Questions for the Record from
Subcommittee Ranking Member F. James Sensenbrenner

Questions for Andrew J. Pincus, Esq., Partner, Mayer Brown, and U.S. Chamber of Commerce Institute for Legal Reform

1. Several witnesses asserted that arbitration agreements prevent the disclosure of wrongdoing, but you testified that arbitration agreements cannot prevent injured parties from speaking publicly about their claims or discussing their claims with law enforcement officials. Please explain why you believe the other witnesses are wrong.

2. You testified about a new study indicating that employees who arbitrate their claims win more often and on average are awarded larger damages than employees who pursue claims in federal court. Are there other studies comparing outcomes in arbitration and litigation? Please provide the Subcommittee with information regarding the results of those studies.

3. A number of witnesses testified about the procedures used in arbitration. Does an arbitrator have unfettered discretion to employ whatever procedures he or she wishes, or are there constraints on how an arbitration is conducted?

4. How realistic is the court system as a means of providing redress for consumers and employees given the complex procedures used by courts? Are small claims courts viable alternatives for consumer claims? How does arbitration interact with small claims courts?

5. Professor Gilles and Mr. Gupta testified that class actions provide significant benefits to class members in the employment and consumer contexts. Does the evidence support their position?

6. Some witnesses suggested that invalidating pre-dispute arbitration agreements would give consumers and employees a choice between proceeding in arbitration or filing a lawsuit in court, and that employees and consumers could then decide which dispute resolution method they wished to use. Are they correct that employees and consumers would retain the ability to utilize arbitration whenever they wished?

7. Opponents of arbitration sometimes point to the number of arbitrations as evidence that arbitration does not provide a realistic remedy. Is that a fair measure of arbitration's effectiveness?

8. At the hearing, the view was expressed that companies "get to choose the arbitrator, the rule of law does not necessarily apply, and there is no right to appeal the decision." How do you respond to each of these contentions?

9. Many at the hearing referenced the question of "secrecy" in arbitration. Is arbitration truly a secret process? To the extent that arbitration may be shielded from public view, how can Congress best address the confidential nature of any proceedings?

10. Professor Gilles testified that "forced arbitration strips us of our legal rights," particularly when class action waivers are present. Specifically, it was claimed that, if individuals cannot bring a class or collective action, employees will be dis-incentivized to pursue small class-wide claims because "the game isn't worth the candle," and "the employee rationally abandons their claim." How do you respond to that contention?

11. A question arose at the hearing regarding whether arbitrators need to be trained in the law, but you did not have a full opportunity to respond because of time constraints. What is your full response to that question?

12. At the hearing, it was pointed out that in the Supreme Court's *Concepcion* case, AT&T moved to strike down a statute that permitted class-wide arbitration. It was suggested that there was an inconsistency between employers' purported preference for arbitration, on the one hand, but disfavor of class-wide arbitration, on the other hand. You were unable to complete your response because of time constraints. What is your full response to this suggestion?