S. HRG. 109–205

CONFIRMATION HEARING ON THE NOMINATIONS OF RACHEL L. BRAND, ALICE S. FISHER, AND REGINA B. SCHOFIELD TO BE ASSISTANT ATTORNEYS GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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CONFIRMATION HEARING TO BE ASSISTANT ATTORNEY GENERAL FOR THE DEPARTMENT OF JUSTICE

THURSDAY, MAY 12, 2005

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 4:10 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Sam Brownback presiding.

Present: Senators Brownback and Grassley.

OPENING STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. The hearing will come to order. Thank you all for joining us today for this confirmation hearing process. Senator Specter has asked that I host and chair this confirmation hearing and I look forward to the testimony and the presentations of the various witnesses.

Obviously, by the array of stars we have here supporting those nominees, these are outstanding, stellar nominees. I don't know that I have seen a panel quite this powerful supporting the list of nominees any time that I have chaired a hearing. So this must be a mighty good group, and I am certain that it is.

We convene the hearing today to consider President Bush's nomination of three outstanding individuals to serve as Assistant Attorneys General at the Department of Justice. The Department's Criminal Division, Office of Legal Policy and Office of Justice Programs are critical agencies charged with everything from prosecution of the war on terror to the provision of grants to combat drug trafficking and domestic violence. The President understands the importance of the missions of these agencies, as shown by the high caliber of these outstanding women who, if confirmed, would lead them.

Rachel Brand has been nominated to be Assistant Attorney General at the Office of Legal Policy. Ms. Brand has developed an extensive record of high achievement. After graduating from the University of Minnesota and Harvard Law School, Ms. Brand served as a law clerk to Justice Charles Fried, of the Supreme Judicial Court of Massachusetts, in 1999. Following her clerkship, she joined the law firm of Cooper, Carvin and Rosenthal. Her work there included a variety of trial and appellate litigation.

In January 2001, she was chosen to serve at the White House in the Office of Counsel to the President, first as an assistant coun-

sel and then as an associate counsel. In these capacities, she has provided legal and policy advice to White House officials on a wide range of challenging issues.

She left the White House to serve as a law clerk to Supreme Court Justice Anthony M. Kennedy during the 2002–2003 term. After her clerkship, Ms. Brand became Principal Deputy Assistant Attorney General in the Office of Legal Policy at the Department of Justice. In this position, she has worked to develop and implement a variety of civil and criminal policy initiatives, and assisted in supervising all aspects of the office's work.

Alice Fisher, nominated to head the Department's Criminal Division, has a distinguished record and a wide range of experience. She received her B.A. from Vanderbilt and her J.D. from Catholic University Law School. After law school, she worked for several years as an associate at Sullivan and Cromwell, where she represented corporations in civil litigation, and also represented a death row inmate in a habeas corpus appeal.

In 1995 and 1996, Ms. Fisher served as Deputy Special Counsel to the U.S. Senate Committee investigating the Whitewater Development Corporation and related matters. In that role, she supported the Senate's investigation and assisted in drafting the final report.

In 1996, Ms. Fisher returned to private practice, this time at the law firm of Latham and Watkins. At Latham, she was a member of the litigation department and the white collar practice group. Her practice focused on the representation of corporations in government investigations and complex civil litigation. In 2001, she became a partner. From 2001 until 2003, Ms. Fisher served as Deputy Attorney General in the Criminal Division of the Department of Justice, excellent work there.

Regina Schofield, nominated to head the Office of Justice Programs, will bring a wealth of experience to the position. Ms. Schofield graduated from Mississippi College and received her MBA from Jackson State University. She currently serves as Director of Intergovernmental Affairs and White House Liaison at the Department of Health and Human Services. She previously was Manager of Governmental Relations at the U.S. Postal Service.

As Director of Intergovernmental Relations at HHS, Ms. Schofield has been instrumental in advancing intergovernmental relations with over 562 federally-recognized tribal governments. She has developed the Department's first comprehensive tribal consultation policy and has worked to establish formal mechanisms to create an open door for tribes regarding the Department's policy and budget process. She has also worked to streamline the grants process, thereby increasing public awareness of government-funded programs and services.

We have a distinguished panel of Senators to introduce, as well, these nominees. I don't know if anybody has a particular time commitment that they need to go through. If not, we usually go from my left to right, unless somebody has a particular time commitment.

If not, the Honorable Senator Trent Lott will be the first witness.

Senator LOTT. Senator Brownback, at this time I think maybe I would like to defer. Maybe you could work the other way. I think the distinguished Whip may have other responsibilities.

Senator BROWNBACK. That is a good thought.

Senator McConnell, we just jumped to the other end of the table here and we will work from that place.

PRESENTATION OF ALICE S. FISHER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, BY HON. MITCH MCCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MCCONNELL. Well, far be it from me to turn down that opportunity. Thank you very much, Senator Lott.

Mr. Chairman, I am thrilled to be here today to introduce Alice Fisher, the President's nominee to be the Assistant Attorney General of the Criminal Division at DOJ. Ms. Fisher is a battle-tested veteran of the war on terror, and with her confirmation she will once again take up a place on the front lines of that struggle.

She joined the Justice Department in July of 2001 as Deputy Assistant Attorney General of the Criminal Division. She was placed in charged of counterterrorism efforts. Two months later came September 11. After that horrific day, our Government responded forcefully and quickly. Ms. Fisher's role was vital to the fight.

She was responsible for national coordination of the Government's efforts to stamp out these evil acts, including all matters related to September 11 investigations and prosecutions. She coordinated the investigation and prosecution of international and domestic terrorist groups, terrorist acts and terrorist financing. She headed up USA PATRIOT Act implementation and she coordinated the Justice Department's efforts with the FBI, the Department of Defense, the CIA, the NIC and the White House.

The man who then held the job to which Ms. Fisher has been nominated, her old boss, was Michael Chertoff, now, as well know, the Secretary of Homeland Security. Secretary Chertoff and Ms. Fisher served together in the Justice Department for two years. Before their Justice Department service, they were both partners at Latham and Watkins, and before that Ms. Fisher and Secretary Chertoff both served as counsels for a U.S. Senate special committee. Secretary Chertoff, who has worked closely with her over the years, has called her, quote, "one of the best lawyers I have seen in my entire career," end quote.

The Criminal Division of the Justice Department must focus on matters other than terrorism, of course, and Ms. Fisher is equally talented to deal with those matters as well. As Deputy Assistant Attorney general, she headed up efforts to combat corporate fraud just at a time that the collapse of Enron and other corporate scandals were front-page news. She supervised all corporate fraud matters at Justice, including the securities accounting and health care areas. She participated in the drafting of Sarbanes-Oxley and worked closely with the Securities and Exchange Commission on policy issues.

She was born and raised in my hometown of Louisville, Kentucky, as part of a close-knit family. She has five older brothers and sisters. Her father ran a chemical plant and her mother

worked the night shift as a nurse. She still has a lot of family back home in Louisville. In fact, I think both of us were there last weekend to watch the Kentucky Derby.

She earned her B.A. from Vanderbilt and her law degree from Catholic University here. Her husband, Clint, also serves our Nation as Director of Aviation Policy for TSA. She is the mother of two. You can tell she has been a really busy lady. In a relatively short time, she has already accomplished a great deal.

She rose to become a partner in one of America's most prestigious law firms. She then selflessly chose to forego a more lucrative career in private practice to serve her country. Thanks to her, America is a safer place than it was on September 11. Now, the President has asked her to serve once more and she has answered the call.

I can't tell you, Ms. Fisher, how grateful we are that you are answering the call again and I am proud to be here to introduce you.

Senator BROWNBACK. Thank you.

Senator Grassley.

PRESENTATION OF RACHEL L. BRAND, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, BY HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I am equally proud to introduce a person that has strong roots in my State, a very young person, Rachel Brand. She has been nominated to be Assistant Attorney General, Office of Legal Policy, at the Department of Justice. A very excellent candidate, and we ought to be delighted that the President has chosen her for this position.

Rachel and her family have strong Iowa connections. Her father was born and raised in Iowa. Her mother went to college in Iowa, and the Brand family lived in Pella, Iowa, for a long time. Recently, the family has moved to Michigan, but her father still works for the Vermeer Manufacturing Company in Pella and she still has much of an extended family remaining in Iowa.

So we would extend a warm welcome to Rachel's husband, Jonathan Cohn; Rachel's mother and father, Ruth and Ivan Brand; Rachel's sister, Deborah Hansel, and her brother-in-law, Neil Hansel, and her niece, Megan Hansel.

Rachel received her bachelor's degree in political science from the University of Minnesota-Morris and graduated with high distinction and honors. While in college, I first got to know Rachel because she interned in my Washington, D.C. office in 1995. She did a very great job for me at that time, and as often happens we Senators realize that a lot of people who are interns in our office have a very good future and this proves to be true in the case of Rachel.

Rachel, after college, got her law degree, cum laude, at Harvard Law School. In law school, Rachel excelled and was the deputy editor-in-chief of the Harvard Journal of Law and Public Policy. After law school, she clerked for Justice Charles Fried, of the Supreme Judicial Court of Massachusetts.

Following her clerkship, Rachel was employed briefly as general counsel to the Elizabeth Dole for President Exploratory Committee,

then joining the firm of Cooper, Carvin and Rosenthal, specializing in trial and appellate litigation.

In January 2001, after a short stint as associate counsel to the Bush-Cheney transition team, Rachel joined the Office of Counsel to the President, first as assistant counsel, then associate counsel. In the Office of Counsel to the President, she provided legal and policy advice to White House officials on a wide range of issues.

She left that position to serve as law clerk for Associate Justice Anthony Kennedy during the 2002–2003 term of the Supreme Court. In July of 2003, she became Principal Deputy Assistant Attorney General of the Office of Legal Policy. Here, she worked to develop and implement a variety of civil and criminal policy initiatives, assisting in supervising all aspects of the office's work. In March 2005, she became Acting Assistant of the Office of Legal Policy.

This brief review of her background shows that she is uniquely qualified for the position of Assistant Attorney General of the Office of Legal Policy. She is a very intelligent individual, an excellent attorney and, of course, a very young age that we would all be jealous of. Rachel has remarkable accomplishments. She has an outstanding record, too, of public service. I know that Rachel will do a good job anyplace she goes, so I highly recommend her to this Committee and ask my colleagues to support her nomination.

Thank you.

Senator BROWNBACK. Thank you, Senator Grassley.

Senator Harkin.

PRESENTATION OF RACHEL L. BRAND, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, BY HON. TOM HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA

Senator HARKIN. Mr. Chairman, I am pleased to join with my colleague, Senator Grassley, to give my support to Rachel Brand, the nominee to head the Department of Justice's Office of Legal Policy.

Rachel, as has been said, is a native of Pella, Iowa, known to many of you probably for its windows and doors, but known to the rest of us for the most beautiful tulips in Iowa, strong families and smart people.

I will not go through all of her accomplishments. Senator Grassley did that, I think, quite effectively. All I would add is he mentioned a young age. Everything that Senator Grassley said Rachel Brand did—she did all that by the age of 32. It kind of puts a lot of us to shame. We wonder what we did with our time when we were young. It just shows you she has a great work ethic.

Also, I must admit I went a step further about Rachel and I took my inquiries on Rachel back to the source in Pella. I asked the sheriff. Rachel's very proud uncle, Marvin Van Haften, who now heads the Iowa Office of Drug Control Policy, confirmed for me that his niece is indeed a fine, upstanding citizen, growing up in Iowa, as well as not surprisingly a straight-A student. Of course, Mr. Van Haften was the former sheriff of that county for a long time. I would also like to join with Senator Grassley in welcoming Rachel's

parents and some other family members here today who still live in Pella.

The Office of Legal Policy is one of the offices in the Department of Justice that not many people know about or understand. However, given that the office essentially handles policy changes for the Department of Justice, it is one that has a tremendous responsibility in shaping how we go forward in our fight against terrorism.

In our continuing war on terror, balancing how to effectively fight terrorism within our criminal justice system and within our Constitution continues to pose new and difficult challenges that will fall squarely upon the person who heads this office. In selecting Rachel Brand, I believe the President has made a good choice to lead the Department in making those good balances between our Constitution and our criminal justice system and fighting terrorism. He has made a great choice and I join with my colleague in hoping that the Committee will confirm her rapidly.

Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you, Senator Harkin. We appreciate that support.

If any of you, after presenting, need to leave for other meetings, it certainly is understood.

Senator HARKIN. Thank you, Mr. Chairman.

Senator BROWNBACK. Senator Cochran.

PRESENTATION OF REGINA B. SCHOFIELD, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, I am pleased to be here this afternoon to introduce Ms. Regina Schofield to the Committee and to recommend her confirmation as an Assistant Attorney General for the Office of Justice Programs at the United States Department of Justice.

Ms. Schofield was born and raised and educated in Mississippi. We have a number of mutual friends in Franklin County, Mississippi, which she still claims as home, and she comes highly recommended to me by them.

She received a bachelor's degree in business administration from Mississippi College and a master's degree from Jackson State University. She began her career in Government serving as Deputy Director of the Office of White House Liaison in the U.S. Department of Education. She later served as Manager of Government Relations at the United States Postal Service.

In February 2001, Ms. Schofield became White House liaison to Secretary Tommy Thompson at the Department of Health and Human Services. In less than two years, she became Director of the Office of Intergovernmental Affairs at HHS, where she was the principal adviser to Secretary Thompson on the impact of Department policies on State, local and tribal governments.

As Assistant Attorney General, Ms. Schofield would be responsible for the overall management and oversight of the Office of Justice Programs. Ms. Schofield has proven that she has the talent, the experience and the capability to serve with distinction as As-

sistant Attorney General in the Department of Justice. I urge the Committee to recommend her confirmation by the Senate.

Senator BROWNBACK. Thank you very much, Senator Cochran.

And now the Honorable Trent Lott.

PRESENTATION OF REGINA B. SCHOFIELD, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you, Mr. Chairman, Senator Brownback, for allowing us to appear before you and the Judiciary Committee today in support of these very fine nominees. It is a great pleasure to join my senior colleague from Mississippi in endorsing the very fine nominee, Regina Schofield, to be Assistant Attorney General of the Department of Justice.

I would like to ask that my entire statement be made a part of the record as I have it prepared.

Senator BROWNBACK. Without objection.

Senator LOTT. I want to extend my congratulations to the other nominees today. These are three very fine, very impressive, young people that will be going to the Justice Department in very critical positions and I am convinced they will do a magnificent job. In fact, the quality of these women probably will begin to straighten out the Justice Department in a way it has never experienced before. So I congratulate them. I am very proud to sit here and listen to their records of achievement and their work in the administration, or administrations, and to congratulate their families who are all here today. I know their families are very proud of them.

I won't repeat what is in the resume of Ms. Schofield. Senator Cochran did a very fine job of that. I am very proud of her background, being from Bude, Mississippi. It is a long way from Bude, Mississippi, to Washington, D.C., and the Justice Department. In fact, if I gave you a map, you probably couldn't find it, but you have got some areas in Kansas pretty far out at the end of the road, too. It is a lot of beautiful people, and I know that community is very proud of Regina and her achievements.

She has done a good job everywhere she has been. She has worked hard. She obviously has outstanding managerial skills and it is evidenced by not only her education and her work in different roles in the administration, at the White House, at HHS and the Department of Education, but she also served on multiple boards and commissions. She serves on the Board of Visitors of the College of William and Mary, where she oversees he school's budget. She also serves as a member of the Board of Trustees of the American Council of Young Political Leaders, an organization dedicated to developing the leadership potential of emerging leaders in politics and government.

So in view of her history of service, certainly it is no surprise that she would receive this nomination. I am convinced she is going to do a wonderful job, particularly working in the Office of Justice Programs. And I must say I am very proud of the record of achievement and all that she has done in her very young life, and so I congratulate her and thank her for her dedication. I know she will be

confirmed and will do a wonderful job at the Department of Justice.

Senator BROWNBACK. Thank you very much, Senator Lott. Thank you both, and all the Senators for presenting here today and introducing these nominees.

We will now call up the three nominees, if they would come forward—Rachel Brand, Alice Fisher and Regina Schofield.

We need to swear you in, if you would, ahead of time, so if you would please stand and raise your right hand. Do you swear that the testimony you will give to this Committee will be the truth, the full truth and nothing but the truth, so help you God?

Ms. BRAND. I do.

Ms. FISHER. I do.

Ms. SCHOFIELD. I do.

Senator BROWNBACK. Thank you. You may be seated.

Well, this is quite a panel, ladies. I am looking forward to the testimony. We will start with Rachel Brand, if we could go with you first. If you have a full statement, we can put it into the record. That will be great. I would invite you if you have any family members here to introduce them. To me, this is a family obligation. You are the point person, but there is a whole bunch of troops behind you and I would like to recognize and thank them as well. So if each of you could do that, then I will have some questions after your testimony.

Ms. Brand.

STATEMENT OF RACHEL L. BRAND, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE

Ms. BRAND. Thank you, Mr. Chairman. I do not have a full statement, although I do look forward to taking your questions. I have some thank yous, though, and some acknowledgements.

I thank you for chairing this hearing so late on a Thursday. I know you have got a lot else on your plate with everything going on in the Judiciary Committee right now. I would like to thank the President and the Attorney General for their confidence in me through this nominations. I would like to thank Senators Harkin and Grassley for being here. It is a real honor for me to have the support of both of my home State Senators from Iowa.

And, finally, I would like to acknowledge my family, especially my parents, Ruth and Ivan Brand, who have been introduced, and my husband, Jonathan Cohn.

Senator BROWNBACK. Could we have them stand if they are here—have the parents stand, and husband?

[The individuals stood.]

Senator BROWNBACK. Great. Thank you very much for being here.

Ms. BRAND. I also have three other family members from out of town. My aunt Beckie and my cousin Katie drove from Michigan yesterday, and my sister-in-law Erica Cohn is here from New York, and so I thank them.

Senator BROWNBACK. You have got to stand, too. If you are going to drive that far for this, we want to see you.

[The individuals stood.]

Senator BROWNBACK. Thank you very much for being here.

Ms. BRAND. And I have a number of other friends here, too, and I thank them all for being here. My siblings, Deborah, Thomas and Andrew, couldn't be here today, but I thank them for their support, as well, and I look forward to taking your questions.

[The biographical information of Rachel Lee Brand follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Rachel Lee Brand

2. Address: List current place of residence and office address(es.)

Residence: Arlington, VA 22207.

Office: U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, D.C. 20530.

3. Date and place of birth.

Muskegon, Michigan. May 1, 1973.

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Jonathan F. Cohn, who is an attorney employed as a Deputy Assistant Attorney General by the Civil Division of the U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, D.C. 20530.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Minnesota-Morris, 1991-1995 (B.A. Political Science 1995).
(I studied at Universidad de los Andes in Merida, Venezuela in the winter of 1993.)
Harvard Law School, 1995-1998 (J.D. 1998).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

In reverse chronological order:

U.S. Department of Justice, Office of Legal Policy (Principal Deputy Assistant Attorney General), 2003-Present (began to serve as Acting Assistant Attorney General on March 28, 2005)

U.S. Supreme Court (Law Clerk to Justice Anthony M. Kennedy), 2002-2003

The White House (Assistant Counsel to the President, 2001; Associate Counsel to the President, 2001-2002), 2001-2002

Bush-Cheney Transition (Associate Counsel), 2001

Cooper, Carvin & Rosenthal (Associate), 1999-2001

Elizabeth Dole for President Exploratory Committee (General Counsel), 1999

Supreme Judicial Court of Massachusetts (Law Clerk to Justice Charles Fried), 1998-1999

Simpson, Thacher & Bartlett (Summer Associate), 1998

Covington & Burling (Summer Associate), 1997

Cooper & Carvin (Summer Associate), 1997

Harvard Law School (Research Assistant to Professor David Shapiro), 1997

Federal Bureau of Investigation (Honors Intern), 1996

Mervenne Beverage, Inc. (Receptionist), 1995

Brann's Steakhouse (Waitress), 1995

Bos Landen Country Club (Waitress), 1995

U.S. Senator Charles Grassley (Legislative Intern), 1995

Bennigan's (Waitress), 1995

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

In 2004, I received the Attorney General's Award for Excellence in Furthering the Interests of U.S. National Security.

I served as Deputy Editor-in-Chief of the *Harvard Journal of Law and Public Policy*. I graduated *cum laude* from Harvard Law School.

