

**Opening Statement**  
Nomination Hearing for Robert P. Charrow  
Senate Finance Committee  
Chairman Orrin G. Hatch  
August 3, 2017

Chairman Hatch, Ranking Member Wyden and members of the Committee, it is an honor to appear before you as the President's nominee to serve as the General Counsel of the Department of Health and Human Services. I am joined by my wife, Dr. Veda Charrow, a retired federal employee most recently at the National Institutes of Health.

I would like to thank this Committee for considering my nomination. I have had many productive meetings with some of you and your staff already, and look forward to discussing the issues facing HHS with you today.

HHS' jurisdiction extends from the bench to the bedside, underwriting basic research that will lead to tomorrow's miracle drugs, new devices and biologics, and financing healthcare through various programs including Medicare, Medicaid, and the Children's Health Insurance Program. In that regard, HHS is a unique blend of science, healthcare, and finance.

I was privileged to serve as the Deputy General Counsel and Principal Deputy General Counsel during President Reagan's second term and into the presidency of George H.W. Bush. Aside from working on President Reagan's re-election campaign as a lawyer, I had been a law professor with little experience managing anyone other than scared law students. My first few months at HHS in 1985 were a rude awakening. But I was lucky. The career attorneys and staff at the Office of the General Counsel were remarkably helpful and extremely competent; traits that I understand persist and have not been lost to the passage of time. In fact, some of the career attorneys in the office thirty years ago still work at the Office of the General Counsel.

Since leaving HHS in 1989, I have been in private practice focusing on healthcare law, administrative law, and general appellate litigation. In healthcare, I have represented academic medical centers, learned societies, hospital systems, research institutes, pharmaceutical companies, providers, and insurers. Those nearly three decades of seeing problems in the real world have brought home the salient differences between the obligations of government attorneys and those in the private sector.

The role of a general counsel in a federal agency is not the same as private attorney for a corporate client. The general counsel's role and obligation is to make sure that all corners are squared and that the rules and policies issued by the agency are legally proper. They should be consistent with the legislation in substance. And these rules and policies must follow the process required by the Administrative Procedure Act. In that regard, a general counsel should act as a neutral arbiter assessing potential agency

action as if he or she were a federal district judge. The notion that a rule “may withstand judicial scrutiny” is not sufficient. The question, when reviewing any rule, is—how would I, as an impartial judge, assess that rule in light of all possible challenges.

Private clients expect their attorneys to develop novel legal arguments. Creating new legal theories or applying old ones in new ways is the most enjoyable aspect of my private legal practice. But that is very different than the role of general counsel where legal creativity takes a back seat to acting as impartial arbiter. You may ask then why would anyone forsake creativity? A legitimate question. The answer is simple--the legal issues themselves are unique and fascinating. In government service one is confronted with legal issues that are so different from what is seen in private practice, and that more than makes up for any loss in creativity.

I am well aware that many HHS rules issued over the past generation, especially those implementing the Medicare Act, have been ridiculed by federal courts as being linguistically incomprehensible. One role of a General Counsel is to ensure that the rules that defy comprehension do not see the light of day.

Experience representing private sector clients has highlighted the importance of virtually all of the actors in our healthcare system. I hope that this practical legal experience will help when reviewing rules, when counseling the Secretary, and when testifying before Congress.

I know from experience that HHS will be the subject of litigation. My goal is to ensure that the agency’s position in any given case is both legally correct and objectively just. The one thing I have learned over the years is that agency action which may be legally correct when viewed hyper-technically, but which offends fundamental notions of fairness, normally does not fare well in the courts.

Thank you for the opportunity to testify today. I now am happy to answer any questions.