring Lawful Interrogations, available at http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/.
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- 12 Press Release, Department of Justice Releases Nine Office of Legal Counsel Memoranda and Opinions (March 2, 2009), available at <http://www.usdoj.gov/opa/pr/2009/March/09-ag-181.html>.
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- 15 Id.; see also Holder to Probe Bush-Era State Secrets Claims, Washington Times, Feb. 10, 2009, available at <http://www.washingtontimes.com/news/2009/feb/10/holder-probe-bush-era-state-secret-claims/>.
- 16 Kurt Opsahl, Al-Haramain Warrantless Spying Case Can Proceed, Elec. Frontier Found., Jan. 5, 2009, available at <http://www.eff.org/deeplinks/2009/01/government-motion-dismiss-al-haramain-spying-case->.
- 17 The Ninth Circuit's Feb. 27, 2009 order in Al-Haramain is available at <http://www.eff.org/files/filenode/att/9thorder.pdf>.
- 18 A copy of the Government's February 27, 2009 brief is available at <http://www.eff.org/files/filenode/att/govtresponsealhara22709.pdf>

19 *Id.*

20 Solomon Moore, Push on Immigration Crimes Is Said to Shift Focus, N.Y. TIMES, Jan. 11, 2009, available at <http://www.nytimes.com/2009/01/12/us/12prosecute.html>.

21 *Id.*

22 Press Release, Department of Justice FY 2010 Budget Request, *supra* n. 5.

23 Zachery Kouwe, Senators Seek More Funds to Fight Financial Fraud, N.Y. TIMES, Jan. 22, 2009, available at <http://dealbook.blogs.nytimes.com/2009/01/22/senators-seek-more-funds-to-fight-financial-fraud/>

24 *Id.*

25 *Id.*

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29 See Justice Department, Civil Division, Recent Cases.

30 Remarks of President Barack Obama—Address to Joint Session of Congress (Feb. 24, 2009).

31 Press Release, U.S. Department of Justice Makes \$1 Billion in Recovery Act Funds for COPS Program (March 16, 2009), available at www.usdoj.gov/opa/pr/2009/March/09-ag-239.html.

32 See Justice Department, Where Recovery Act Funds Are Going at <http://www.usdoj.gov/recovery/programs.htm>.

33 Remarks of President Barack Obama—Address to Joint Session of Congress, *supra* n. 29.

34 See Justice Department, Where Recovery Act Funds Are Going, *supra* n. 31; see also Doug Wyllie, DOJ Announces Procedures to Obtain Byrne Grant Funds In Stimulus Package, POLICEONE, March 10, 2009, available at <http://www.policeone.com/chiefs-sheriffs/articles/1795128-DOJ-announces-procedures-to-obtain-Byrne-Grant-funds-in-stimulus-package/>.

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36 Carrie Johnson and Krissah Thompson, Holder Seen As a Chance to Right Racial Wrongs, Washington Post, Feb. 5, 2009.

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38 See U of Minnesota Study Shows Racial Disparities in Twin Cities Mortgage Lending, E! SCIENCE NEWS, Feb. 12, 2009, available at <http://esciencenews.com/articles/2009/02/12/u.minnesota.study.shows.racial.disparities.twin.cities.mortgage.lending>.

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40 Statement of Senator Barack Obama for the American Antitrust Institute, Sept. 27, 2008.

41 *Id.*; see also Ronald Fink, Obama's Pick For Antitrust Boss Signals Tougher Stance on Deals, FIN. WEEK, April 6, 2009, available at <http://www.financialweek.com/apps/pbcs.dll/article?AID=/20090202/REG/901309979/0/FWIssueAlert01>.

42 See Statement of Senator Barak Obama for the American Antitrust Institute, *supra* n. 39.

43 Ronald Fink, Obama's Pick For Antitrust Boss Signals Tougher Stance on Deals, *supra* n. 40.

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46 Jacqueline Bell, Merck, Shering Merger Puts Pressure on Regulators, LAW360, March 9, 2009, available at <http://www.law360.com/articles/90554>.

47 See Statement of Senator Barak Obama for the American Antitrust Institute, *supra* n. 39.

48 Neal R. Stoll and Shepard Goldfein, President Obama's Centrist Antitrust Enforcement, N.Y. L.J., Nov. 19, 2008, available at <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1202426120827>.

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