I received a full tuition scholarship from the University of Minnesota-Morris as a result of being a National Merit Scholar. I graduated from the University of Minnesota-Morris with High Distinction and Honors.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

District of Columbia Bar, 2000-present.
American Bar Association, 1999-2000.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not know whether the District of Columbia Bar engages in lobbying. Otherwise, I do not belong to any organizations that lobby public bodies.

Other memberships:
National Presbyterian Church, Washington, D.C., member 2001 - present.
John F. Kennedy Center for the Performing Arts, member intermittently 2000-present.
Federalist Society, member intermittently 1995-present.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Bar of the Supreme Court of the United States, 2003-present.
Bar of the U.S. Court of Appeals for the Federal Circuit, 1999-present.
Bar of the U.S. District Court for the District of Columbia, 2000-present.
Bar of the U.S. Court of Federal Claims, 2000-present.
Licensed to practice law in New York (and in the New York state courts), 1999-present.
Licensed to practice law in the District of Columbia (and in the D.C. local courts), 2000-present.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications:

Case Comment, *Civil Forfeiture as Jeopardy*: United States v. Ursery, 20 HARV. J.L. & PUB. POL'Y 292 (1996).

Editorial on behalf of Bob Dole for President, published in the *Harvard Law Record* (Harvard Law School student newspaper) in 1996. [I have been unable to obtain a copy.]

Various columns in the *University Record* (student newspaper of the University of Minnesota-Morris campus) written in my editorial capacity with that student newspaper between 1991 and 1995. I have no record of the specific column titles or dates.

Editorial Activities:

I served in several editorial positions, including Deputy Editor-in-Chief, with the *Harvard Journal of Law and Public Policy* from 1995 to 1998 and edited numerous articles in that capacity. I also edited numerous articles during college in various editorial positions with the student newspaper, *The University Register*.

Speeches and other speaking engagements:

I have given the following speeches and testimony and participated in the following panel discussions and debates in my capacity as Principal Deputy Assistant Attorney General, Office of Legal Policy.

Radio interview regarding the USA PATRIOT Act on KQED – Forum with Michael Krasny. (February 12, 2004) [No prepared remarks. No transcript available.]

Panel discussion on terrorism co-hosted by the Oklahoma City University chapters of the National Women's Law Student Association and of the Federalist Society (Oklahoma City, OK, March 2004). [Draft of opening statement attached. No transcript available.]

Keynote address to the Computers, Freedom, and Privacy Conference (Berkeley, CA, April 2004). [Draft of speech attached.]

Participant in the 2004 Holmes Debates at the Library of Congress (Washington, DC, June 2004). [Transcript attached.]

Panel discussion on the USA PATRIOT Act hosted by the Wyoming State Bar Association (Gillette, WY, September 2004). [No prepared remarks. No transcript available.]

Panel discussion on the USA PATRIOT Act hosted by the Long Island chapter of the Federalist Society (Mineola, NY, September 2004). [Draft of opening statement attached. No transcript available.]

Debate on the USA PATRIOT Act hosted by the Western Michigan chapter of the Federalist Society (Grand Rapids, MI, October 2004). [Draft of opening statement attached. No transcript available.]

Testimony before the United States Senate Judiciary Committee, Subcommittee on Terrorism, Technology and Homeland Security, at a hearing entitled "Tools to Fight

Terrorism: Subpoena Authority and Pretrial Detention of Terrorists," June 22, 2004. [Statement attached.]

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in good health. I received my last physical examination on March 22, 2005.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law Clerk to Justice Anthony M. Kennedy
U.S. Supreme Court
One First Street
Washington, D.C. 20543
2002-2003

Law Clerk to Justice Charles Fried
Supreme Judicial Court of Massachusetts
One Pemberton Square
Boston, MA 02108
1998-1999

2) whether you practiced alone, and if so, the addresses and dates;

I have not been a sole practitioner.

3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Principal Deputy Assistant Attorney General
U.S. Department of Justice, Office of Legal Policy
Washington, D.C. 20530

2003-Present
[and Acting Assistant Attorney General, March 28, 2005 – present]

Assistant Counsel to the President, 2001
Associate Counsel to the President, 2001-2002
The White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Associate Counsel
Bush-Cheney Transition
Washington, D.C.
2001

Associate
Cooper, Carvin & Rosenthal
1500 K Street, N.W., Suite 200
Washington, D.C. 20005
1999-2001

General Counsel
Elizabeth Dole for President Exploratory Committee
Arlington, VA
1999

Summer Associate
Simpson, Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017
1998

b. 1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Most of my career has been spent in public service, with a period of litigation with a private law firm from November 1999 to January 2001.

2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Most of my career has not been spent representing private clients. When I was litigating with Cooper, Carvin, and Rosenthal, the firm's clients for whom I worked ranged from large companies such as Bank of America to individuals such as Julie Terran, a severely disabled girl seeking compensation for injuries sustained as the result of a childhood vaccine.

c. 1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As an associate, I did not personally appear in court. I argued two motions telephonically in federal district court. I also took and defended numerous depositions relating to litigation pending in federal district court and in the U.S. Court of Federal Claims.

2) What percentage of these appearances was in:

(a) federal court;

100%

(b) state courts of record **0%**
(c) other courts **0%**

3) What percentage of your litigation was:

(a) civil:

100%

(b) criminal.

0%

4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None

What percentage of these trials was:
(a) jury;
(b) non-jury.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated;
(c) and the individual name, addresses, and telephone numbers of co-counsel and of principal

counsel for each of the other parties.

As a litigation associate at Cooper, Carvin & Rosenthal, I participated in representing a number of the firm's clients. Among the cases I assisted with were the following. In addition, because most of my career has been spent in pursuits other than litigation, I have attached below a professional reputation references list.

Litigation Matters

1) *Satellite Broadcasting Association of America v. FCC.* The firm represented the Satellite Broadcasting Association of America in a First Amendment challenge to the FCC's must-carry rule for satellite broadcasters. The challenge to the rule was brought directly in the U.S. Court of Appeals for the Fourth Circuit. I was involved in communicating with clients, developing the theory of the case, conducting research, and drafting the complaint. The case was in the pleadings stage when I left the firm.

Docket number: Nos. 01-1151(L) (CA-00-1571-A).
Disposition: The Fourth Circuit ruled for the FCC, upholding the regulations. The Supreme Court denied certiorari.

(a) Date: 2000-2001.

(b) Court: United States Court of Appeals for the 4th Circuit.
Judges: Widener, Niemeyer, Michael.

(c) Co-counsel: None.
Opposing Counsel of record:

Mark Bernard Stern
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202)514-5089

Louis Emmanuel Peraertz
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

2) *Bank of America v. United States.* The firm represented Bank of America in a *Winstar*-type lawsuit against the United States in the U.S. Court of Federal Claims. The suit involved a claim for breach of contract and related damages. I took and defended depositions, communicated with the client and with opposing counsel, conducted legal research, and was involved in various other aspects of discovery. The case was pending when I left the firm.

Docket number: Nos. 95-660 C; 95-797C; 95-803 C (consolidated).
Disposition: Pending in the Court of Federal Claims.

(a) Date: 2000-2001.

(b) Court: U.S. Court of Federal Claims.
Judge: Wiese.

(c) Co-counsel: None.
Opposing Counsel: Tonia Tornatore
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530

3) *Michele Terran v. Secretary of Health & Human Services.* The firm represented Julie Terran, a girl who sustained severe injuries as the result of a childhood vaccine, and her mother Michele Terran in a suit for damages under the National Child Vaccine Injury Act of 1986. Under the Act, such claims are decided by a Special Master in the U.S. Court of Federal Claims. The Court of Federal Claims ruled against Ms. Terran, and the firm brought an appeal to the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court on grounds including an unconstitutional delegation of legislative power to the Executive Branch. I conducted legal research and drafted briefs and pleadings in the Court of Federal Claims, the Federal Circuit, and the U.S. Supreme Court. I also participated in proceedings relating to attorneys' fees.

Docket numbers: Court of Federal Claims, 95-451V; Federal Circuit, 98-5161; Supreme Court, 99-1749.
Disposition: The U.S. Court of Appeals for the Federal Circuit upheld the ruling of the Special Master. The U.S. Supreme Court denied certiorari.

(a) Date: 2000.

(b) Court: U.S. Court of Federal Claims; U.S. Court of Appeals for the Federal Circuit; U.S. Supreme Court.

Judges: Special Master in the U.S. Court of Federal Claims: Abell; Panel of the U.S. Court of Appeals for the Federal Circuit: Plager, Lourie, Clevenger.

(c) Co-Counsel: Andrew Dodd.
Opposing Counsel:
Claudia Gangi
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530
(202) 616-4138

4) *Glunt v. GES*. The firm represented Viad Corp., the parent company of GES Exposition Services, in a sexual harassment lawsuit brought by one female employee against another female employee. I handled a significant portion of this case until I left the firm, drafting pleadings and motions, communicating with the client and with opposing counsel, interviewing witnesses, taking and defending depositions, handling all aspects of discovery, and arguing motions telephonically.

Docket number: Civil Action No. AW-99-3013.
Disposition: The case was settled after I left the firm.

(a) Date: 2000-2001.

(b) Court: U.S. District Court for the District of Maryland.
Judge: Williams.

(c) Co-counsel: None.
Opposing Counsel: Omar Melehy
8403 Collesville Road
Silver Spring, MD 20910
(301) 587-6364

PROFESSIONAL REPUTATION LIST

1) Charles Fried
Professor, Harvard Law School (former Justice, Supreme Judicial Court of Massachusetts)
Phone number: (617) 495-4636

2) Charles Cooper
Partner with Cooper & Kirk
Phone number: (202) 220-9600

3) Michael Carvin
Partner with Jones, Day
Phone number: (202) 879-7643

4) David Thompson
Partner with Cooper & Kirk
Phone number: (202) 220-9659

5) Andrew McBride
Partner with Wiley, Rein & Fielding
Phone number: 202-719-7135

6) Timothy Flanigan
Senior Vice President and General Counsel -- Corporate and International Law, Tyco International
Phone number: (609) 720-4343

7) Daniel Bryant
Vice President for Government Relations, Pepsico
Phone number: 914-253-3600

8) Helgi Walker
Partner with Wiley, Rein & Fielding
Phone number: 202-719-7349

9) David Nahmias
United States Attorney for the Northern District of Georgia
Phone number: 404-581-6000

10) Dan Levin
Legal Advisor, National Security Council
Phone number: 202-456-9111

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

1) I currently serve as the Principal Deputy Assistant Attorney General and Acting Assistant Attorney General for the Office of Legal Policy in the U.S. Department of Justice. In this capacity, I oversee all aspects of the work of the Office of Legal Policy and manage the Office's staff, budget, and operations. The Office of Legal Policy handles a broad range of legal policy issues – ranging from terrorism to tort reform – and manages development of most of the Attorney General's policy priorities. The office also handles the Department of Justice's functions relating to judicial confirmations. In my capacity as Principal Deputy Assistant Attorney General, I have served as second-in-command to the Assistant Attorney General, overseeing many aspects of the Office's policy development and managing the staff and budget. I have personally focused on issues relating to counter-terrorism and national security. I became the Acting Assistant Attorney General, by operation of law, on March 28, 2005.

2) During the October Term 2002, I served as a law clerk to Anthony M. Kennedy, Associate Justice of the United States Supreme Court.

3) From January 2001 to July 2002, I served in the Office of Counsel to the President in the White House. I was an Assistant Counsel to the President from January to June 2001, and an Associate Counsel from June 2001 to July 2002. My functions in both positions were the

same; only the title changed. In that capacity, I provided legal and policy advice to White House officers on a wide range of issues and participated in the preparation of recommendations to be presented to the President in his selection of nominees for judicial offices. For example, I coordinated development of the Executive Order creating the Office of Homeland Security. Some of the other issues within my portfolio included legal issues relating to presidential personnel decisions, issues relating to the Twenty-Fifth Amendment to the U.S. Constitution, and the Federal Advisory Committee Act.

4) I served as an Associate Counsel in the Bush-Cheney Transition for approximately one week in January 2001 prior to President Bush's inauguration.

5) I served as an Associate with the law firm of Cooper, Carvin & Rosenthal in Washington, D.C., from November 1999 to January 2001, handling trial and appellate litigation. In that capacity, I researched and wrote briefs and motions, took and defended depositions, provided advice to clients, communicated with opposing counsel, conducted discovery, and argued motions telephonically.

6) I served as General Counsel to the Elizabeth Dole for President Exploratory Committee for a very brief period during 1999 before Mrs. Dole withdrew her candidacy. I served as a volunteer for a period of months before being hired as General Counsel. In both capacities, I was primarily responsible for obtaining access to the presidential ballots in all fifty States and the Territories. In addition, I handled various legal matters such as reviewing leases and contracts.

7) I served as a law clerk to Charles Fried, then Associate Justice of the Supreme Judicial Court of Massachusetts, from 1998-1999.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a 401(k) account from my employment with Cooper, Carvin & Rosenthal. The firm and I made contributions to it between November 2000 and January 2001. Neither the firm nor I have contributed since, and I have no control over the account.

I have participated in the federal Thrift Savings Plan throughout my employment with the White House, the U.S. Supreme Court, and the Department of Justice. The value of my TSP account as of Dec. 31, 2004, was $49,379.88.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest, I would consult with the Department of Justice's ethics officials.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See SF-278, attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title

and responsibilities.

I participated in the *Bush v. Gore* litigation by drafting motions and pleadings in the Florida state courts in 2000. I did not appear in court in connection with this litigation.

I have volunteered at the grassroots level for several political campaigns, including the Bush-Cheney campaign in 2000 and a number of state and federal campaigns in Minnesota during college.

As discussed above, I served as General Counsel to the Elizabeth Dole for President Exploratory Committee in 1999.

I served as Vice President of the Harvard Law Republicans from 1997-1998 and as Secretary-Treasurer of the University of Minnesota-Morris College Republicans during college.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged. Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Most of my career has been spent in public service.
I have chosen to provide volunteer service through church-related activities. Currently, I teach Sunday School classes to first-graders at McLean Bible Church in McLean, VA and am a member of the handbell choir ("Grace Chimes") at National Presbyterian Church in Washington, DC.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	11	972	75[a]	Notes payable to banks-secured			0
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured			0
Listed securities-add schedule	712	264	23	Notes payable to relatives			0
Unlisted securities--add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid tax and interest			0
Doubtful			0	Real estate mortgages payable-add schedule	727	660	82
Real estate owned-add schedule	979	000	00*	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			0
Autos and other personal property	18	435	00				
Cash value-life insurance	13	366	16				
Other assets itemize:			0				
				Total liabilities	727	660	82
				Net Worth	1007	377	32

Total Assets	1735	038	14	Total liabilities and net worth	1735	038	14
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)	No		
On leases or contracts			0	Are you a defendant in any suits or legal actions?	No		
Legal Claims			0	Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax			0				
Other special debt			0				

* This is the tax-assessed value as of Jan. 14, 2005.
Ω As of March 30, 2005.

Real Estate Owned Schedule:

My husband and I own our home, subject to mortgages, which is located in Arlington, VA.

Real Estate Mortgages Payable Schedule:

Wells Fargo Bank holds the mortgage to our home, which consists of a first trust and a second trust.
The amount of the first trust as of Jan. 17, 2005 (the date of the last statement mailed from the bank), is 609,367.23.
The amount of the second trust as of March 2, 2005 (the date of the last statement mailed from the bank), is 118,293.59.

Total: $727,660.82.

Securities Schedule:

ASSET	AMOUNT
AllianceBernstein Capital Reserve (cash held in investment account by AllianceBernstein)	$675.68**
Loomis Sayles Strategic Income A	$3,409.25**
Pioneer Strategic Income A	$1,953.66**
Pioneer Global High Yield A	$3,389.74**
Delaware High-Yield Opportunities A	$1954.22**
Touchstone Large Cap Growth A	$3,406.88**
T. Rowe Price Equity Income	$4,325.36**
Columbia Strategic Investor Z	$ 3393.00** + $1938.86** (spouse IRA) + $1938.86** (IRA)
Pioneer Mid-Cap Value A	$4,924.63**
CRM Mid-Cap Value Inv	$4,859.73** +$3,401.81** (spouse IRA) +$3,401.81** (IRA)
Munder Mid-Cap Select A	$4,821.25**
Dreyfus Premier S&P Stars Opportunity R	$4115.39**
Dreyfus Premier New Leaders R	$4076.99** +$1295.05** (spouse IRA) + $1295.05** (IRA)
John Hancock Small Cap A	$5197.91**
Dreyfus Premier Enterprises A	$5283.04**
Value Line Emerging Opportunities	$3,373.68**
Fidelity Small Cap Stock	$3368.15**
UBS Bank USA Deposit Acct (in Spouse's IRA)	$6,594.76**
Baker Hughes Inc.	$25,531.20**
Bank of America Corp.	$27,990**
Boston Scientific Corp.	$65,320**
Del Monte Foods Inc.	$2118.00**
Heinz HJ Co.	$16938.00**
Hewlett Packard Co.	$13,145.60**
Honeywell Int'l Co.	$14,238.75**
Intel Corp.	$76,768.00**
Pepsico	$43,088.00**
Pfizer Inc.	$13,145.00**
Unova Inc.	$4,656.00**
Yum! Brands Inc.	$7,804.80**
Diamonds Trust Ser 1	$17,232.00**
Nasdaq 100 shares (Index Fund QQQ)	$40,681.46**
S&P Dep Recpts Unit ser 1 (Index Fund SPY)	$44,391.84**
Aim Global Growth A	$7715.25**
American Funds Growth Fund of America Class A	$28,108.49**
Janus Core Equity Fund	$29,412.42**
Janus Global Life Sciences Fund	$7,189.46**
Janus Growth & Income Fund	$6,180.76**

Janus Worldwide Fund	$4,011.55[++]
Federated MaxCap (In my 401(k) from former employment with Cooper, Carvin & Rosenthal – I have no control over this account.)	$8,943.02[Ω]
SSgQ 500 IndexFund (In my husband's 401(k) from former employment with Sidley, Austin, Brown & Wood – we have no control over this account.)	$7,871.47[ΩΩ]
Skyline Spec. Equities Fund (In my husband's 401(k) from former employment with Sidley, Austin, Brown & Wood – we have no control over this account.)	$9,642.99[ΩΩ]
Harbor Cap. Appreciation (In my husband's 401(k) from former employment with Sidley, Austin, Brown & Wood – we have no control over this account.)	$14,717.00[ΩΩ]
Harbor Int'l Fund (In my husband's 401(k) from former employment with Sidley, Austin, Brown & Wood – we have no control over this account.)	$9,880.33[ΩΩ]
Fidelity Diversified Int'l (In my husband's 401(k) from former employment with Wachtell, Lipton, Rosen & Katz – we have no control over this account.)	$1,892.02[Ω]
Fidelity Bluechip Growth (In my husband's 401(k) from former employment with Wachtell, Lipton, Rosen & Katz – we have no control over this account.)	$1943.23[Ω]
Lazard Smallcap (In my husband's 401(k) from former employment with Wachtell, Lipton, Rosen & Katz – we have no control over this account.)	$9,539.67[Ω]
RMA tax-free fund Inc. (cash held in investment account by UBS Financial Services Inc.)	$20,393.29[++]
Federal Thrift Savings Plan (TSP) Account	49,379.88[Ω]

** As of March 30, 2005.
[Ω]As of Dec. 31, 2004 (the date of the last account statement received).
[ΩΩ]As of Sep. 30, 2004 (the date of the last account statement received).
[++] As of Feb. 28, 2005 (the date of the last account statement received).

U.S. Department of Justice

Washington, D.C. 20530

APR 0 6 2005

Marilyn Glynn
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Rachel L. Brand who has been nominated by the President to serve as Assistant Attorney General, Office of Legal Policy, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Ms. Brand will recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute, has a financial interest. Ms. Brand has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests.

