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April 18, 2001

The Honorable Avraham Burg
Speaker of the Knesset
The Knesset
Jerusalem 91950
Israel

Dear Speaker Burg:

At the request of Speaker Hastert, we are responding to your letter of October 31, 2000, which inquired regarding the structure and role of the legal departments of the Congress of the United States. At the outset we would note that the House of Representatives and the Senate are separate legislative bodies and, for the most part, receive legal advice from separate sources. Our discussion will concentrate primarily on the House of Representatives, although the Senate's legal institutions are quite similar.

The House of Representatives has a number of different offices which provide legal advice and assistance in their respective areas to the House and its Members, Officers and committees. Our office, the Office of General Counsel ("OGC"), is charged by House rule with the responsibility of providing "legal assistance and representation to the House." OGC operates under the direction of the Speaker, who consults with a Bipartisan Legal Advisory Group consisting of the majority and minority leadership. Like the other legal offices discussed later, OGC is completely independent of the United States Attorney General and the executive branch of the government generally.

Among other things, OGC represents Members, Officers, committees and employees of the House in official matters before the federal and state courts. For example, if a Member of Congress is served with a subpoena for documents or testimony relating to the Member's official duties, OGC advises the Member as to whether the subpoena violates pertinent constitutional provisions, such as the Speech or Debate Clause's prohibition against questioning a Member as to legislative activities, or other legal requirements. If appropriate, OGC then represents the Member before the federal or state judicial authority in seeking to have the subpoena quashed or modified. Similarly, OGC will represent a Member or an Officer of the House in court if he or

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she is sued civilly for matters arising out of official functions.

OGC also represents the House itself, or the leadership of the House, in judicial proceedings in which the House has an institutional interest. For example, if the Attorney General refuses to defend the constitutionality of a law that Congress has passed, OGC may represent the House leadership in defending the statute before the U.S. Supreme Court or lower courts.

OGC provides advice, on an informal or formal basis, to House entities on a wide variety of legal issues relating to their official functions. For example, OGC advises House committees on matters relating to their oversight of the executive branch and on issues relating to conduct of legislative investigations, such as compelling recalcitrant witnesses to provide testimony or documents to a committee.

It is generally agreed that several legal and historical developments culminating in the 1970s resulted in the establishment of OGC as the institutional counsel for the House. These same factors also resulted in the establishment of OGC's Senate counterpart, the Office of Senate Legal Counsel, at approximately the same time. First, there was the general increase in litigation in the United States, which resulted in the House and Senate more frequently being drawn directly into court proceedings. Second, there was an increased concern that the institutional interests of the Congress could not always be fairly represented in court by the Attorney General, who as part of the executive branch of government would sometimes take a legal position in court that was inconsistent with or opposed to the position supported by the House and Senate. Two types of cases in particular tended to present these concerns: (1) cases in which the Attorney General declined to defend, or affirmatively attacked, the constitutionality of laws passed by Congress, most often on grounds that those laws unconstitutionally intruded upon the powers of the executive branch; and (2) criminal investigations in which the Attorney General argued in favor of narrowing the scope of congressional privileges and immunities, such as the Speech or Debate Clause mentioned earlier, in order to enable the Department of Justice to question or prosecute Members of Congress or their aides.

Finally, there was a concern that the Congress needed institutional counsel in order to safeguard its ability to require the executive branch to produce information when such information was sought by congressional committees. This concern was highlighted by the Watergate investigation, when the Senate sought judicial enforcement of a congressional subpoena that the President had declined to honor.

As noted earlier, OGC is established by House rule, rather than by legislation. However, recent legislation has specifically provided OGC with the authority to appear in any state or federal court for purposes of performing its functions. This legislation also requires the Attorney General to notify OGC when the Attorney General has determined not to defend the

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constitutionality of any Act of Congress. It should also be noted that the Senate Legal Counsel was established by legislation in the 1970s, and this legislation explicates Senate Legal Counsel's functions (which are similar in most respects to those of OGC) in some detail.

In addition to OGC, there are a number of other legal offices which provide advice and assistance to the House and its Members. These include:

Office of the Parliamentarian: This office provides advice and assistance on the House rules and parliamentary procedures.

Office of the Legislative Counsel: This office assists in the legislative process by drafting statutory language that represents a "clear, faithful, and coherent expression of legislative policies."

Office of the Law Revision Counsel: This office is charged with developing and keeping current an official and positive codification of the laws of the United States.

Congressional Research Service: This legislative agency provides both the House and Senate with legislative research, analysis and information on numerous subjects. Particularly through its American Law Division, the Congressional Research Service provides legal information and analysis to support the legislative, oversight and representational functions of Congress.

Committee on Standards of Official Conduct: The staff of this committee provides advice and education to the Members of Congress and their aides on matters relating to the ethics rules, regulations and standards of the House.

Administrative Counsel to the Chief Administrative Officer: These lawyers provide advice and review with respect to administrative matters, such as leases for district offices and long-term automobile leases.

Office of House Employment Counsel: This office provides advice and representation with respect to the employment laws.

Committee Counsel: Each committee of the House also may employ lawyers who provide advice and assistance to that committee alone. Normally such lawyers provide expertise in the substantive area of the committee's jurisdiction, or are engaged in carrying out the committee's investigative and oversight functions.

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We are enclosing some articles and materials that will provide you with further information on the functions of OGC and other legal offices of the House. If you or your staff have any further questions, we would be most happy to answer them.

Sincerely yours,

A handwritten signature in cursive script that reads "Geraldine R. Gennet". The signature is written in dark ink and is positioned above the printed name and title.

Geraldine R. Gennet
General Counsel

cc: The Honorable J. Dennis Hastert
The Honorable Richard A. Gephardt