We have advised Ms. Brand that because of the standard of conduct on impartiality at 5 CFR 2635.502, she should seek advice before participating in a particular matter involving specific parties which she knows is likely to have a direct and predictable effect on the financial interest of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Michael H. Allen
Deputy Assistant Attorney General
Alternate Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(if Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Brand			First Name and Middle Initial: Rachel L.	
Position for Which Filing	Title of Position: Asst Attorney Gen., Ofc of Legal Policy			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 950 Pennsylvania Ave., NW, Washington, DC 20530			Telephone No. *(Include Area Code)*: 202-616-0038	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: Principal Deputy Asst Attorney General, Office of Legal Policy				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: [signature]			Date *(Month, Day, Year)*: 3/10/05	
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]			Date *(Month, Day, Year)*: 4/5/05	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]			Date *(Month, Day, Year)*: 4/5/05	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

Supersedes Prior Editions, Which Cannot Be Used.

NSN 7540-01-070-8444
OGE/Adobe Acrobat version 1.0.1 (3/29/01)

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Brand, Rachel L

SCHEDULE A

Page Number: 2 of 11

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Loomis Sayles Strategic Income A		X											X							X												
2	Pioneer Strategic Income A		X											X							X												
3	Pioneer Global High Yield A		X											X							X												
4	Delaware High-Yield Opportunities A		X											X							X												
5	Touchstone Large Cap Growth A		X											X							X												
6	T. Rowe Price Equity Income		X											X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Brand, Rachel L

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Columbia Strategic Investor Z		X											X							X												
2	Pioneer Mid-Cap Value A		X											X							X												
3	CRM Mid-Cap Value Inv		X											X							X												
4	Munder Mid-Cap Select A		X											X							X												
5	Dreyfus Premier S&P Stars Opportunity R		X											X							X												
6	Dreyfus Premier New Leaders R		X											X							X												
7	John Hancock Small Cap A		X											X							X												
8	Dreyfus Premier Enterprise A		X											X							X												
9	Value Line Emerging Opportunities		X											X							X												

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Reporting Individual's Name: Brand, Rachel L

SCHEDULE A continued
(Use only if needed)

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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Fidelity Small Cap Stock		X											X							X												
2	IRA: CRM Mid-Cap Value Inv.		X											X							X												
3	IRA: Columbia Strategic Investor Z		X											X							X												
4	IRA: Dreyfus Premier New Leaders R		X											X							X												
5	Spouse IRA: CRM Mid-Cap Value Inv.		X											X							X												
6	Spouse IRA: Columbia Strategic Investor Z		X											X							X												
7	Spouse IRA: Dreyfus Premier New Leaders R		X											X							X												
8	Spouse IRA: UBS Bank USA Deposit Acct		X																		X												
9	Baker Hughes Inc.			X													X					X											

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Reporting Individual's Name: Brand, Rachel L

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Bank of America Corp.			X													X						X										
2	Boston Scientific Corp.				X																X												
3	Del Monte Foods Inc.		X																		X												
4	Heinz HJ Co			X													X					X											
5	Hewlett Packard Co		X														X					X											
6	Honeywell Int'l Co		X														X					X											
7	Intel Corp.				X												X						X										
8	Pepsico			X													X					X											
9	Pfizer Inc		X														X					X											

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SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Unova Inc.		X																		X												
2	Yum! Brands Inc.		X																		X												
3	Diamonds Trust Ser 1			X										X								X											
4	Nasdaq 100 shares (Index Fund QQQ)			X										X								X											
5	S&P Dep Recpts Unit ser 1 (S&P Index Fund SPY)			X										X								X											
6	AIM Global Growth A		X											X							X												
7	American Funds Growth Fund of America Class A			X										X							X												
8	Janus Core Equity Fund			X										X							X												
9	Janus Global Life Sciences Fund		X											X							X												

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SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Janus Growth & Income Fund		X											X							X												
2	Janus Worldwide Fund		X											X							X												
3	Filer's 401(k) (from Cooper, Carvin & Rosenthal) - Federated Maxcap		X											X							X												
4	Spouse 401(k) (from Sidley Austin Brown & Wood) - SSgQ 500 IndexFund		X											X							X												
5	Spouse 401(k)(from Sidley Austin Brown & Wood)-Skyline Spec. Equities		X											X							X												
6	Spouse 401(k)(from Sidley Austin Brown & Wood)-Harbor Cap. Appreciation		X											X							X												
7	Spouse 401(k)(from Wachtell Lipton Rosen & Katz)-Fidelity Diversified Int'l		X											X							X												
8	Spouse 401(k)(from Wachtell Lipton Rosen & Katz)-Fidelity Bluechip		X											X							X												
9	Spouse 401(k)(from Wachtell Lipton Rosen & Katz)-Lazard Smallcap		X											X									X										

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Reporting Individual's Name: Brand, Rachel L

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	RMA tax-free fund inc.(money fund held by UBS Financial Services Inc.)			X																	X												
2	Checking Account - Citibank		X																		X												
3	Spouse 401(k) (from Sidley, Austin, Brown & Wood)		X											X							X												
4	Harbor Int'l Fund																																
5	Money fund (cash) held by AllianceBernstein	X																			X												
6																																	
7																																	
8																																	
9																																	

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Brand, Rachel L

SCHEDULE B

Page Number: 9 of 11

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government, given to your agency in connection with official travel, received from relatives, received by your spouse or dependent child totally independent of their relationship to you, or provided as personal hospitality at the donor's residence. Also for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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SCHEDULE C

Page Number: 10 of 11

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None [x]

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401K, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any such future employment or leaves of absence.

None [x]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	401(k). Vested 11/00, contributions made by me and the firm between 11/00 and 1/01. Neither party now contributes.	Cooper, Carvin & Rosenthal, Washington, D.C.	11/00
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None [x]

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None [x]

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Senator BROWNBACK. Good. We will have a few as we go along. Ms. Fisher.

STATEMENT OF ALICE S. FISHER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. FISHER. Thank you, Mr. Chairman, for chairing this hearing. I, as well, would like to thank the President and the Attorney General for having confidence in me for this position, and thank Senator McConnell for that very nice opening statement.

I would acknowledge my family members that are here—my mother, who is the mother of six—I was the baby—who taught me the work ethic by working the night shift while raising six kids, and my husband, Clint Fisher, who also works for the Government at TSA, and my two little boys, one of which is already asleep, a 3-year-old—that is probably why we aren't hearing him right now—Luke, and my son Matthew.

Senator BROWNBACK. Very good. We won't ask the father and the two children, but the mother, if you could stand, we would love to recognize you, if that would be possible.

[Ms. Biedenbender stood.]

Senator BROWNBACK. Thank you for being here.

Do you have a statement, any comments?

[The biographical information of Alice S. Fisher Brand follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Alice Stevens Fisher (maiden name Alice Stevens Biedenbender)

2. Address: List current place of residence and office address(es.)

Office: Latham & Watkins, 555 11th Street, NW Washington, DC 20004
Home: Alexandria, VA 22302

3. Date and place of birth.

January 27, 1967; Louisville, KY

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

W. Clinton Fisher, III
Executive Director, Aviation Security Policy
Transportation Security Administration
Department of Homeland Security
601 S. 12th Street, TSA-9
Arlington, VA 22202

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Vanderbilt University, Nashville, TN, (1985-1989); B.A. 1989
Columbus School of Law, Catholic University of America, Washington, DC. (1989-1992); J.D. 1992

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2003-present: Partner, Latham & Watkins
2001-2003: Deputy Assistant Attorney General, Criminal Division, Department of Justice
1996-2001: Partner (Jan. 2001); Associate (1996-Dec 2000), Latham & Watkins

1995-1996: Deputy Special Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation & Related Matters
1992-1996: Associate, Sullivan & Cromwell
1991-1992: Law Clerk, Morgan, Lewis & Bockius (part-time)
1991: Summer Associate, Sullivan & Cromwell
1991: Law Intern, Judge John A. Terry, D.C. Court of Appeals
1990-1991: Law Clerk, McCarthy, Wilson & Etheridge

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Vanderbilt University, Gamma Beta Phi Honorary Society
Vanderbilt University Academic Scholarship 1985-1989
Ashland Oil Academic Scholarship 1985-1989

Vernon X Miller Scholarship for Academic Achievement, Catholic University, Columbus School of Law
Note & Comment Editor, *Catholic University Law Review*
Graduated Fourth in Law Scholl Graduating Class

"Top Ten Women Who Keep You Safe" Award from Court TV and Ladies Home Journal

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Admitted, DC Bar, 1993
Admitted, Virginia Bar, 1992
Virginia Bar Association, 1992-1996
American Bar Association, 1992-1996; 1998-present

Edward Bennett Williams Inn of Court, barrister, 2002-present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

St. Mary's Catholic Church, Alexandria, VA, member 2001-present
Blessed Sacrament Catholic Church, Alexandria, VA, member 1995-2001
The Federalist Society, National Practitioner's Advisory Council, 2004
Kentuckian Society, member

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Virginia Bar (Oct. 1992-present)
Virginia Supreme Court (Nov. 1992-present)
U.S. District Court for the Eastern District of Virginia (Nov. 1996-present)
U.S. Court of Appeals for the Fourth Circuit (Nov. 1992-present)
D.C. Bar (August 1993-present; except for one month in 2002 when suspended for non-payment of dues)
U.S. District Court for the District of Columbia (August 1993-2001)
U.S. Court of Appeals for the District of Columbia (April 1993-present)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have included copies of testimony and articles. I have also included copies of speeches to the extent I have a copy of a written speech. Many times I spoke from notes and I no longer have those notes. Where the list is for panel participation, I did not have a written speech and no longer have notes that I used for those panels. Where I could find articles written about the talks or speeches, I have included them. In addition, I have appeared in the media where transcripts have been published and given media interviews that were not published in the media. Where I could locate transcripts of these appearances, I have included them.

Testimony

House Financial Services Committee, Subcommittee on Oversight and Investigations, "Progress Since 9/11: The Effectiveness of U.S. Anti-Terrorist Financing Efforts", March, 2003, Washington, D.C.

Senate Judiciary Committee, Testimony, Subcommittee on Technology, Terrorism & Government Information, "Tools Against Terror—How the Administration is Implementing New Laws in the Fight to Protect Our Homeland", October 2002, Washington, D.C.

Senate Special Committee on Aging, Testimony, "Identity Theft: The Nation's Fastest Growing Crime Hits Seniors" July 2002.

Senate Judiciary Subcommittee on Antitrust, Business Rights and Competition, "The Product Packaging Protection Act", August 1, 2001

Articles

Criminal Sanctions, Enforcement and Litigation, (book chapter), The Practitioners Guide to the Sarbanes-Oxley Act, Co-Author with Josh Hochberg and John Arterberry, published by the American Bar Association (2004).

Enforcement From Every Direction: The Importance of Cooperation in the Current Enforcement Environment, Co-Author with William Baker, American Bar Association White Collar Crime Conference (2005).

Strategies for Joint Defense Agreements in the Face of Increasing Demand for Cooperation in Criminal Cases, American Bar Association Litigation Section Annual Meeting, May 2004, Phoenix, AZ.

You Do Not Have to Remain Silent-The Government's Ability to Compel Testimony from Records Custodians, Co-author, Presented to American Bar Association White Collar Crime Conference, March 2003, San Fransisco, CA.

Tilting at Windfalls: Rejecting the Tainted Claims Theory of Damages in false Claims Act Cases, ABA Health Care Fraud Conference (2001).

Holland v. Illinois: A Sixth Amendment Challenge to the Use of Discriminatory peremptory Challenges, Catholic University Law Review, Vol. 40, No. 3 (1991).

Speeches

Panelist, *Foreign Corrupt Practices Act Compliance*, Annual Pharmaceutical Compliance Congress, November 2004, Washington, DC

Panelist, *Effect of the Patriot Act on Foreign Financial Institutions*, September 2004, Cambridge, England

Panelist, *Criminal Law on the Front Lines*, DC Bar Association, July 2004 , Washington, DC

Panelist, *How to Detect and Deter Corporate Wrongdoing*, CPE Conference, June 2004, Falls Church, VA

Panelist, *Corporate Investigations in the Post Sarbanes-Oxley World*, PLI Conference, April 2004, New York, New York

Panelist, *Use of Joint Defense Agreements*, ABA Annual Litigation Conference, May 2004, Phoenix, AZ

Panelist, *The Constitution and the War on Terrorism*, International Trial Lawyers Association, April 2004, San Fransisco, CA

Panelist, *The Patriot Act*, Columbia University Law School, March 2004, New York, New York

Panelist, *Military Detention of Enemy Combatants: Exercise of Civil Defense or Violation of Civil Liberties*, Georgetown University, February 2004, Washington, DC

Panelist, The Death of Privacy, IAAP Fourth Annual Privacy & Data Security Forum, February 2004, Washington, DC

Panelist, *The Patriot Act Forum*, New York University, February 2004, New York, New York

Panelist, *Civil Liberties: The Patriot Act*, League of Women Voters, February 2004

Speaker, *Prevention of Terrorism*, The Heritage Foundation, March 2004

Panelist, *On the Front Line of the War on Terrorism and Identity Theft*, Inside ID—Identification Solutions Mega Show, December 2003, Washington, D.C.

Panelist, *The Patriot* Act, The Federalist Society Annual Meeting, November 2003

Panelist, *War on Terrorism*, American Enterprise Institute, October 2003

Panelist, *The Great Debate*, Boston University, November 2003

Panelist, *White Collar Defense*, First Circuit Judicial Conference, September 2003, Washington, D.C.

Speaker, *Pursuing Terrorist Financing*, Economic War on Terrorism: Money Laundering & Terrorist Financing, The Marshall Center, July 18-22, 2003, Garmisch, Germany

Principles of Corporate Prosecution, Luncheon address at the National Institute on Health Care Fraud, May 2003, Las Vegas, NV

Speaker, *Policy Briefing on National Security Issues*, MacArthur DC Policy Briefing, April 14, 2003, Washington, D.C.

Panelist, *Sarbanes-Oxley: What are We Doing, What Do We Still Need to Do?", Federalist Society*, Michigan Lawyers Chapter, May 2003, Detroit, Michigan

Keynote address, *Current Trends in Corporate Fraud*, Securities Industry Association Annual Meeting, April 8, 2003, Lake Buena Vista, FL

Panelist, *You Have the Right to Remain Silent: 5th Amendment Privilege Applied to Document Discovery*, ABA White Collar Crime Institute, March 2003, San Francisco, CA

Presenter, *Section 906 Certification in the Sarbanes-Oxley Act*, ABA Corporate Finance Meeting, November 2002, Washington, D.C.

Instructor, *Prosecuting Terrorist Acts*, National Security Conference, Department of Justice National Advocacy Center, September 2002, Columbia, SC

Speaker, *Impact of Immigration Law on Homeland Security*, Ninth Circuit Judicial Conference, May 2002, Santa Barbara, CA

Speaker, *Keeping the Government out of the Boardroom*, ABA Annual Meeting, ABA Section of Business Law Program, August 2002, Washington, D.C.

Speaker, *Understanding and Preventing Terrorism*, Criminal Justice Research and Evaluation, National Institute of Justice Annual Conference, July 2002, Washington, D.C.

Panelist, *Department of Justice Priorities in Health Care Enforcement*, ABA Health Care Fraud Institute, May 16, 2002, San Francisco, CA

Speaker, Conference on Bank Structure & Competition, Federal Reserve Bank, 38th Annual Conference on Bank Structure & Competition, May 8-10, 2002, Chicago, IL

Speaker, *Terrorist Financing and Money Laundering*, Federal Strategies Against Financial Fraud, FDIC /Department of Justice Conference, April 16-18,2002, Long Beach, CA

Panelist, *Domestic Terrorism: Are We Ready on the Home Front*", United Jewish Youth Leadership Conference, February 2002, Washington, DC

Speaker, Conference on Capital Punishment, Yale Law School, February 8, 2002, New Haven, CT

Panelist, *Reconciliation of Legal Ethics and Attorney-Client Monitoring Regulations*, American Bar Association Midyear Meeting, January 31, 2002, Philadelphia, PA

Signatory, "*The Patriot Act is vital to protecting national security*." Addressed to Congress dated September 23, 2004.

13. Health: What is the present state of your health? List the date of your last physical examination.

    Good. Last exam by physician was August 2004.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

    None

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I was an intern for Judge John A. Terry, District of Columbia Court of Appeals, 1991.

2. whether you practiced alone, and if so, the addresses and dates;

I have never been a solo practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

2003-present: *Partner*, Latham & Watkins, 555 11th Street, NW Washington, DC 20005. Litigation Department and White Collar Crime Practice Group member.

2001-2003: *Deputy Assistant Attorney General*, Criminal Division, Department of Justice, 950 Pennsylvania Ave., NW Washington, DC.

1996-2001: Partner (Nov. 2000); Associate (1996-Nov 2000), Latham & Watkins, 555 11th Street, NW Washington, DC 20005. Litigation Department and White Collar Crime Practice Group member.

1995-1996: Deputy Special Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation & Related Matters, Senate Banking Committee, 534 Dirksen Senate Office Building, Washington, DC 20510

1992-1996: Associate, Sullivan & Cromwell, 1701 Pennsylvania Ave., NW Washington, DC 20006. Litigation Department

1991-1992: Law Clerk, Morgan, Lewis & Bockius (part-time), 1111 Pennsylvania Ave., NW Washington, DC 20004

1991: Summer Associate, Sullivan & Cromwell, 1701 Pennsylvania Ave., NW Washington, DC 20006

1990-1991: Law Clerk, McCarthy, Wilson & Etheridge, 100 South Washington Street, Rockville, MD 20850

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Partner, Latham & Watkins (2003- present) The general nature of my practice is advising corporations, banks, audit committees of the Board of Directors and individuals in a range of complex criminal and corporate fraud issues. I represent clients in front of the Department of Justice, U.S. Attorneys Offices, Securities & Exchange Commission and in court. My most recent representations include criminal and civil investigations, advising and training on a range of criminal law matters and issues involving health care fraud; Foreign Corrupt Practices Act; securities and accounting fraud; bank fraud; antitrust; the Patriot Act and other criminal statutes. I have also represented clients in complex civil matters such as *qui tam* litigation, products liability, theft of trade secrets, and contract issues.

Deputy Assistant Attorney General, Criminal Division, Department of Justice. (2001-2003) I supervised the Counter-Terrorism Section, Fraud Section, Appellate Section, Capital Case Unit and the Alien Smuggling Task Force (for 1 year only). I managed approximately 160 Justice Department Criminal Division prosecutors and employees. I worked on implementation of criminal enforcement policy and DOJ's terrorism response, including coordination with U.S. Attorneys, other Department of Justice Divisions and other federal agencies.

Counter-Terrorism Efforts I supervised the Criminal Division's response to the September 11, 2001 attacks and the national coordination efforts and reported to the Assistant Attorney General, Criminal Division. This included: (1) managing the prosecutors in the Counter-Terrorism Section, overseeing specific cases, restructuring and prioritizing resources, implementing new strategies to combat the global terrorism threat; (2) daily communication and coordination with the United States Attorneys and prosecutors on terrorism cases and intelligence issues; (3) regular briefing of the Attorney General, Deputy Attorney General and the Director of the FBI on threat information and the Criminal Division's role in efforts to identify and disrupt threats; (4) monitoring and advising on national terrorism cases in the U.S. Attorneys Offices consistent with the national strategy, including, for example, prosecutions of Richard Reid, Zaccharius Moussaoui, John Walker Lindh, Iyman Faris, Sami Al Arian; (5) managing the establishment of the Terrorist Financing Task Force which pursued an intense focus on terrorist financing cases; (6) establishing an international initiative which assigned DOJ prosecutors to coordinate with their *foreign* counterparts to share information, and assist other countries in bringing terrorist prosecutions and (7) overseeing implementation of the Patriot Act provisions such as information sharing provisions.

Fraud Section Efforts. I supervised prosecutors and cases in the Fraud Section including establishing goals and prioritizing resources, with a renewed focus on complex corporate fraud, including almost doubling the number of indicted fraud cases and convicted defendants by the Fraud Section. I worked closely with the Enron Task Force and coordinated with the United States Attorneys Offices on other significant fraud cases, including such as HealthSouth and Credit Lyonnais. I also managed a nationwide takedown for identity theft cases and worked on telemarketing fraud efforts. In addition, I worked on policy issues, such as those relating to Sarbanes-Oxley criminal enforcement provisions and implementation

Coordination with Other Federal Agencies. I spent a great deal of time coordinating with other Divisions within the Department of Justice and other federal agencies. This included working closely with the SEC on prosecutions and enforcement actions such as Enron and HealthSouth; working closely with the FBI, Department of Defense, NSC and CIA on information sharing coordination; working closely with the Department of Treasury and the Department of State on terrorist financing matters; working with the Department of Treasury and the Federal Reserve on bank fraud issues; and working with the FTC on the identity theft and telemarketing fraud initiatives.

Criminal Appellate Section. I supervised the efforts of the attorneys in the Criminal Appellate Section and reviewed national policy issues relating to appeals. I reviewed all requests from the U.S. Attorneys Offices for appeals of criminal cases and made recommendations to the Office of the Solicitor General regarding the decision regarding appeal.

Capital Case Unit. I supervised the attorneys in the Capital Case Unit. I reviewed requests to proceed with the death penalty and made recommendations to the Assistant Attorney General regarding requests to seek or not to seek the death penalty

Alien Smuggling Task Force. I supervised the Alien Smuggling Task Force prosecutors (one year).

Partner and Associate, Latham & Watkins (1996-2001) I was a member of the Litigation Department and the White Collar Crime Practice Group at Latham & Watkins as an associate (1996-2000) and a partner (2001). Generally, I represented corporations in government investigations or in complex civil litigation. I represented corporate clients in health care fraud investigations, civil and criminal, in a government investigation relating to procurement fraud, in a government investigation relating to misstatements to the government; and in a government investigation into bribery of local state officials. I also conducted internal investigations for corporations. In addition, I advised clients on compliance matters. On the civil litigation side, I represented corporate clients in matters involving civil *qui tam* actions, an employment discrimination suit, in contracts disputes, and in products liability actions.

Deputy Special Counsel, U.S. Senate Committee Investigating Whitewater Development and Related Matters (1995-1996). I participated in the Senate's investigation, including taking Senate testimony, preparing for public hearings, briefing U.S. Senators and drafting a report.

Sullivan & Cromwell (1992-1995). I was a member of the Litigation Department. Generally, I represented corporations in civil litigation. For example, I represented a patent holder in the technology industry in an intellectual property litigation. I represented a defendant in a patent litigation in the medical device industry. I represented an individual on death row in Georgia in a *habeas corpus* appeal investigation. I also worked on some antitrust issues, as well as investigations in front of the CFTC and the Department of Transportation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients at law firms have been publicly traded companies, investment banks and individuals. I have specialized in matters involving criminal investigations, Securities & Exchange Commission enforcement actions and investigations, civil fraud investigations and complex civil litigation such as *qui tam* actions, products liability cases, and theft of trade secret cases. I have conducted investigations and advised on issues involving the Foreign Corrupt Practices Act, securities and accounting fraud, procurement fraud and public corruption.

At the Department of Justice, I represented the United States. I worked primarily on terrorism prosecutions, policy and coordination, including managing the Counter Terrorism Section. In addition, I spent a large percentage of my time working on corporate fraud prosecutions and policies. I also managed the Capital Case Unit, Criminal Appellate Section and the Alien Smuggling Task Force. I coordinated criminal enforcement policy with other Department of Justice Divisions and other federal agencies.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Since returning to private practice in late 2003, my current law practice includes representing clients in conducting internal investigations of wrongdoing, responding to criminal grand jury investigations, responding to the Securities & Exchange Commission enforcement investigations, training and general compliance advice. I often represent clients for testimony to the SEC or for witness interviews in front of the Department of Justice. These representations often involve non-public investigations or representations and have not been publicly litigated in court. However, over the past year I have represented clients in three civil matters; a products liability action involving an over-the-counter pharmaceutical (federal court) and two contract actions for two different clients in the telecommunications industry (one in state court and one in front of the Federal Communications Commission). Two of these matters were settled and one was dismissed.

While I was at the Department of Justice, I managed five litigating sections in the Criminal Division. While I managed and participated in several litigations, as Deputy Assistant Attorney General, I did not personally appear in court. The one exception to this was my argument in the U.S. Court of Appeals for the Third Circuit in *United States v. Camille Pollard*, No. 02-3018. This case involved the constitutionality of the Departure Control Checkpoint in the United States Virgin Islands. The District Court found that the Checkpoint violated the Fifth Amendment equal protection clause and the Fourth Amendment's prohibition against unreasonable seizures. I argued on behalf of the United States government for reversal and the Third Circuit reversed in favor of the Government in a 3-0 decision.

Prior to my tenure as Deputy Assistant Attorney General in the Criminal Division, I worked on a variety of criminal and civil matters as an associate and then as s partner at Latham & Watkins. These matters included representing a client in a public corruption investigation; representing a client in a nationwide criminal health care fraud investigation; representing a former Inspector General in a government and U.S. Senate investigation; representing clients in civil health care fraud (*qui tam*) litigations (federal court); representing a client in a racial discrimination lawsuit (federal court); representing a client in a pharmacy benefits litigation (federal court); representing a bank in a contract dispute (state court); representing an investment bank in a theft or trade secrets case (arbitration); representing a law firm in a partnership dispute (arbitration); representing a company in a products liability action (state court); and representing a company in an energy contracts dispute (state court). Some of these civil matters involved appearances in federal or state court, although even those almost always settled prior to full litigation.

2. What percentage of these appearances was in:

(a) federal court;
(b) state courts of record;

(c) other courts.

3. What percentage of your litigation was:

(a) civil:
(b) criminal.

In the past year and one-half at Latham & Watkins, approximately 15% of my work has been in civil litigation and the majority of that has been in federal court. The other 85% of my work has been representing defendants in criminal investigations,

Securities & Exchange Commission investigations, internal investigations and advising clients on compliance issues, primarily compliance with criminal laws.

While I was at the Department of Justice, my practice focused 100% on criminal prosecutions and policy.

In private practice prior to 2001, approximately 50% of my work was in civil litigation and it was divided equally between federal and state court. The other 50% of my work related to criminal cases and investigations, particularly health care fraud and public corruption.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Five judgments

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

One was a jury trial and the remainder were decided by a judge.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Norduft v. Insight Pharmaceutcals Corporation

Represented Defendant Insight Pharmaceuticals Corporation in a products liability action in the U.S. District Court for the Western District of Washington, CV 04-1578Z. (Judge Thomas S. Zilly). In this products liability case, Plaintiffs alleged that one plaintiff was injured by an over-the-counter pharmaceutical and that defendant

corporation was liable for the injury based on a successor liability, corporate disregard and fraud theory. Discovery had progressed and a Motion to Dismiss and Motion to Vacate was pending in court. This case settled prior to trial. I was the lead counsel on this case. (2004)

Co-counsel was Stephen Willey, Savitt & Bruce LLP 1325 Fourth Avenue, Suite 1410 Seattle, Washington 98101 (206) 749-0500.

Opposing counsel was Ron Perey, Perey-Haris, Market Place tower, 2025 First Avenue, Suite 250 Seattle, WA 98121-2147 (206) 443-7600.

United States v. HCA Healthcare Corp.

Represented Defendant HCA Healthcare Corporation in twenty-six *qui tam* cases involving allegations of healthcare fraud. These cases were consolidated in a multi-district litigation management forum in front of Judge Royce Lamberth, U.S. District Court for the District of Columbia. Many of these cases progressed in discovery, some had motions to dismiss or motions for summary judgment pending at various times. After extensive negotiations with the Government, defendant entered into a global settlement resolving many of the cases. I was the lead counsel on some of the *qui tam* actions and I was co-counsel on others. (1998-2001)

Co-counsel varied for the different cases, but included Roger Goldman, Latham & Watkins, 555 11th Street, NW Washington, DC 20005 (202) 637-2253.

Opposing counsel varied from case to case but the Government's primary counsel was Jonathon Diesenhaus, Commercial Litigation Branch, Department of Justice, 601 D Street, NW Washington, DC 20004 (202) 616-1436.

Lewis v. Booz Allen & Hamilton

Represented defendant Booz Allen & Hamilton in an employment litigation in the U.S. District Court for the District of Columbia (Judge Urbina), Civ Action No. 1:99 CV 00713. This case progressed through discovery and into motions for summary judgment. The case settled just prior to trial. I was co-counsel on this case. (2000-2001)

Co-Counsel was Everett Johnson and Maureen Mahoney, Latham & Watkins, 555 11th Street, NW Washington, DC 20005, (202) 637-2200.

Opposing Counsel was Jonathon Graham, Williams & Connolly, Washington, DC, currently Director of Litigation, General Electric Corp., 3135 Easton Turnpike Fairfield, CT 06828-0001 (203) 373-2567.

Scott & Stringfellow, Inc. v. Jefferies Group, Inc. et. al.

Represented defendant Jeffries Group Inc., an investment bank, in a litigation arising out of the departure of employees from Plaintiff bank to Defendant bank, including several common law causes of action including tortious interference with employment contract and theft of trade secrets. A preliminary injunction was filed in Chancery Court for Henrico County, Virginia, No. CHOO-1335. The state court case was dismissed in favor of NASD arbitration, Case No. 05128. After several days of arbitration hearings, the parties settled the dispute. I was co-lead counsel on this case. (2000-2001).

Co-lead counsel was Edward Shapiro, Latham & Watkins, 555 11th Street, NW, Washington, DC 20005 (202) 637-2200.

Opposing Counsel was John Barr, Esq., McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219 (804) 775-1000.

The Apothecary, Inc. v. PCS Health Systems, inc. and Group Hospitalization and Medical Services, Inc.

Represented defendant PCS Health Systems, Inc. in a contracts dispute involving pharmacy benefits administration in the U.S. District Court for the Eastern District of Virginia (Judge T.S. Ellis), Civ. Action No. 98-685-A. After progressing through discovery, the Court granted summary judgment in favor of the defendants just prior to trial. I was lead counsel on this case. (1998)

Co-Defendant Blue Cross Blue Shield counsel was Chas MacAleer, Miller & Chevalier, 655 15th Street, NW Washington, DC, 20005-5701 (202) 626-5800.

Opposing Counsel was Thomas R. Breeden, Esq., Thomas R. Breeden, P.C. , 7900 Sudley Road, Suite 301, Manassas, VA 20109 (703) 361-9277.

Gray's Ferry v. PECO Energy Company

Represented plaintiff Chase Manhattan Bank in a complex contract and loan dispute involving underlying energy contracts in the Court of Common Pleas, Philadelphia County, No. 544 in Philadelphia, PA. This case progressed through discovery and summary judgment motions and settled on the first day of trial. I was co-counsel. (1998-99)

Lead counsel was Edward Shapiro, Latham & Watkins, 555 11th Street, NW Washington, DC 20005 (202) 637-2200.

Opposing Counsel was Alan Davis, Ballard, Spahr, Andrews & Ingersoll , 1735 Market Street, 51st Floor, Philadephia, PA 19103-7599 (212) 665-8500.

Goldin v. G&S Liapis, et. al.

Represented defendant Rubbermaid Corporation in a products liability action in Superior Court for the District of Columbia (Judge Jose M. Lopez), Civ. Action No. 98 CA 004197. After discovery had progressed, and summary judgment motions filed, plaintiff dismissed action against defendant Rubbermaid Corporation. I was lead counsel on this case. (1998-2000)

Opposing Counsel was Gary Stein, Margolius, Mallios, Davis, Rider & Tomar, LLP Suite 500, 1828 L Street, NW (202) 296-6400.

Bullinger v. Cushman, Darby & Cushman and Pillsbury, Madison & Sutro

Represented law firm in a dispute with a former law partner. After discovery and summary judgment motions, the parties had an arbitration hearing. The arbitrator ruled in favor of the defendant. I was co-counsel on this case.

Lead counsel was Peter Winik, Latham & Watkins, 555 11th Street, NW, Washington, DC (202)637-2201.

Opposing Counsel was John M. Shoreman, Esq., McFadden, Shoreman & Tsimpedes, P.C., 1026 16th Street, N.W. Suite 302, Washington, DC 20036 (202) 638-2100.

RodimePLC v. Seagate Technology Inc.

Represented Rodime PLC, a patent holder of computer hard drive, in this intellectual property litigation in the U.S. District Court for the Central District of California (Judge Gadbois), 92-6855. This case progressed through discovery and summary judgment motions while I was at Sullivan & Cromwell. It also included appeals to the federal Circuit. I was co-counsel (1992-1995)

Lead Counsel was Margaret Pfeiffer, Sullivan & Cromwell, 1701 Pennsylvania Ave., NW , Washington, DC (202) 956-7500.

Opposing Counsel was Karl Limbach, Limbach & Limbach San Fransisco, California (no longer listed).

Ethicon Endo-Surgery and Ethicon, Inc. v. Richard Allen

Represented Defendant Richard Allen, a medical device manufacturer, in patent infringement case involving a endoscopic staple gun in an intellectual property litigation in the U.S. Court for the Southern District of Ohio (Judge James Graham), c2-94-0501. This case progressed through discovery and the court granted summary judgment on the first day of trial. I was co-counsel on this case (1994-95).

Lead Counsel was Margaret Pfeiffer, Sullivan & Cromwell, 1701 Pennsylvania Ave., NW Washington, DC (202) 956-7500.

Opposing Counsel was David Dobbins at Patterson, Belknap Webb & Tyler 1133 Avenue of the Americas, New York, New York 10036 (212) 336-2000

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

- Represented an Audit Committee of Board of Directors of a public company in an investigation relating to the Foreign Corrupt Practices Act. (Lead counsel)

- Represented public company in an accounting and securities fraud investigation in front of the Securities and Exchange Commission. (Co-counsel with other firm partners)

- Represented public company in a Securities & Exchange Commission investigation relating to alleged violations of securities laws and regulations. (Co-counsel with other firm partner)

- Represented company in a response to grand jury subpoena involving alleged violations of criminal laws. (Lead counsel)

- Represented public company in internal investigations involving potential violation of criminal laws. (Lead counsel)

- Represented member of Audit Committee in Department of Justice and Securities & Exchange Commission investigation involving alleged accounting and securities fraud. (Lead counsel)

- Represented former Board member of the New York Stock Exchange in investigation of violations of state law. (Co-counsel)

- Represented individual defendant in allegations involving bank fraud and other federal criminal laws. (Lead counsel)

- Represented public company in advising on risk assessment and compliance with the Foreign Corrupt Practices Act. (Lead counsel)

- Represented public company involving compliance with Office of Foreign Assets Control and Patriot Act laws and regulations. (Lead counsel)

- Represented former associate counsel of a public company in an investigation involving allegations of accounting and securities fraud being conducted by the Securities & Exchange Commission and the Department of Justice. (Co-counsel)

- Represented individual clients in a Department of Justice investigation relating to alleged violations of the Foreign Corrupt Practices Act. (Lead counsel)

- Represented individual in a New York State Attorney General and Securities & Exchange Commission investigation into market timing practices. (Co-counsel)

- Represented public corporation in a Department of Justice investigation involving alleged bribery of state officials. (Co-counsel)

- Represented individuals in a Department of Justice antitrust investigation. (Lead counsel)

- Represented public company in a grand jury investigation involving Department of Defense procurement fraud. (Co-counsel)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None. I do have a 401k Plan through Latham & Watkins that is in mutual funds and I will leave the money in mutual funds although there will be no further contribution from me or from Latham & Watkins.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   In the event of a potential conflict of interest, I will consult with the Department of Justice Ethics Office.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Please see attached SF 278

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   Please see attached net worth statement

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

National Steering Committee, Women for Bush/Cheney 2004
Virginia Lawyers for Bush/Cheney, Co-Director 2004

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Pro Bono Representations

Represented a man sentenced to death in Georgia in the matter entitled *Scott L. Christenson v. Turpin, Warden State of Georgia* (eventually reported decision in the Supreme Court of Georgia in 269 Ga. 226 (1998) in conjunction with his state *habeas corpus* appeal. This individual was convicted of felony murder and sentenced to death. He was on death row at the beginning of my representation. I spent hundreds of hours on this matter conducting an investigation, meeting with my client and witnesses, conducting legal research, working with experts and drafting legal briefs. I left my law firm, Sullivan & Cromwell, prior to the habeas hearings on this matter, although the death sentence was ultimately overturned in court, a decision affirmed by the Georgia Supreme Court.

Represented a group of military families relating to their opposition to the government's change in mental health care services and Tricare benefits (primarily for their children) in a case in the U.S. District Court for the Eastern District of North Carolina, entitled Nakomoto, et. al. v. United States, Civil Action No. 5: 98-CV-299-BO(Z) (Judge Terrence Boyle). We filed a preliminary injunction to stop the award of a new government contract for mental health care benefits that would result in diminishing those benefits. After favorable decisions in court, the government settled the case.

Supervised young attorneys in pro bono matters in D.C. Superior court including representation of an abused mother in a child custody suit in D.C. Superior Court and a tenant in a landlord-tenant litigation.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES		
Cash on hand and in banks	439,730			Notes payable to banks-secured		
U.S. Government securities-add schedule	74,981			Notes payable to banks-unsecured		
Listed securities-add schedule	1362147			Notes payable to relatives		
Unlisted securities--add schedule				Notes payable to others (Payable to W.C. Fisher II Trust)	290062	
Accounts and notes receivable:				Accounts and bills due		
Due from relatives and friends				Unpaid income tax		
Due from others				Other unpaid tax and interest		
Doubtful				Real estate mortgages payable-add schedule – mortgage on residence held by Homecomings Financial	412000	
Real estate owned-add schedule – residence in Alexandria, Virginia	1030500			Chattel mortgages and other liens payable		
Real estate mortgages receivable				Other debts-itemize:		
Autos and other personal property	109000					
Cash value-life insurance	5125					
Other assets itemize:						
College Savings Plan	24000					
Amount from law Firm (schedule) (est)						
684,300 (ONLY IF SEVERED SO NOT ADDED YET)				Total liabilities	702062	
				Net Worth	2343421	
Total Assets	3045483			Total liabilities and net worth	3045483	
CONTINGENT LIABILITIES				GENERAL INFORMATION		
As endorser, comaker or guarantor	NA			Are any assets pledged? (Add schedule)	No	
On leases or contracts	NA			Are you a defendant in any suits or legal actions?	No	
Legal Claims	NA			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	NA					
Other special debt	NA					

ALICE S. FISHER

ASSETS

Virginia State Rfd Municipal Bond	15800
Cash on Hand	439730
Abbott Laboratories	11547
Apache Corporation	28985
Ashland Oil	13774
Bristol Myers Squibb	7482
Citigroup	89240
DU PONT E I DE NEMOURS & CO	9454
Dollar General	19700
ISHARES TR MSCI EMERGING MKTS INDEX FD	40800
EMC Corporation	7416
Nike	24900
Nokia	6168
NAVELLIER MID CAP GROWTH PORTFOLIO	16719
Pimco	32887
Federal Express	36940
Gillette	10004
General Electric	21282
Home Depot	22560
HARRAH'S ENTERTAINMENT INC	12800
HOSPIRA INC	802
INTL BUSINESS MACH	34400
ISHARES TR GOLDMAN SACHS NAT RES INDEX FD	22447
Interpublic Group	3654
ISHARES TR RUSSELL 1000 GROWTH INDEX FD	15816
JPMORGAN CHASE & CO	59834
Coca Cola	16900
KEELEY SMALL CAP VALUE FD INC	40327
Southwest Airlines	4200
YUM! BRANDS INC	1024
Zimmer Holdings	2240
Pepsi Corp.	5276
Pfizer	20920
St Pauls Travelers	3995
Target	9880
Time Warner	5235
Texas Instruments	7488
VANGUARD INTERNATNAL EXPLORER INVESTOR	31136
VANGUARD TOTAL STOCK MARKET INDEX ADMIRAL5	84962
Exxon Mobil	52315
MEDCO HEALTH SOLUTIONS INC	1182
Walt Disney Corporation	44356

IRA

COLUMBIA ACORN USA CLASS Z	27183	View Details
FIDELITY MAGELLAN	4805	
ISHARES TR RUSSELL 1000 GROWTH INDEX FD	9401	
KING PHARMACEUTICALS INC	1636	
AT&T CORP NEW	125	
THIRD AVENUE REAL ESTATE VALUE	7397	
THIRD AVENUE SMALL CAP VALUE	6783	
VANGUARD TOTAL STOCK MARKET INDEX ADMIRALs	**15922**	

Fidelity Cash Reserves	93	
FIDELITY CONTRAFUND	22795	
FIDELITY CHINA REGION	7184	
FIDELITY NORDIC	9160	
TARGET CORP	2513	
VANGUARD INTERNATNAL EXPLORER INVESTOR	13613	
VANGUARD TOTAL STOCK MARKET INDEX ADMIRALs	**5111**	

Matthew Fisher Account

Cash	389	
ISHARES TR MSCI EMERGING MKTS INDEX FD	$6,219.76	
FIDELITY DIVERSIFIED INTERNATIONAL	$15,229.65	
HENNESSY CORNERSTONE GROWTH	$14,417.62	
ISHARES TR RUSSELL 1000 GROWTH INDEX FD	$11,360.46	
CLIPPER FOCUS	$14,681.58	
FIDELITY HIGH INCOME	$5,427.32	
THIRD AVENUE REAL ESTATE VALUE	$6,854.83	
THIRD AVENUE SMALL CAP VALUE	$19,014.37	

Luke Fisher Account

FIDELITY MUNICIPAL MONEY MARKET	$544.66	
ISHARES TR MSCI EMERGING MKTS INDEX FD	$6,120.00	
FIDELITY DIVERSIFIED INTERNATIONAL	$14,334.18	

HENNESSY CORNERSTONE GROWTH	$13,801.20
ISHARES TR RUSSELL 1000 GROWTH INDEX FD	$10,699.60
CLIPPER FOCUS	$14,038.37
FIDELITY HIGH INCOME	$5,076.70
THIRD AVENUE REAL ESTATE VALUE	$6,550.39
THIRD AVENUE SMALL CAP VALUE	$17,950.24

Alice Fisher IRA

Fidelity Cash Reserves	$4.93
Janus Worldwide	$5,103.81
Fidelity balanced	$3,303.61
Fidelity Contrfund	$6,795.73
Fidelity growth Company	$5,603.23
Fidelity OTC Port	$3,202.70
Spartan U.S. Equity	$13,593.40
M&I Stable Principal	$4,490.81
Dodge & Cox Balanced	$17,758.21
Legg Mason Value Trust	$31,313.79
Vanguard Instit Index	$3,122.39
Dodge & Cox Stock	$28,434.35
T Rowe Price Mid Cap gr	$6,373.59
Harbor International	$11,346.34
Fund A-Van Tot Stk Mkt	$4,219.01
Fund A-Van Dev Mkt	$2,219.85

Alice Fisher Law Firm (when severed)

Capital Account	$243,000
L&W Retirement Plan	$13,000
Vintage Partners	$800
Partnership Share for 2005 (est.)	$427,500

OTHER ASSETS	
U.S. Government Securities	2600
TSP accounts	72381
Real Estate Owned	1035000
Autos and Personal Property	109000
Children College Savings Plans	24000
Cash Value - Life Insurance	5125

U.S. Department of Justice

Washington, D.C. 20530

APR 06 2005

Marilyn Glynn
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Alice S. Fisher, who has been nominated by the President to serve as Assistant Attorney General for the Criminal Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. Section 208, requires that Ms. Fisher recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute, has a financial interest. Ms. Fisher has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests.

Ms. Fisher will resign from Latham & Watkins upon confirmation as Assistant Attorney General. Within 45 days of her resignation, she will receive a lump sum return of her capital account and her 2005 earnings calculated in accordance with the partnership agreement as of the date she withdraws from the partnership, and a buy-out of her interest in Vintage Partners Investment, an investment in which she participates as a partner in the firm. Until she receives the agreed-upon payments of her capital account, 2005 compensation, and payment for her interest in Vintage Investments, Ms. Fisher understands that she may not participate personally and substantially in a particular matter that would have a direct and predictable effect on the ability or willingness of Latham & Watkins to make the agreed-upon payments, unless she receives a waiver.

We have advised Ms. Fisher that because of the standard of conduct on impartiality at 5 CFR 2635.502, she should seek advice before participating in a particular matter involving specific parties which she knows is likely to have a direct and predictable effect on the financial interest of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party. She will have covered relationships with her former clients and her former firm, and she understands that for at least one year from the date she last

performed services for any former client, she will not participate in any particular matter involving specific parties in which the former client is or represents a party to such matter, unless she is authorized to participate. She will not participate in any particular matter involving specific parties in which her former law firm is or represents a party, for at least one year from the date she withdraws from the firm, unless she is authorized to participate.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Michael H. Allen
Deputy Assistant Attorney General
Alternate Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Fisher			First Name and Middle Initial: Alice S.	
Position for Which Filing	Title of Position: Assistant Attorney General, Criminal Division			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 555 11th St, NW Washington, DC 20004			Telephone No. *(Include Area Code)*: (202) 637 2148	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Alice S. Fisher			Date *(Month, Day, Year)*: 04/04/05	
Other Review (If desired by agency)	Signature of Other Reviewer: Ivan M. Tedd			Date *(Month, Day, Year)*: 4/5/05	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)	Signature of Designated Agency Ethics Official/Reviewing Official: Michael H. Allen			Date *(Month, Day, Year)*: 4/5/05	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Notations "4ME" made by Janice Rodgers, DOJ, based on information provided by filer.

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Alice Fisher

SCHEDULE A

Page Number: 2 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $180,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Latham + Watkins Capital Account						X																									Partnership Income 2004-'05 = 961,210	
2	Latham + Watkins '05 Partnership Share						X																									(est).	
4	Bristol Myers Squibb		X														X					X											
5	Dupont E I De Nemours + Co		X														X					X											
6	Gillette Co.		X														X			X													

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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U.S. Office of Government Ethics

Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	ING (Savings / Money Market)						X												X						X								
2	Virginia State Refunding Municipal Bond			X															X			X											
3	U.S. Government Inflation Bonds		X																X		X												
4	Texas Instruments		X														X				X												
5	Dodge + Cox Balanced (IRA)			X										X									X										
6	Dodge + Cox Stock (IRA)			X										X										X									
7	Fidelity Magellan (IRA)		X											X			X				X												
8	Fidelity Nordic		X											X			X				X												
9	Abbott Labs		X														X					X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	BankOne/JPMorgan				X												X						X										
2	Pfizer			X													X					X											
3	Vanguard International Explorer Investor			X										X			X						X										
4	St Pauls Travelers		X														X				X												
5	Exxon Mobil Corp.				X												X					X											
6	Walt Disney Co. Del.			X													X						X										
7	Citigroup				X												X							X									
8	Dollar General			X													X				X												
9	EMC Corp. Mass		X														X				X												

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Vanguard Total Stock Market (more than 1 acct)			X										X			X					X											
2	Keeley Small Cap Value Fund			X										X			X					X											
3	Navellier Mid Cap Growth Portfolio			X										X			X				X												
4	Pimco Commodity Real Return			X										X			X				X												
5	iShares TR Goldmansachs Natural Resources			X										X			X				X												
6	Ashland		X														X					X											
7	Southwest Airlines		X														X				X												
8	Target		X														X				X												
9	Apache			X													X				X												

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Page Number 6 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Fidelity Spartan US Equity Index (IRA)		X											X							X												
2	Fidelity Balanced (IRA)			X										X							X												
3	Fidelity Contrafund (IRA)			X										X							X												
4	Fidelity Growth Company (IRA)		X											X							X												
5	Fidelity OTC Port (IRA)		X											X							X												
6	Time Warner		X														X				X												
7	Pepsico Inc.		X														X				X												
8	Nike Inc. Class B			X													X					X											
9	Nokia Corp. ADR		X														X				X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	FedEx Corp			X													X				X												
2	Home Depot			X													X				X												
3	Accenture		X														X					X											
4	IBM			X													X					X											
5	Interpublic Group Cos. Inc. Del		X														X				X												
6	King Pharmaceuticals (IRA)		X														X				X												
7	[illegible]																																
8	Zimmer		X														X				X												
9	iShares TR MSCI Emerging Markets Index Fund (more than)				X									X								X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	I Shares TR Russell 1000 Growth Index (more than 1 acct)			X										X			X					X											
2	Coca Cola			X													X					X											
3	Medco Health Solutions		X														X				X												
4	Columbia Acorn USA (IRA)			X										X			X				X												
5	Vanguard Total Stock Market Admiral (more than 1 acct)				X									X			X					X											
6	Fidelity Municipal Money Market (more than 1 acct)		X											X			X					X											
7	Fidelity China Region		X											X			X				X												
8	General Electric Co.			X													X					X											
9	Fidelity Cash Reserves (money market) (more than 1 acct)				X									X					X			X											

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SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Third Avenue Real Estate Value (More than 1 acct)			X										X			X			X		X											
2	Third Avenue Small Cap Value (More than 1 acct)			X										X			X			X		X											
3	MFS Stable Principal (IRA)		X											X						X	X												
4	Legg Mason Value Trust (IRA)			X										X						X			X										
5	T Rowe Price Midcap Growth		X											X			X					X											
6	Harbor International (IRA)		X											X						X			X										
7	Vanguard Developed Markets (IRA)		X											X			X					X											
8	Vanguard Institutional Index (IRA)		X											X			X					X											
9	Fidelity Diversified International (IRA)			X										X			X						X										

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Reporting Individual's Name: Alice Fisher

SCHEDULE A continued
(Use only if needed)

Page Number: 10 of 15

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Janus Worldwide (IRA)		X											X						X	X												
2	Clipper Focus (more than 1 acct)			X										X			X			X		X											
3	Fidelity High Income (more than 1 acct)		X											X			X				X												
4	Hennessey Cornerstone Growth			X										X			X				X												
5	Yum Brands Inc.		X														X				X												
6	Pimco Total Return (Nebraska College Savings Plan)		X											X			X				X												
7	Vanguard Growth Index (Nebraska Plan)		X											X			X				X												
8	American Century Equity Income (No College Savings Plan)		X											X			X				X												
9	Vanguard Small Cap Growth		X											X			X				X												

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SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	(Nebraska College Savings Plan) Vanguard Small Cap Value Index		X											X			X				X												
2	(Nebraska College Savings Plan) Fidelity Diversified Income		X											X			X				X												
3	Latham & Watkins Retire Plan for Partners																																
4	GS High Yield Fund		X											X							X												
5	NT Domestic Equity Index Fd.		X											X							X												
	NT Int'l Equity Index Fd		X											X							X												
6	NT Domestic Bond Index Fd.		X											X							X												
	Dow Dimen Group Real Estate Sec. Port.		X											X							X												
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

U.S. Office of Government Ethics

Reporting Individual's Name: Alice Fisher

SCHEDULE C

Page Number 12 of 15

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

Category of Amount or Value (x)

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to Partnership Agreement with Latham + Watkins will receive lump sum pay out of capital contribution, partnership income	Latham + Watkins, Washington DC	10/03
2	as of date severed, a buy out of interest in Vintage Partners (valued at less than $1000 for Vintage Partners		
3			
4	will receive lump payment of filer's contributions to L+W retirement plan within 45 days of withdrawal from partnership.	Latham + Watkins, Washington DC	10/03
5			
6	will leave accrued 401K retirement funds in mutual funds reported on Schedule A, with no further contributions from filer at firm.	Latham + Watkins, Washington DC	10/03

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Reporting Individual's Name: Alice Fisher

SCHEDULE D

Page Number 13 of 15

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law Firm	Partner	7/85	1/00
1	Latham + Watkins, Washington DC	Law Firm	Partner	10/03	Present
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metco University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Latham & Watkins	Law Firm Income
2	America Online / Time Warner Inc.	Legal Services
3	Bear Stearns & Co.	Legal Services
4	Cogent Communications	Legal Services
5	HCA Healthcare Corp.	Legal Services
6	Insight Pharmaceuticals	Legal Services

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Reporting Individual's Name: Alice Fisher

SCHEDULE D

Page Number 13 of 15

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during your year of service to the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	International Truck + Engine Co.	Legal Services
2	Schering Plough	Legal Services
3	Telefacific	Legal Services
4	Veritas	Legal Services
5	IDT Corp.	Legal Services
6	Alex Trotman	Legal Services

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Sec. 2634.103, 103(b)(1)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Alice Fisher

SCHEDULE D

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise or any other non-profit organization when services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Presidio Advisory	Legal Services
2	Philip Fischer	Legal Services
3	Virginia Gemmell	Legal Services
4	Certain John Doe Clients not reported	Legal Services
5		
6		

Prior Editions Cannot Be Used.

Ms. FISHER. No, but I look forward to your questions, Senator.

Senator BROWNBACK. Ms. Schofield.

STATEMENT OF REGINA B. SCHOFIELD, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE

Ms. SCHOFIELD. Thank you, Senator Brownback, and thank you again for chairing this meeting. We really appreciate it. I want to thank the President and Attorney General for their support in my nomination, and I appreciate Senators Cochran and Lott on their support. Bude is a long way from here, so I do appreciate it.

I want to introduce my husband, Steve, and my son, Samuel, and my mother- and father-in-law, Bob and Doris Schofield, who had a very harrowing experience on I–95 today. So I appreciate them being here.

Senator BROWNBACK. If you can stand, please do it, from that harrowing experience.

[The individuals stood.]

Senator BROWNBACK. Thank you for being here.

Ms. SCHOFIELD. I appreciate the support of my friends today and there are a lot of them here today. So thank you.

[The biographical information of Regina B. Schofield follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Regina Brown Schofield
Regina Ann Brown (maiden)

2. Address: List current place of residence and office address(es.)

Home:
Alexandria, Virginia 22304

Office:
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

3. Date and place of birth.

January 14, 1962
Natchez, Mississippi

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Stephen Gerard Schofield
Spouse employer: Central Intelligence Agency
Occupation: Intelligence Officer
Address: Washington, D.C. 20505

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

October 1997 - February 1998
The George Washington University
Certificate of Environmental Management, 11/1998

September 1986 - May 1990
Jackson State University
M.B.A., 5/1990

September 1979 - December 1982
Mississippi College
B.S./B.A., 5/1983

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2/83-4/83	**Waitress, Pizza Hut**
4/83-8/83	**Sales Associate, Sears, Roebuck, and Company**
8/83 - 7/91	**Sales Representative, Philip Morris, USA**
7/91 - 9/92	**Confidential Assistant United States Department of Education**
9/92 - 1/93	**Deputy Director, Office of White House Liaison United States Department of Education**
1/93-3/93	**Temporary Staff, Best Temporary Services**
1993-2001	**Trustee, Alexandria Republican City Committee**
3/93 - 12/98	**Manager, Environmental Issues International Council of Shopping Centers**
1993-1995	**Member, Alexandria Economic Opportunities Commission**
3/1/95-6/30/99	**Member, Virginia Board of Agriculture and Consumer Services**
3/1/95-6/30/99	**Member, Committee on Rural Atlantic Exposition**
7/1/97-6/30/01	**Member, Board of Visitors of The College of William and Mary**
12/98 - 2/01	**Manager, Government Relations, United States Postal Service**
2/01 - present	**Director, Office of White House Liaison U.S. Department of Health and Human Services**
10/03 - present	**Director, Office of Intergovernmental Affairs U.S. Department of Health and Human Services**
2001-2004	**Member, HHS/Education Daycare Board (Co-President, 2003)**
2001-2006	**Member, Board of the National Endowment Association of The College of William and Mary**
2001-present	**Member, Board of Trustees, American Council of Young Political Leaders**
2003-present	**Co-Chairperson, HHS Rural Task Force**
2003-present	**Executive Overseer, HHS Intra-Departmental**

	Council on Native American Affairs
2003-present	**Member, Executive Committee**
	Federal Interagency Coordinating Council on Access and Mobility
2003-present	**Member, Interagency Workgroup on Insular Affairs**
2003-present	**Member, President's Task Force on Puerto Rico's Status**

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1978/79	**Who's Who Among High School Students**
1982	**Omicron Delta Kappa**
1982	**Mortar Board**
1981/82	**Who's Who Among College Students**
1999-2000	**Who's Who Among American Women**
2004	**Certificate of Appreciation, National Indian Health Board**

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

   None

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.
    Organizations lobbying before public bodies:

    National Endowment Association
    The College of William and Mary

    Board of Trustees

American Council of Young Political Leaders

Other memberships:

Commonwealth Republican Women's Club

Virginia Federation of Republican Women

National Federation of Republican Women

Trustee, Alexandria Republican City Committee

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

None

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I edited numerous brief articles for the International Council of Shopping Centers pertaining to environmental issues and have attached those remaining on the Council's web site. Additionally, while employed by the International Council of Shopping Centers, I gave numerous informal speeches of 10-minutes or less. I have never kept nor been made aware of a record of these informal speeches.

Also, while employed by the ICSC, I gave comments to the Army Corps of Engineers in 1998 concerning proposed regulatory changes. The comments were written by our contracted government relations consultant and are attached.

At the United States Postal Service, I prepared and delivered informal remarks, mostly for educational purposes.

As Director of Intergovernmental Affairs at HHS, I have given speeches, primarily to Tribal audiences, at conferences and meetings. I have attached the remarks for those speeches of which a record has been kept.

13. Health: What is the present state of your health? List the date of your last physical examination.

In good health
Last physical: September, 2004

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member, Alexandria Economic Opportunities Commission (appointed by the City Council, 1994; (term 1994-1995)
Member, Virginia Board of Agriculture and Consumer Services (appointed by Governor of Virginia, 1995; term 3/1/95-6/30/99)
Member, Committee on Rural Atlantic Exposition (appointed by the Governor of Virginia, 1995; term 3/1/95-6/30/99)
Member, Board of Visitors, The College of William and Mary (appointed by the Governor of Virginia, 1998, 7/1/97-6/30/2001)
Member, National Endowment Association Board, The College of William and Mary (elected by the alumni, 2001; 6-year term)
Member, President's Task Force on Puerto Rico's Status (appointed, 2003)

15. Legal Career:

Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

   No

2. whether you practiced alone, and if so, the addresses and dates;

   No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Pizza Hut
Dates: **2/1983 - 4/1983**
Status: **Waitress**
Address: **Jackson, MS**

Sears, Roebuck, and Company
Dates: **4/1983 - 8/1983**
Status: **Sales Associate**
Address: **Jackson, MS**

Philip Morris, USA
Dates: **8/1983 - 7/1991**
Status: **Sales Representative**
Address: **120 Park Avenue**
New York, NY 10017

United States Department of Education
Dates: **7/1991 - 1/1993**
Status: **Confidential Assistant (7/91-9/92)**
Deputy White House Liaison (9-92-3/93)
Address: **400 Maryland Avenue, SW**
Washington, D.C. 20202

Best Temporary Services
Dates: **1/1993 - 3/1993**
Status: **Temporary Staff**
Address: **Alexandria, Virginia**

International Council of Shopping Centers
Dates: **3/1993 - 12/1998**
Status: **Manager, Environmental Issues**
Address: **1033 North Fairfax Street**
Alexandria, VA 22314

United States Postal Service

Dates: **12/1998 - 2/2001**
Status: **Manager, Government Affairs**
Address: **475 L'Enfant Plaza, SW**
Washington, D.C. 20260

U.S. Department of Health and Human Services
Dates: **2/2001 - present**
Status: **Director, Office of White House Liaison (2/2001-present)**
Director, Office of Intergovernmental Affairs (10/03-present)
Address: **200 Independence Avenue, SW**
Washington, D.C. 20201

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Not applicable

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Not applicable

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Not applicable

2. What percentage of these appearances was in:

(a) federal court;
(b) state courts of record;
(c) other courts.

Not applicable

3. What percentage of your litigation was:

(a) civil:
(b) criminal.

Not applicable

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Not applicable

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Not applicable

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Character references:

1) Honorable George Allen, United States Senator
Telephone: (202) 224-4024
2) Honorable Tommy G. Thompson, Former HHS Secretary
Telephone: (202) 494-3486
3) Dr. Timothy Sullivan, President, The College of William and Mary
Telephone: (757) 221-1693
4) Honorable Claude A. Allen, Former HHS Deputy Secretary
Telephone: (202) 456-1414
5) Debbie Willhite, Former Senior Vice President, U.S. Postal Service
Telephone: (202) 667-4700
6) Honorable Danny Lee McDonald, Commissioner, Federal Election Commission
Telephone: (202) 694-1020
7) Charles L. Merin, Consultant
Telephone: (202) 530-0500
8) Jennifer S. Flack, Attorney
Telephone: (248) 351-3581
9) Honorable Haley Barbour, Governor of Mississippi
Telephone: (601) 359-3150
10) Honorable Dana Covington, Member, U.S. Postal Rate Commission
Telephone: (202) 789-6868
11) John M. Coster, Ph.D., R.Ph.

Telephone: (703) 837-4126
12) Judy A. Black, Consultant
Telephone: (202) 872-5285
13) Raymond Scheppach, Executive Director, National Governors Association
Telephone: (202) 624-5320
14) Tom Edwards, Director, New Jersey Office of Federal Affairs
Telephone: (202) 638-0631
15) Sally Smith, President, National Indian Health Board
Telephone: (202) 742-4262

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Through my experience at the Department of Health and Human Services (HHS), the Department of Education (DOE), and the United States Postal Service, I have developed many important skills and have earned the reputation as a strong and effective manager. Many of these attributes, particularly my resourcefulness, creativity, and success at encouraging collaboration qualify me for this important position.

My service at the United States Postal Service, DOE, and now at HHS has allowed me significant insight into the Executive Branch of the federal government and afforded me the invaluable skills necessary to shepherd change, manage complex staffing issues, and reform the policy-making process.

At HHS, working with the Office of the Assistant Secretary for Administration and Management, we took numerous steps to help streamline and improve the grants process.

Key steps included:
1) Participating in internal review of grant funding announcements to ensure that federal funding opportunities are available to as broad a group as possible and to ensure that grant programs administered by different components of an agency help to support an overall program strategy (IGA served as a member of the Grant Review Team).
2) Bolstering surrogate grantee visitation and evaluation in order to assure appropriate expenditure of federal funds by grantees.

As Director of the Office of White House Liaison, I placed particular emphasis on the importance of a strong surrogate grantee visitation schedule as outlined in step 3 above. Because senior departmental officials are continually traveling across the country for routine business, we formed a working group in order to match existing travel with opportunities for grantee visitation. The results of the process exceeded expectations by generating increased post-award communication between HHS and grantees, and by

generating enhanced public awareness of government-funded programs and services.

As Director of the Office of Intergovernmental Affairs at HHS, I have forged strong alliances with external partners, many of whom welcomed a more proactive approach to intergovernmental relations. Additionally, I have developed a strong foundation of the characteristics and background of numerous key populations. Department-wide leadership positions, such as the Co-Chairmanship of the HHS Rural Task Force, executive oversight of the Intra Departmental Council on Native American Affairs, and my designation as Secretary Thompson's point-person on the coordination of human services transportation, have helped me to build this important perspective.

Additionally, I have led with success in the following key areas relating to the importance of working closely with partners at every level of government:

1) **Breaking down access barriers for tribal organizations and facilitating an open process to bring tribes to the table for dialogue in the federal policymaking process.**
2) **Establishing and/or strengthening the language of cooperative agreements and Intergovernmental Personnel Mobility Act agreements.**
3) **Working with HHS agencies to strengthen and improve technical assistance available to partners and grantees.**

As noted in item #1 above, HHS, through my leadership of the Office of Intergovernmental Affairs, has accomplished significant milestones in advancing intergovernmental relations with over 562 federally recognized Tribal governments. Since becoming Director in 2002, I have developed my dual roles (White House Liaison and Director, IGA) to further Native American and Tribal government health and human services needs. I have carried out an, "Open Door," policy for Tribal leaders and have won praise from Tribes for exhibiting a trustworthy and straightforward approach in my interactions with them.

I developed, and then-Secretary Thompson approved, the Department's first-ever comprehensive Tribal consultation policy earlier this year. This policy, applicable to all ten regions of HHS, establishes a formal mechanism through which the policy process and budgetary deliberations of the Department can be made transparent to our Tribal partners. The Department's annual national Tribal budget consultation makes available the Department's top leadership for substantive and open discussions surrounding HHS' over $500 billion budget and the delivery of health and human services to Tribal constituents.

Having served in multiple capacities at different federal agencies, the importance of cutting across bureaucratic barriers for collaboration is vital. For example, federal agencies can and should work together to help our nation fight crime and care for victims of crime. The Department of Health and Human Services, through numerous grant programs, including the Mentoring Children of Prisoners Program and substance abuse programs through the Substance Abuse and Mental Health Services Administration, can

be and should be coordinating with efforts at the Department of Justice. The Department of Education, through classroom materials, teacher/administrator training programs, and its own research can and should work with the Department of Justice to help coordinate and strengthen crime fighting messages and help to increase awareness of victims services.

At HHS, my membership on numerous interagency working groups, particularly the Interagency Workgroup on Insular Affairs and the Executive Committee of the Interagency Coordinating Council on Access and Mobility, has facilitated active collaboration and partnership on important federal initiatives.

Also, through the ten HHS Regional Directors, located across the country, I have facilitated active partnerships at the regional level between agencies in order to strengthen federal programs and initiatives. Numerous initiatives, such as the annual Take A Loved One to the Doctor Day, have seen spawned active partnerships with other federal agencies.

There has been no more important experience in the course of my lifetime than service to my community. Throughout my life I have served the community in numerous capacities, from volunteer service at the local hospital to serving as a rape crisis counselor to victims of crime, community service has been a constant. Out of these diverse experiences I have learned the importance of outreach generally, and outreach to community groups in particular.

In all of my professional capacities I have applied an active outreach strategy in order to help educate, inform, build consensus, and implement. At the International Council of Shopping Centers, I maintained an active travel schedule in order to discuss important environmental issues directly with members. This face to face interaction and discussion provided for a better two-way process of exchanging information and generating constructive feedback.

At the United States Postal Service, building relationships with congressional staff members at the district level was an ideal way to improve public understanding of postal service products and policies. At HHS, outreach to intergovernmental groups was essential to the ability of the Department to begin implementation of the Medicare Modernization Act of 2003 and to carry-out its wide-ranging mission in promoting public health across the country and around the world.

Finally, in managing the HHS portfolio of 150 political appointees across staff and operating divisions lines, in addition to managing the 40-employee national organization in the Office of Intergovernmental Affairs, I have gained additional appreciation for basic management principles. Some of the additional steps I have taken include:

1) Implementing cascading employee performance contracts in order to ensure fair

application of performance standards from the top of the organization on down.

2) **Planning and hosting in-person staff retreats for exchange of ideas and discussion of best practices.**
3) **Solving complex personnel issues for numerous employees and managers across the Department.**
4) **Encouraging and supporting staff in the development of their professional skills through appropriate training.**
5) **Working with entry-level staff to improve skills and encourage upward mobility through merit promotion.**

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Philip Morris Retirement Plan
   Defined Benefit Plan; $3220.00 per year at age 65 (January 14, 2027)

   Thrift Savings Plan of the United States
   Current balance as of 3/15/2005: $114,218.54

   IRA Rollover from International Council of Shopping Centers
   Current balance: $40,000.00

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   In the event of a potential conflict of interest I will consult with ethics officials from the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached copy of SF278

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please

identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Bush/Cheney, volunteer, 2004
RNC Victory, volunteer, 2004
Phil Gramm for President, volunteer, 1996
Bob Calhoun for Commonwealth Senate (VA), volunteer, 1995
Kyle McSlarrow for U.S. Congress (VA), volunteer, 1994
Alexandria Republican City Committee, Trustee, 1993-2001
George Allen for Governor (VA), volunteer, 1993
David Caprara for House of Delegates (VA), volunteer, 1993
Phil Russell for House of Delegates (VA), volunteer, 1993
George Bush for President, volunteer, 1988
Jack Reed for Governor (MS), volunteer, 1987
Ronald Reagan for President, volunteer, 1984
Liles Williams for Governor (MS), volunteer, 1983
Haley Barbour for Senate (MS), volunteer, 1982

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   I have been a committed public and community servant throughout my life. My community service over the years has included volunteer activities in my church since age seven. In addition to that continuing service, I have volunteered as a rape crisis counselor; led clothing drives for the under-privileged; participated in numerous "litter-free" days by picking up trash in public areas throughout the community; volunteered at my local hospital in Alexandria; and served as a reading mentor to young children in Mississippi. I also volunteered part-time as a tutor in May of 1996 and April-May of 1997.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	$40K			Notes payable to banks-secured	N/A		
U.S. Government securities-add schedule	N/A			Notes payable to banks-unsecured	N/A		
Listed securities-add schedule	N/A			Notes payable to relatives	N/A		
Unlisted securities--add schedule	N/A			Notes payable to others	N/A		
Accounts and notes receivable:				Accounts and bills due	$5K		
Due from relatives and friends	N/A			Unpaid income tax	N/A		
Due from others	N/A			Other unpaid tax and interest	N/A		
Doubtful	N/A			Real estate mortgages payable-add schedule	$315K		
Real estate owned-add schedule	$500K			Chattel mortgages and other liens payable	N/A		
Real estate mortgages receivable	N/A			Other debts-itemize:			
Autos and other personal property	$20K			Chase Auto Loan	$8K		
Cash value-life insurance	$5K			Bank One / Chase MasterCard	$12k		
Other assets itemize:							
				Total liabilities	$340K		
				Net Worth	$225K		
Total Assets	$565K			Total liabilities and net worth	$565K		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	N/A			Are any assets pledged? (Add schedule)	No		
On leases or contracts	N/A			Are you a defendant in any suits or legal actions?	No		
Legal Claims	None			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	None						
Other special debt	None						

U.S. Department of Justice

Washington, D.C. 20530

APR 0 6 2005

Marilyn Glynn
Acting Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Glynn:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Regina B. Schofield, who has been nominated by the President to serve as Assistant Attorney General, Office of Justice Programs, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Ms. Schofield recuse herself from participating personally and substantially in a particular matter in which she, her spouse, or anyone whose interests are imputed to her under the statute, has a financial interest. Ms. Schofield has been counseled and has agreed to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect her financial interests.

We have advised Ms. Schofield that because of the standard of conduct on impartiality at 5 C.F.R. § 2635.502, she should seek advice before participating in a particular matter involving specific parties that she knows is likely to have a direct and predictable effect on the financial interest of a member of her household, or in which she knows that a person with whom she has a covered relationship is or represents a party.

Upon confirmation, Ms. Schofield will resign from her trustee positions with the American Council of Young Political Leaders, and The College of William and Mary Endowment Association. Pursuant to 5 C.F.R. § 2635.502, for at least one year from the date of her resignations from these organizations, Ms. Schofield will recuse herself from participating in any particular matter involving specific parties in which either of these organizations is a party or represents a party, unless she is authorized to participate.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Michael H. Allen
Deputy Assistant Attorney General
Alternate Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Schofield			First Name and Middle Initial: Regina B	
Position for Which Filing	Title of Position: Assistant Attorney General/Office of Justice Programs			Department or Agency *(If Applicable)*: United States Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Hubert H. Humphrey Building, 200 Independence Ave, SW, Washington, DC 20201			Telephone No. *(Include Area Code)*: (202) 690-6060	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: Director, Office of Intergovernmental Affairs, US Department of Health and Human Services, 10/02-present White House Liaison, US Department of Health and Human Services, 2/01-present				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Judiciary			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Regina B. Schofield			Date *(Month, Day, Year)*: 3/17/2005	
Other Review (If desired by agency)	Signature of Other Reviewer: Lori M. Rabb			Date *(Month, Day, Year)*: 4/5/05	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: Richard H. Allen			Date *(Month, Day, Year)*: 4/5/05	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Schofield, Regina B

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties*	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Merril Lynch/Hartford Growth Fund Class A (spouse's mutual fund)		X											X							X												
2	Merril Lynch CMA/Alliance Bernstein Growth and Income Fund ADV CL		X											X							X												
3	Merril Lynch/Delaware Group Trend Fund		X											X							X												
4	Merril Lynch/Victory Diversified Stock Fund		X											X							X												
5	Merril Lynch/The Oakmark Fund		X											X							X												
6	PhilipMorrisUSA(defined benefit plan held intrust byChaseManhattan;valuenotreadily ascertained)																															$3220/yr at 65	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Schofield, Regina B

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Citibank IRA/Alliance Bernstein Global Technology Fund Class B		X											X							X												
2	Citibank IRA/Calamos Growth and Income Fund Class C		X											X							X												
3	Citibank IRA/Growth Fund of America Class B		X											X							X												
4	Citibank IRA/John Hancock Financial Industries Fund Class B		X											X							X												
5	Citibank IRA/John Hancock Small Cap Equity Fund Class B		X											X							X												
6	Citibank IRA/ MFS Total Return Fund Class B		X											X							X												
7	Citibank IRA/ MFS Utilities Fund Class B		X											X							X												
8	Citibank IRA/Oppenheimer Global Fund Class A		X											X							X												
9	Citibank IRA/Van Kampen Comstock Fund Class B		X											X							X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Schofield, Regina B

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Citibank/Davis New York Venture Fund Class B		X											X							X												
2	American Funds 529 Acct/Growth Fund of America 529B (Virginia)		X											X							X												
3	Citibank/Jennison Growth Fund Class B		X											X							X												
4	Merril Lynch/Fidelity ADV DIV International		X											X							X												
5	Merril Lynch/Janus Small Cap Value Investor Fund		X											X							X												
6	Merril Lynch/Nations Marsico Growth Fund Class A		X											X							X												
7	Merril Lynch/Oppenheimer Capital Appreciation Class A		X											X							X												
8	United States Government (spouse salary)																																
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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U.S. Office of Government Ethics

Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Schofield, Regina B

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: Schofield, Regina B

SCHEDULE C

Page Number: 6 of 7

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					X						
1	First USA, Delaware	Credit Card	2003	2.9%	Rev	X										
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Philip Morris, USA (definted benefit plan held in trust by Chase Manhattan)	New York, NY	07/91
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Schofield, Regina B		7 of 7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo.,Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	American Council of Young Political Leaders, Washington, D.C.(uncompensated)	Non-profit	Trustee	10/1997	present
2	The College of William and Mary Endowment Association (uncompensated)	Educational Institution	Trustee	11/2004	present
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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Senator BROWNBACK. Good. Thank you all very much.

The questions I have are not tough ones to drill you. We have heard the support from home State Senators, and the backgrounds each of you have are outstanding qualifications. I would, though, like to go down the bench and as you look at the place you have been nominated to, what is it you see as the top issue or issues that you are going to be confronted with in working there?

I know you are not in the position yet. I don't know of any opposition to any of you going into these positions, so I think it clears through pretty quick, although strange things happen around here. What do you see as the top issues you are going to be confronting?

Ms. Brand?

Ms. BRAND. Thank you, Senator Brownback. The Office of Legal Policy handles an extraordinarily broad range of issues, ranging from everything from tort reform to drug policy and terrorism. But the top priority of the Department of Justice, writ large, is the war on terrorism, and so that has been my focus as the Principal Deputy Assistant AG over the last couple of years and it will continue to be my primary focus going forward. There is a lot of legislation on the table this year and the threat of terrorism is not receding, so that will continue to be my top priority.

Senator BROWNBACK. Ms. Fisher?

Ms. FISHER. Thank you, Senator. As well, for the Criminal Division the top priority remains terrorism and protecting our homeland. I had the opportunity, as you know, to work at the Department in the terrorism area for two years, and I look forward to working side by side with those very dedicated career people that work night and day combating terrorism. So I look forward to getting back with them. It is in my heart and I look forward to that.

My other priorities would obviously continue to be corporate fraud and white-collar fraud. That continues to be a priority of the Department, as well as obscenity, child pornography and computer crimes, the whole range of computer crimes that are just rampant through our Nation right now. Whether it is drugs on the computer, obscenity, child pornography, we need to find better, effective ways to deal with these crimes. Guns and drugs, public corruption—these are also things that the Criminal Division is very focused on.

Senator BROWNBACK. Ms. Schofield?

Ms. SCHOFIELD. Thank you, Senator Brownback. If confirmed, I would continue to advance the mission of the Office of Justice Programs and support the President's and the Attorney General's initiatives on DNA. There are some issues dealing with serving victims of crime. That is an issue that is very close to my heart and I would work tirelessly to support our local law enforcement, State and local law enforcement agencies.

Senator BROWNBACK. Ms. Brand, in the war on terrorism, it goes on and just today a group of us put in an immigration bill because one of the concerns that a lot of people have, and realistically, that we have got people coming over that seek to do us harm. A lot of people enter the United States legally each year and a lot of people enter illegally.

The PATRIOT Act has had a lot of controversy, it seems, surrounding it. What is your take of its effectiveness in the war on ter-

rorism, not the legal—and there have been a number of hearings held on that—but the effectiveness of what the PATRIOT Act has done to date?

Ms. BRAND. Thank you. Alice is certainly in a good position to answer this question, as well, having worked in the Criminal Division following 9/11. But we have seen in a number of cases the effectiveness of many of the provisions of the PATRIOT Act, particularly the provisions dealing with information-sharing between the criminal justice field and the intelligence field.

The PATRIOT Act took down the wall, so to speak, that divided those different elements of the Government prior to the PATRIOT Act. Those provisions of the Act were used in the Lackawanna 6 investigation, the Portland 7 investigation, the Virginia jihad investigation, and others, and have really become part of the way of effectively doing business in combating terrorism now.

Many of the Act's provisions also help us in the war on violent crime. There is, for example, a provision, Section 212, that allows Internet service providers to voluntarily disclose information if they see an imminent threat of death or serious physical injury. That has been used in cases ranging from defusing a bomb threat to rescuing a kidnapping victim and rescuing young girls who were kidnapped and taken across State lines by pedophiles. So it really has been effective across the board.

Senator BROWNBACK. Ms. Fisher, you mentioned a couple of areas that I am curious on how you think we are doing today or how we might improve both in corporate fraud and on the issue of pornography. We had the huge difficulty in the late 1990s on the corporate fraud. How do you feel we are doing today on that score?

Ms. FISHER. Well, I think the Government has been very effective in combating corporate fraud. When I was at the Department, Sarbanes-Oxley was passed and the corporate fraud task force was set up to specifically focus on corporate fraud. And I saw the results while I was in the Government, and now being on the outside in private practice I have seen what effect those laws actually had on the board rooms across America.

I think such things as the certification provisions that were put into Sarbanes-Oxley had a real effect on decisionmaking in boards of directors for our public corporations. I think the Government is doing a good job in increasing the awareness and being able to increase investor confidence in our public corporations because of the efforts of the Government in this regard.

Senator BROWNBACK. On pornography, there have been a number of charges that we have not taken this battle on. In spite of Supreme Court rulings that allow the prosecution of this on a local community standard basis, a number of groups are charging that there has just not been anything done on this.

Ms. FISHER. Well, child exploitation and obscenity was not one of the areas that I supervised while I was at the Department before, but I know that recently the Department of Justice has set up an obscenity task force out of the Criminal Division to focus the Government's resources from not only within the Department of Justice, but also with other agencies—Homeland Security, postal inspectors, et cetera—to really focus on this problem. So I think that there will be a commitment to this going forward.

What has happened with child pornography and obscenity because of the Internet is a really horrible thing and we have to take efforts now to combat it or it will continue to spread.

Senator BROWNBACK. I think the Justice Department is going to be key on this, and I met with the Attorney General about it and he mentioned it in his confirmation hearing. But the reason I say that is that you have the legal capacity to prosecute these cases that a number of people at State or local levels don't have.

Even though the standard is on a community basis standard, you are the ones that have probably the expertise to be able to move, and much of it goes all across the country, if not internationally. I do hope you can step up and either provide assistance in prosecuting some of these cases on a State and local basis or take on some high-profile cases yourself in this process, because I do think a few prosecutions of selected items would have a significant impact on this. I think it is like a $10 billion industry now.

Ms. FISHER. Well, I certainly plan on doing that, Senator, and looking at that and focusing on that if I am lucky enough to be confirmed.

Senator BROWNBACK. Ms. Schofield, you mentioned DNA issues. That has been certainly a big one on some capital punishment cases. Are we getting that information and technology widespread across the country now? Is it available to most jurisdictions to use on an as-needed basis?

Ms. SCHOFIELD. I believe that the billion-dollar initiative that the President has proposed is to start relieving some of the backlog and provide our State and local laboratories and agencies with enough wherewithal to get going and get rid of some of those backlogs.

Senator BROWNBACK. I don't know, and maybe this isn't fair to ask, but do you know where that is in the allocation process? There has been that appropriation. Has it been allocated? Is it being allocated? Do you know where we are on that?

Ms. SCHOFIELD. I think that the $1 billion is in the pipeline. I may be mistaken about that, but I would be happy to look into it.

Senator BROWNBACK. I was just curious.

Ms. SCHOFIELD. There are two parts to it. There is $50 million to help exonerate the innocent and educate defense lawyers and prosecutors, but there is also the $1 billion initiative to help with the backlog.

Senator BROWNBACK. The TV shows certainly have an impact on some of these, as well, that my family watches.

Ms. SCHOFIELD. Yes.

Senator BROWNBACK. I don't get to watch them as often as I would like, but I get reports from the rest of my family members about a number of them.

Thank you all for being here. I don't have further questions. You are outstanding nominees. I will certainly be supporting you. I don't know of any opposition. I hope we can move this through rapidly on the floor. We will keep the record open the requisite number of days.

I do have a statement that we will put into the record for Senator Leahy, who unfortunately could not be here, but had a series of comments and some questions, I believe, that he is submitting

to the various nominees. If you could respond to those in as rapid order as possible, that would certainly help out.

I congratulate you. I congratulate your family members. I thank you for your public service. It is a tough life, it is a great life. It is a great one of contribution where you are giving of yourself to the country and really around the world by the standards that we put forward here. So I consider it a very high calling, and one in the Justice Department even more so. When you are helping to dispense justice, it is hard to have a higher calling than that. Thanks for doing it. God bless you all and we will move this on forward.

The hearing is adjourned.

[Whereupon, at 4:45 p.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

May 23, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed my responses to the written questions received following my confirmation hearing from Senators Cornyn, Leahy, Kennedy, and Durbin.

Sincerely,

Rachel L. Brand

U.S. Senator John Cornyn

Executive Nominations

Thursday, May 12, 2005, 4 p.m., Dirksen Senate Office Building Room 226

WRITTEN QUESTIONS FOR RACHEL BRAND
Ms. Brand, I regret that I was unable to attend your confirmation hearing in person. I would like to congratulate you on your impressive record of public service.

As you and I discussed when we met in my office on Tuesday, April 19, I am a strong proponent of openness in government and freedom of information. Earlier this year, I introduced two bills – the OPEN Government Act of 2005 (S. 394) and the Faster FOIA Act of 2005 (S. 589). The OPEN Government Act is important legislation to strengthen the procedural aspects of the federal Freedom of Information Act. I know there are provisions of that legislation that raise concerns with the Justice Department, and I look forward to working with the Department to resolve those concerns.

The Faster FOIA Act, by contrast, should not be controversial at all. That measure can and should be enacted into law quickly. Indeed, I am submitting these written questions to you today, well in advance of the one-week deadline, in the hope of expediting action on the Faster FOIA Act.

Introduced by Senator Patrick Leahy and myself in the Senate, and by Representatives Brad Sherman and Lamar Smith in the House (H.R. 1620), the Faster FOIA Act would simply establish a commission of FOIA experts and government officials to examine the causes of delay in the processing of FOIA requests and to consider possible solutions. I cannot imagine why there should be problems moving the Faster FOIA Act quickly through the process. Indeed, I am gratified that the Senate Judiciary Committee has seen fit to take such quick action on the measure. But that was two months ago. Since that time, I have been informed that the Administration will ultimately support the bill and would simply like to make some suggestions for improving the bill.

I remain hopeful that the Faster FOIA Act will be swiftly approved by Congress and sent to the President's desk. Ideally, that would occur before the Memorial Day recess. At a minimum, it should be signed into law before the Independence Day recess. As you may know, the original Freedom of Information Act was signed into law on July 4, 1966.

According to recent Department testimony, the Justice Department is "the lead federal agency for FOIA" and "has the primary responsibility for overseeing agency compliance with FOIA." As Acting Assistant Attorney General for the Office of Legal Policy, you already play an important role in developing legal policy for the Justice Department, and if confirmed to the position of Assistant Attorney General for that same office, your role in developing legal policy will be enhanced further still.

Accordingly, I would like to ask you the following questions:

1. Are there any changes that the Administration would like to recommend to the Faster FOIA Act prior to its support for the legislation? Or is the Administration prepared to the support the legislation as currently drafted?

RESPONSE: Senator Cornyn, I know how important this issue is to you. I very much enjoyed meeting with you several weeks ago when you asked for my views on the Freedom of Information Act (FOIA). As I told you then, I firmly believe that government should operate as openly as possible. The government exists to serve the people, who pay for its functions through their hard-earned tax dollars and who elect the President and the Congress. Our fellow citizens have a right to information about how the government is serving them. The important goal of openness must, of course, be balanced with the need to protect certain types of information from disclosure. I know from my experience working in the Executive Branch that the government would be far less effective in serving the people without these protections. For example, information that, if dislcosed, could disrupt law enforcement operations or threaten national security must be protected. The Freedom of Information Act generally reflects this important balance.

I can assure you that the Department of Justice takes very seriously its obligations to comply with FOIA. Our Office of Information and Privacy has both responsibility for assisting most components of the Department of Justice in complying with FOIA requests and governmentwide responsibility for uniform and proper compliance with FOIA, and this component is staffed by a group of government employees who have dedicated their careers to the faithful implementation of the Act.

The Administration is still considering how best to work with you to study ways to improve implementation of FOIA. If confirmed, I look forward to working on this with you.

2. The day before your confirmation hearing, a Justice Department official testified on FOIA before the House Government Reform Subcommittee on Government Management, Finance and Accountability. I submitted a statement to the House subcommittee as well, and for your convenience, I attach here a copy of my statement, accompanied by supporting materials. Because the Justice Department chose not to send a witness to the Senate Judiciary subcommittee hearing I chaired on March 15, 2005, this may be the only opportunity I will have to ask questions to a Justice Department official about FOIA.

As explained in greater detail in my statement to the House subcommittee, the Justice Department's written testimony to the House expressed opposition to any legislative effort to reverse the effects of the Supreme Court's *Buckhannon* ruling within the specific context of FOIA litigation. The Department justified its opposition on a single ground: namely, that any fear of abuse of the *Buckhannon* decision within the FOIA context is "'entirely speculative and unsupported by any empirical evidence'" – quoting the Chief Justice's majority opinion in *Buckhannon*. My statement responded to that assertion by making two points.

First, I explained that the Chief Justice was speaking not to policymakers, but to the litigants in the case, who apparently had neglected to produce any evidence of abuse to the Supreme Court. I further noted that, in any event, the Chief Justice was not referring to FOIA litigation at all. To the contrary, he specifically directed his attention to litigation involving money damages – as opposed to litigation for equitable relief. FOIA, as you may know, provides only equitable relief. *So the Chief Justice was not even referring to FOIA plaintiffs.* Even Justice Scalia's concurring opinion acknowledges that *Buckhannon* can be abused in precisely the manner feared by open government advocates.

Second, I provided specific examples of abuse of the *Buckhannon* decision within the specific context of FOIA litigation. Indeed, the record is already sufficient to drive at least one attorney to report that "I am no longer able to take most FOIA cases because I know it is highly likely that the agency will turn over the documents after I file suit and then refuse to pay attorneys' fees and expenses."

Now that it has had the opportunity to review my statement and to consider other evidence, does the Justice Department still believe that my concern about *Buckhannon* within the specific context of FOIA litigation is "entirely speculative and unsupported by any empirical evidence"?

RESPONSE: Your question refers to testimony provided by an official of the Department's Civil Division at the House Government Reform Subcommittee on Government Management, Finance, and Accountability's recent FOIA oversight hearing, and specifically concerns the portion of that testimony dealing with the Supreme Court's decision in *Buckhannon Board & Care Home, Inc. v. West Virginia Dep*artment *of Health & Human Resources*, 532 U.S. 598 (2001).

Although I am not a litigator for the Department of Justice, I understand that this portion of the testimony restates a longstanding litigating position of the Department of Justice, which favors the application of *Buckhannon* to the issue of attorneys' fees in FOIA cases. It is my understanding that federal district and appellate courts have adopted the Department's position on this question.

I am not aware of any agency action that relies upon the *Buckhannon* decision to the detriment of FOIA requesters. But I agree that this is an important question that the Department of Justice and other agencies should address. The Department's recent testimony highlighted the many positive developments in the area of FOIA implementation. Nevertheless, I believe there is always room for improvement. I look forward, if confirmed, to working with you and your colleagues to ensure that the executive branch stays true to the letter and spirit of FOIA.

Responses of Rachel L. Brand
Nominee to be Assistant Attorney General for the Office of Legal Policy
to Written Questions from Senator Patrick Leahy
May 23, 2005

Judicial Nominations

1. **You indicated on your questionnaire that, while working as Associate White House Counsel in 2001-02, you "participated in the preparation of recommendations to be presented to the President in his selection of nominees for judicial offices." You've also worked first as Principal Deputy Assistant Attorney General and now as Acting Assistant Attorney General at the Office of Legal Policy – the DOJ component charged with recommending and vetting judicial nominees for the Attorney General and the President. So you've apparently been involved in the judicial nominations process throughout much of the Bush presidency.**

   a. **In your time in the White House Counsel's office and at OLP, how was judicial philosophy and ideology of the nominees taken into account?**

RESPONSE: President Bush has stated that he seeks to nominate individuals who clearly understand that the role of a judge is to interpret the law, not to make policy or legislate from the bench. He looks for fair and impartial individuals of ability and integrity, who have appropriate experience and the respect of their peers, and who have the appropriate temperament. Those involved in providing recommendations to the President concerning judicial nominations seek to assist the President in identifying individuals who fit this description.

   b. **Do you believe it would appropriate for the administration to work with the Senate to find consensus nominees, rather than taking radical measures including eliminating the filibuster in order to push through contentious nominees?**

RESPONSE: It is appropriate to seek the views of Senators on both sides of the aisle concerning judicial nominations. For instance, the White House Counsel's Office regularly consults with and seeks the views of home-state senators on judicial nominations. In my own experience as an Associate Counsel to the President, I regularly worked with home-state senators to identify qualified nominees upon whom the Administration and the home-state senators could agree. For example, in connection with my responsibility for assisting with district court vacancies in Wisconsin, I worked closely with the staffs of Senators Kohl and Feingold.

   c. **Given your previous political positions on two Republican presidential campaigns and in the White House and your involvement**

in this administration's previous aggressive decisions to nominate and re-nominate controversial candidates, do you think you will be able to work toward the type of consensus needed to resolve the current crisis over judicial nominations?

RESPONSE: If confirmed, I would do my best to assist the Attorney General in any role the Department of Justice has in the judicial nominations process.

PATRIOT Act

2. **In defending the USA PATRIOT Act, you have emphasized the provisions that include explicit checks and balances on executive power – judicial review in some cases, reporting requirements in others. I agree on the importance of these checks and balances; in fact, I pushed for them during negotiations on the PATRIOT Act, generally against the Administration's strong objections. I also pushed for the sunset provision, which ensured that Congress would revisit the PATRIOT Act. As you said in one speech, "Because many of the Act's most important provisions are scheduled to expire in 2005, the debate over the Act will continue."**

   a. **Would you agree that this debate is an important and healthy exercise for our democracy?**

RESPONSE: I believe that vigorous debate over issues of public concern is a cornerstone of our democracy.

   b. **Assuming that Congress reauthorizes provisions of the PATRIOT Act this year with modifications, why shouldn't we use the sunset mechanism again, if only to ensure the sort of close congressional oversight that you have said is so important?**

RESPONSE: As the Attorney General has testified, a sunset mechanism is not necessary for Congress to conduct oversight of the use of the authorities contained in the USA PATRIOT Act. In the absence of a sunset provision, Congress would have not only the authority but also the constitutional responsibility to conduct thorough oversight of the Department's implementation of the Act.

The track record of the Administration's use of the USA PATRIOT Act in the last three-and-a-half years demonstrates not only the Act's effectiveness in protecting the safety and security of the American people, but also in safeguarding their civil liberties; there has not been one substantiated case of abuse under the Act. Therefore, I believe that all of the sunsetted provisions of the USA PATRIOT Act should be reauthorized.

c. **Given that you told one group that the PATRIOT Act "guards against abuse through extensive congressional oversight," would you support more punctual, regular, and complete reporting to the Senate Judiciary Committee, to other Congressional committees, and as much as possible, to the public about use of those PATRIOT Act provisions of concern to many Americans?**

RESPONSE: As I indicated in that speech, the USA PATRIOT Act contains important provisions that are designed to facilitate congressional oversight. For example, section 1001 directs the Office of Inspector General to submit to both the Senate Judiciary Committee and the House Judiciary Committee on a semiannual basis a report detailing any abuses of civil rights and civil liberties by Department employees or officials. In addition, on a semiannual basis, the Department is required to report to the Senate Judiciary Committee and the House Judiciary Committee the number of applications made for orders requiring the production of business records under section 215 as well as the number of such orders granted, modified or denied. The Department is also required to fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on a semiannual basis concerning all requests for the production of business records under section 215. It is my understanding that these reports, along with the Department's semiannual reports on its use of FISA authorities generally, are available for inspection by any member of Congress.

I also believe that the Department has made considerable efforts to inform both Congress and the public on its use of USA PATRIOT Act authorities. Over the last two months, for example, the Department has provided at least 29 Department witnesses to testify at 15 different congressional hearings relating to the USA PATRIOT Act. In addition, the Attorney General has released a significant amount of information regarding the Department's use of three of the most frequently discussed provisions of the Act: sections 206, 213, and 215.

If any Senator has proposals for further reporting requirements, I would be happy to review and consider them if confirmed.

3. **Let's talk about a government power that is not subject to meaningful checks and balances, in my view. Section 214 of the PATRIOT Act lowered the standard for obtaining a pen register or trap and trace authority under FISA. Under current law, the government need only certify that the information sought is relevant; the judge then has no discretion – he must issue the order. I believe that, at a minimum, the government should be required to make a showing that the information sought is relevant, and the judge should make a finding to that effect. Do you agree or disagree, and why?**

RESPONSE: Pen registers and trap-and-trace devices can track routing and

addressing information about a communication, such as which numbers a particular telephone dials, but may not be used to collect the content of communications. Section 214 authorizes investigators to ask the FISA Court for authorization to install a pen register and/or trap-and-trace device, based on a certification by the applicant that the device is likely to reveal information relevant to a foreign intelligence investigation.

The Supreme Court has long held that law enforcement is not constitutionally required to obtain court approval before installing a pen register. *See Smith v. Maryland*, 442 U.S. 735, 744 (1979). Nevertheless, FISA requires the government to go to a court, certify that the information sought is likely to reveal information relevant to a foreign intelligence investigation, and receive court authorization before installation. The section 214 standard for obtaining a pen register under FISA is comparable to that in the criminal context: the government must certify to the court that the information sought through the pen register or trap-and-trace device is relevant to an ongoing criminal investigation. *See* 18 U.S.C. § 3123(a)(1).

In addition to requiring court approval, use of section 214 is subject to other safeguards. First, section 214 explicitly safeguards First Amendment rights, requiring that any "investigation of a United States person ... not [be] conducted solely upon the basis of activities protected by the First Amendment of the Constitution." The Department therefore must satisfy the FISA court that the investigation is not conducted due solely to activities that are protected by the First Amendment. Second, in the Department's experience, the FISA Court does not function as a rubber stamp; rather, it is my understanding that the FISA Court scrutinizes and asks questions about applications filed by the Department. Third, current law requires the Department to "fully inform" both the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence on a semiannual basis concerning all uses of pen register and trap-and-trace devices. This report must detail the total number of applications made for orders approving the use of pen registers or trap-and-trace devices under FISA along with the total number of such orders either granted, modified, or denied. *See* 50 U.S.C. § 1846. It is my understanding that the Department transmitted these reports to Congress in April 2002, January 2003, September 2003, December 2003, September 2004, and December 2004, and that they may be reviewed by any member of Congress.

Therefore, I believe the use of pen registers and trap-and-trace devices is subject to adequate checks and balances, particularly in view of the minimally intrusive nature of these investigative tools. I do not believe, therefore, that the Department would support raising the standard for obtaining this preliminary investigative tool. Doing so could deprive investigators of the ability to use a pen register or trap-and-trace device at the outset of an investigation, precisely when those tools are most useful. Raising the standard would also make it more difficult to obtain a pen register or trap-and-trace device in the terrorism context than in the criminal context.

Justice For All Act

4. **Congress last year passed the Justice For All Act of 2004, which, among other things, authorized $75 million a year for five years for capital representation and capital prosecution improvement grants. This program is carefully crafted to help participating states establish an effective system for providing competent legal representation to indigents charged with capital crimes. The Administration's budget for FY 2006 included no money for this program, and instead proposed $20 million for an unauthorized, ill-defined "training" program for attorneys in capital cases. As the head of the Justice Department's policy office, what would you do to support the priorities, and carry out the mandates, enacted into law in the Justice For All Act?**

RESPONSE: I consider the Justice for All Act of 2004 to be a very important piece of legislation. I have already worked extensively on implementing certain provisions of the Act, and I would continue to do so if confirmed. For instance, the Office of Legal Policy coordinated the drafting of recently issued guidelines for vindicating the crime victims' rights that are recognized in Title I of the Act and is coordinating promulgation of the regulations concerning victims' rights that the Attorney General is required to issue under the Act. The Office of Legal Policy generally plays no role in the budgeting and grant-making decisions to which your question refers, as those issues are within the purview of Office Of Management and Budget (OMB) and the Office for Justice Programs, the Department's grant-making component.

With respect to the capital litigation training program proposed by the President, the Office of Legal Policy is participating in a secondary role in the development of the program. Lawyers from the Office of Legal Policy participated in an initial meeting with stake-holders held in February 2005, shortly after the President announced the initiative. The response from the stake-holders since that initial meeting has been very supportive, with prosecutors, capital defense lawyers, and judges all expressing support for and interest in the program. For example, an April 28, 2005, letter on behalf of the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the New York State Capital Defender Office "applaud[s]" the Department's work on the program and expresses "excite[ment] about this opportunity to improve the administration of justice . . . ." I expect that lawyers from the Office of Legal Policy will continue to assist the Office of Justice Programs in developing the President's initiative to improve the quality of lawyering in capital cases.

5. **The Administration's budget for FY 2006 budget proposed removing an estimated $1.2 billion from the Crime Victims Fund, leaving the Fund with a zero balance going into fiscal year 2007.**

   a. **Did the proposal to rescind the Fund originate at the Justice Department or at the White House? As the Principal Deputy Assistant Attorney General in the Office of Legal Policy, did you weigh in on this proposal?**

RESPONSE: I do not know where the proposal to move funds from the Crime Victims Fund originated. I have never been asked to take a position on that proposal, and it is not an issue in which the Office of Legal Policy has been involved.

b. The Crime Victims Fund is funded entirely through collections from federal criminal fines, forfeitures, and special assessments. Do you agree that it is appropriate to use money collected from criminal offenders to assist and compensate crime victims, as well as to allow more than 4,400 agencies nationwide to provide critical services to victims?

RESPONSE: I do believe it is appropriate to require convicted criminals to compensate the victims of their crimes and to fund assistance programs for those victims.

c. Despite Congress' intention to retain all deposits in the Fund for victim services, the Administration's FY 2006 budget proposal would consequently leave the Fund empty at the start of FY 2007. No funds would be available to allocate VOCA grants according the statutory formula, thereby jeopardizing the ability of these programs to continue serving crime victims. Just how does the Administration propose victims and victims' services sustain themselves in the interim while the Fund is replenished in FY 2007?

RESPONSE: I am not familiar with the budgeting process or requirements for grants to victims' services organizations and would defer to the Office of Justice Programs on those issues.

Experience

6. When describing your responsibilities in your Questionnaire, you stated that you "oversee all aspects of the work of the Office of Legal Policy.... The Office of Legal Policy handles a broad range of legal policy issues – ranging from terrorism to tort reform – and manages development of the Attorney General's policy priorities."

a. What are the policies and priorities you have helped to devise and implement?

RESPONSE: In my capacity as Principal Deputy Assistant Attorney General, I have been involved to varying degrees in almost every policy issue handled by the Office of Legal Policy. Issue areas in which I was most heavily involved have included crime victims' rights, including the recent revision of the Attorney General Guidelines for Victim and Witness Assistance, and counterterrorism and national security issues, including those listed in the answer to 6.b., below.

b. You have stated that you have focused on counterterrorism and security issues, and you have spoken frequently about the Patriot Act, which was implemented before you got to OLP. During your time at OLP, what specific counter-terrorism or security initiatives have you developed?

RESPONSE: The Office of Legal Policy typically plays a coordinating role in policy development, involving and drawing upon the expertise of many other components of the Department of Justice and other agencies. In my capacity as Principal Deputy Assistant Attorney General, I have helped to coordinate initiatives in a number of specific areas related to counterterrorism and national security. These initiatives have included, for example: (1) the development of the *Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*, which were designed in part to reflect the change in the FBI's emphasis to the early intervention and prevention of terrorist acts before they occur; (2) working with Congress on a number of counterterrorism proposals that were included in the Intelligence Reform and Terrorism Prevention Act of 2004, including the Prevention of Terrorist Access to Destructive Weapons Act of 2004 and the Material Support to Terrorism Prohibition Enhancement Act of 2004; (3) the Department's response to the recommendations of the National Commission on Terrorist Attacks Upon the United States, including the implementation of the President's Executive Orders of August 2004 to strengthen information sharing and the management of the Intelligence Community as well as the President's directive to improve the capabilities of the FBI; and (4) the creation of the Terrorist Screening Center.

c. You have held several impressive positions in your brief career and have been very politically active, but your experience as a lawyer is limited – much more so than that of several of your predecessors. What experience and advice will you be able to draw upon to rise to the challenge of being one of the chief policy makers in the Department of Justice?

RESPONSE: I have been the Principal Deputy Assistant Attorney General in the Office of Legal Policy since July of 2003. In that capacity, I was the second-in-command to the Assistant Attorney General, assisting in all aspects of the management of the office. Since March, I have been the Acting Assistant Attorney General. I believe this experience uniquely qualifies me to take on the responsibilities of Assistant Attorney General if I am confirmed.

Responses of Rachel L. Brand
Nominee to be Assistant Attorney General for the Office of Legal Policy
to the Written Questions from Senator Edward M. Kennedy
May 23, 2005

While working as Associate White House Counsel in 2001-02, you participated in the preparation of recommendations for the President in his selection of nominees for judicial offices. As Principal Deputy Assistant Attorney General and Acting Assistant Attorney General at the Office of Legal Policy, you have been responsible for recommending and vetting judicial nominees for the Attorney General and the President. Based your experience, please answer the following:

1. **Please describe in detail the process by which President Bush selects a nominee to the federal judiciary.**

RESPONSE: The President established a judicial selection committee that advises him on judicial nominations. Generally speaking, members of the White House Counsel's Office consult with home-state senators and other state and local officials to identify candidates for a judicial vacancy. Candidates are interviewed by members of the White House Counsel's Office and the Department of Justice. The judicial selection committee makes recommendations and provides advice to the President. After the President approves a candidate for a vacancy, the Department of Justice, in consultation with the White House Counsel's Office, oversees a two-pronged background investigation of the candidate. The Office of Legal Policy conducts a "vet" of the candidate, while the FBI performs a full field background investigation. Those reports are provided to the White House Counsel's Office. Thereafter, the President makes the decision whether to nominate the candidate.

2. **Identify the interest groups and individuals with which you regularly consult, meet, or speak with on developing potential judicial candidates. For each group or person, please describe the number of contacts you have had in the past 4 years.**

RESPONSE: The White House Counsel's Office takes the lead on identifying candidates for any particular vacancy. The Office of Legal Policy often receives correspondence recommending candidates, which it forwards to the White House Counsel's Office. I do not regularly consult with any individuals or groups for the purpose of developing candidates for judicial nomination. In my position as an Associate Counsel to the President, I consulted with the home-state senators of those states for which I was responsible, as well as state and local officials in those states.

3. **Please identify which nominees have you worked with in any capacity?**
   a. **With respect to each, describe your role in selecting, vetting, or recommending them for nomination to the federal courts of appeals.**
   b. **With respect to each, please describe the role you played in their preparation for testimony or responses to written questions.**

RESPONSE: As an Associate Counsel to the President, I was responsible for assisting with district court vacancies in the following states: Iowa, Minnesota, Wisconsin, Alabama, Oregon, Alaska, and New Jersey. I also assisted with vacancies on the Court of Federal Claims. I assisted with the circuit court nominations of Barrington Parker (to the U.S. Court of Appeals for the Second Circuit), Michael Melloy (to the U.S. Court of Appeals for the Eighth Circuit), and William Steele (to the U.S. Court of Appeals for the Eleventh Circuit). As I indicated earlier, I consulted with home-state senators and other state and local officials to identify candidates for these vacancies, participated in interviews of candidates, and participated in meetings of the judicial selection committee. In my role in the Office of Legal Policy, I have not personally handled any particular vacancies, but have generally provided supervision for the efforts of the Office's lawyers with respect to judicial nominations. I do participate in the meetings of the judicial selection committee and have participated in interviewing some candidates.

The Department of Justice takes the primary role in preparing nominees for a hearing and reviewing their responses to written questions. As an Associate Counsel to the President, I would at times participate in hearing preparation for nominees. In my current position, I occasionally participate in such preparation meetings. I have not been involved personally in reviewing nominees' responses to written questions.

4. **As you know, Democrats who have raised concerns about some of the Administration's most controversial nominees have been called anti-Black, anti-Latino, anti-Southern, and anti-Catholic by outside organizations and members of the Senate.**

   a. **Did you play any role in encouraging conservative organizations, conservative media, or Senators in these characterizations of those who opposed judicial nominees?**
   b. **If so, please describe your role in detail.**
   c. **Do you agree that such characterizations are unacceptable and mislead the public about the judicial nominations process?**
   b. **What if anything did you do to stop these White House supported organizations and surrogates from continuing to make these charges?**

RESPONSE: I have not encouraged any groups or individuals to characterize senators in that way. To my knowledge, no one in the Administration has encouraged such characterizations.

Responses of Rachel L. Brand
Nominee to be Assistant Attorney General for the Office of Legal Policy
to the Written Questions from Senator Edward M. Kennedy
May 23, 2005

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    a. **Did you play any role in encouraging conservative organizations, conservative media, or Senators in these characterizations of those who opposed judicial nominees?**
    b. **If so, please describe your role in detail.**
    c. **Do you agree that such characterizations are unacceptable and mislead the public about the judicial nominations process?**
    b. **What if anything did you do to stop these White House supported organizations and surrogates from continuing to make these charges?**

RESPONSE: I have not encouraged any groups or individuals to characterize senators in that way. To my knowledge, no one in the Administration has encouraged such characterizations.

Senator Richard J. Durbin
Written Questions for Rachel Lee Brand
Nominee to be Assistant Attorney General, Office of Legal Policy
May 23, 2005

1. In your prepared remarks for a March 2004 panel discussion at Oklahoma State University, you said the FISA business records provision "creates a procedure for the FBI to get an order for the production of records and tangible things – this is essentially a subpoena." You also said, "In fact, it would be much easier to get those records by a grand jury subpoena." In your April 2004 speech to the Computers, Freedom and Privacy conference, you said, "it's important to note that section 215 contains a number of safeguards to protect civil liberties that do not exist in the grand-jury context."

a) Isn't it true that a grand jury subpoena includes procedural protections that a FISA records order does not, e.g., a subpoena recipient can challenge the subpoena, the government must make a showing of need before a non-disclosure requirement is imposed, and a subpoena recipient can challenge such a non-disclosure requirement?

RESPONSE: Section 215 orders are subject to greater oversight and afford more protections than grand jury subpoenas. First, a court must explicitly authorize the use of section 215; a grand jury subpoena, by contrast, is typically issued without prior involvement by a judge. Section 215 orders are also subject to the same burden of proof (relevance) as are grand jury subpoenas, but section 215 orders are subject to greater congressional oversight. Every six months, the Attorney General must "fully inform" the House and Senate Intelligence Committees "concerning all requests for the production of tangible things." 50 U.S.C. § 1862(a). Moreover, section 215 explicitly protects First Amendment rights, providing that an investigation under this section shall "not be conducted of a United States person solely upon the basis of activities protected by the First Amendment to the Constitution of the United States." 50 U.S.C. § 1861(a)(2)(B).

To be sure, section 215 does not explicitly provide that a recipient may challenge an order, but the Attorney General has stated his support for clarifying section 215 to provide that a recipient may challenge a section 215 production order in the FISA Court. In addition, the Department has taken the position in litigation that the statute already allows for such a challenge. As to the nondisclosure requirement, as Congress recognized in 1978 when it enacted FISA, the information involved in national security investigations must be safeguarded; Congress therefore provided statutory protections for that information in FISA itself, without a requirement that investigators make an additional individualized showing of need in each and every case. Section 215's nondisclosure requirement is consistent with nondisclosure requirements accompanying other FISA surveillance authorities and is necessary to safeguard sensitive information.

b) Would you object to revising the USA PATRIOT Act to (i) give the recipient of a Section 215 order the right to challenge the order and consult

with an attorney and persons to whom disclosure is necessary in order to comply with the order; (ii) require the government to make a showing of need before a non-disclosure requirement is imposed; and (iii) permit a recipient to challenge such a non-disclosure requirement?

RESPONSE: (i) The Department of Justice has taken the position in litigation that a recipient of a section 215 order may consult with an attorney and may challenge the order in court. As the Attorney General testified, the Department supports amending section 215 to clarify that a recipient may disclose receipt to legal counsel and that a recipient could seek judicial review of the production request. In the Department's view, a challenge to a 215 order should be filed in the FISA court, which is comprised of Article III judges who are well-equipped to assess the merits of such a challenge and to safeguard sensitive information.

(ii) The Administration has not taken a position on this issue, though I would be happy to review any proposed legislation if I am confirmed.

(iii) The Administration has not taken a position on this issue, though I would be happy to review any proposed legislation if I am confirmed.

2. In your remarks for the March 2004 Oklahoma State University panel discussion, you said, "concerns that the FBI is willy-nilly rifling through library records should be alleviated by the fact that last September the Attorney General declassified the number of times Section 215 had been used, which was zero." During a Senate Judiciary Committee hearing on April 5, 2005, Attorney General Gonzales stated, "the department has not sought a Section 215 order to obtain library or bookstore records, medical records or gun sale records."

The Department of Justice can compel production of library and other sensitive records pursuant to legal authorities other than a Section 215 order, e.g., a grand jury subpoena or a national security letter. In your remarks for the Oklahoma State University panel discussion, you acknowledged, "Prosecutors have always been able to get library records by issuing grand jury subpoenas." During the April 5, 2005 Senate Judiciary Committee hearing, FBI Director Robert Mueller said:

> **And we've had several occasions where in the course of terrorism investigations, we have had to obtain library records. And I only make that point to say that because we have not been forced to go to 215 does not mean that we have never had occasions where we have needed to go and obtain library records.**

a) **Can the government use legal authorities other than a Section 215 order to obtain library and other records?**

RESPONSE: Yes. For example, the government could obtain such records through a grand jury subpoena if they were relevant to a criminal investigation.

b) Since enactment of the USA PATRIOT Act, in how many instances has the Justice Department sought the production of library or bookstore records? For each such instance, upon what legal authority did the Justice Department rely (e.g. grand jury subpoena, national security letter, or other authority)?

RESPONSE: The Office of Legal Policy does not compile or possess this data, and I am not aware that such information has been compiled anywhere within the Department of Justice. With respect to section 215 specifically, the Attorney General recently reported publicly that, as of March 30, 2005, section 215 had not been used to obtain library or bookstore records.

c) Since enactment of the USA PATRIOT Act, in how many instances has the Justice Department sought the production of medical records? For each such instance, upon what legal authority did the Justice Department rely?

RESPONSE: The Office of Legal Policy does not compile or possess this data, and I am not aware that such information has been compiled anywhere within the Department of Justice. With respect to section 215 specifically, the Attorney General recently reported publicly that, as of March 30, 2005, section 215 had not been used to obtain medical records.

d) Since enactment of the USA PATRIOT Act, in how many instances has the Justice Department sought the production of gun sale records? For each such instance, upon what legal authority did the Justice Department rely?

RESPONSE: The Office of Legal Policy does not compile or possess this data, and I am not aware that such information has been compiled anywhere within the Department of Justice. With respect to section 215 specifically, the Attorney General recently reported publicly that, as of March 30, 2005, section 215 had not been used to obtain gun sale records.

3. The government has the authority to request information pursuant to each of the following authorities: Section 2709 of Title 18 of the United States Code, Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)), Section 625 of the Fair Credit Reporting Act (15 U.S.C. 1681u), and Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681v).

Since enactment of the USA PATRIOT Act, with respect to each of these authorities:

a) **How many requests has the Justice Department made?**

RESPONSE: The Office of Legal Policy does not compile or possess this data. However, it is my understanding that this same information was requested of the Attorney General after his April 5, 2005, testimony before the Senate Judiciary Committee, and is forthcoming from the Office of Legislative Affairs.

b) With how many requests did recipients fail to comply?

RESPONSE: The Office of Legal Policy does not compile or possess this data.

c) Has the government attempted to enforce any requests judicially? If yes, how many requests has the government attempted to enforce judicially and what was the outcome of these attempts?

RESPONSE: The Office of Legal Policy does not compile or possess this data. However, there is no explicit statutorily created enforcement mechanism for enforcing an NSL.

d) Have any requests been challenged judicially by the recipient? If yes, how many requests have been challenged and what was the outcome of those challenges?

RESPONSE: The Office of Legal Policy does not compile or possess these data. However, as you know, an NSL issued pursuant to 18 U.S.C. § 2709 was challenged judicially in *Doe v. Ashcroft*, 334 F. Supp. 2d 471 (S.D.N.Y. 2004). In that case, the district court held that NSLs have been applied in a manner that violates the Fourth Amendment. The Department of Justice has appealed that ruling to the Court of Appeals for the Second Circuit. The Department's opening brief on appeal is due to be filed on May 24, 2005.

e) Have any recipients challenged judicially a request's nondisclosure requirement? If yes, how many recipients have challenged a nondisclosure requirement and what was the outcome of those challenges?

RESPONSE: The nondisclosure requirement in 18 U.S.C. § 2709(c) has been challenged in the *Doe* case (discussed above in subsection (d)). The district court held that the nondisclosure requirement violates the First Amendment to the extent that it does not place any limit on the duration of the nondisclosure obligation. That ruling is being challenged by the Department of Justice in the pending Second Circuit appeal.

f) Would you object to giving the recipient of a request pursuant to each of these authorities the right to challenge the request in federal court?

RESPONSE: The Department of Justice has already stated in litigation that an entity or person served with an NSL can challenge the request either: (1) as a defense to any

enforcement proceeding commenced by the United States in the face of non-compliance; or (2) through a pre-production action to enjoin enforcement.

g) Would you object to giving the recipient of a request pursuant to each of these authorities the right to challenge the request's nondisclosure requirement in federal court?

RESPONSE: The Administration has not taken a position on this question, and I would be happy to review any proposed legislation if I am confirmed.

4. In your April 2004 speech to the Computers, Freedom and Privacy conference, you said, "Section 215 also specifically preserves First Amendment rights." The protection to which you refer provides that an investigation of a U.S. person shall not be conducted "solely upon the basis of activities protected by the first amendment to the Constitution." This provision only protects First Amendment activities if they are the sole basis for the investigation. Isn't it true that this provision permits First Amendment activities to be the basis of an investigation as long as there is any basis for the investigation? For example, couldn't the government investigate an Arab-American leader simply on the basis of his public criticism of the war in the Iraq and his ethnicity because such an investigation would not be based solely on the individual's First Amendment activities?

RESPONSE: Section 215 can be used only to obtain information relevant to an ongoing foreign intelligence investigation. Such an investigation could not be initiated simply because a person was of a particular ethnicity and exercised First Amendment rights. Moreover, under procedures already in place, the Department will not file a section 215 application unless the FBI can satisfactorily explain to attorneys at the Justice Department's Office of Intelligence Policy and Review (OIPR) exactly how the information sought in the application would be relevant to the ongoing investigation. In addition, there are provisions of law other than section 215 that would prohibit conducting investigations on this basis. For example, to address your hypothetical, it would be unconstitutional to investigate a person simply on the basis of his ethnicity.

5. The Justice Department frequently claims that the USA PATRIOT Act simply made tools available for terrorism investigations that were already available for other criminal investigations. In your April 2004 speech to the Computers, Freedom and Privacy conference, you said, "Section 215 now allows agents in espionage and international terrorism investigations to have the same authority to obtain records that law enforcement has always had in ordinary criminal investigations."

a) Isn't it true that terrorism was a federal crime before enactment of the USA PATRIOT Act, and, as a result, agents in terrorism investigations have long had the same authority to obtain records as agents in other criminal investigations?

RESPONSE: Various forms of terrorism were federal crimes prior to enactment of the USA PATRIOT Act. However, depending on the circumstances, international terrorism might be investigated in the foreign intelligence context rather than the criminal context, and section 215 gives intelligence investigators in espionage and international terrorism cases authority to obtain records through FISA, just as law enforcement has always had such authority in criminal investigations. Prior to passage of the USA PATRIOT Act, it was difficult for the government to obtain court orders for access to business records and other tangible items in connection with foreign intelligence investigations. Such records, for example, could be sought only from common carriers, public accommodation providers, physical storage facility operators, and vehicle rental agencies. *See* 50 U.S.C. §§ 1861-1863 (2000 ed.). In addition, intelligence investigators had to meet a much higher evidentiary standard to obtain an order requiring the production of such records than prosecutors had to meet to obtain a grand-jury subpoena to require the production of those same records in a criminal investigation. *See id.*

Section 215 made several critical changes to the FISA business records authority, so that intelligence agencies are better able to obtain crucial information in important investigations. Section 215 eliminated both the restriction on the types of entities from which items may be sought and the unnecessarily high standard for obtaining a section 215 order, providing that the FISA Court may issue an order requiring the production of records or items relevant to an international terrorism or clandestine investigation.

b) During a May 10, 2005 Senate Judiciary Committee hearing, Andrew McCarthy, a strong supporter of Section 215, acknowledged, "there is no item now obtainable by Section 215 that could not already be compelled by simple subpoena (and thus made accessible to intelligence agents, who are now permitted to share grand jury information)." Do you agree?

RESPONSE: Section 215 is used in intelligence investigations, whereas grand jury subpoenas are used in criminal investigations; as the scopes of these two types of investigations and tools are not co-extensive, they cannot merely be substituted for one another. In addition, section 215 allows investigators in sensitive foreign intelligence investigations to request business records and items with the protections FISA accords to sensitive information and ongoing investigations. When Congress enacted FISA in 1978, it recognized that the information involved in national security investigations must be safeguarded; Congress therefore provided statutory protections for that information in FISA itself.

6. In your April 2004 speech to the Computers, Freedom and Privacy conference, you said, "Section 215's detractors have noted that use of 215 and other FISA authorities cannot be publicly disclosed. This is true, although a person must be notified if FISA information issued against him/her in court." At a Senate Judiciary Committee hearing on April 5, 2005, I asked Attorney General Gonzales about Section 215, and he said, "And people have the opportunity, Senator, after the fact – if the information is going to be used in any way, in any kind of proceeding, they have the opportunity to go to another judge an contest the collection of that

information." Other FISA authorities, such as wiretaps and physical searches, require a) notice to the target if the government seeks to use the information obtained they have obtained in a trial or other judicial proceeding, and b) an opportunity for the target to challenge the use of those information. Isn't it true that Section 215 does not include these requirements, contrary to the statements by you and the Attorney General? Would you object to revising the USA PATRIOT Act to require such notice and opportunity to challenge for the target of a Section 215 order?

RESPONSE: The above quotation regarding the use of section 215 is from an early draft of my April 2004 speech, a draft that apparently was erroneously given to this Committee instead of the final draft. I have attached the final as-prepared version of the speech. In addition, I would note that an audio version of the final speech, as delivered, is available at http://cfp2004.org/program/#keynote2. The speech did not contain the above-referenced statement as finally drafted or as delivered. I apologize for this confusion.

Section 215, which allows investigators to request records held by third parties and is much less invasive than physical searches or electronic surveillance, does not require (a) notice to the target if the government seeks to use information obtained through the section 215 order or (b) an opportunity for the target to challenge the use of that information.

The Administration has not taken a position on the issue posed by your last question.

7. In your prepared remarks for a March 2004 panel discussion at Oklahoma State University, you said Section 213 "merely codified a long-standing and never-before controversial law enforcement tool." However, the USA PATRIOT Act did not adopt limitations on sneak and peek search warrants that courts had recognized. During a May 10, 2005 Senate Judiciary Committee hearing, Dan Collins, a strong supporter of Section 213, acknowledged: "Pre-existing case law seemed to have developed this presumption of a 7-day limit. That was not codified into 213." Do you agree with Mr. Collins?

RESPONSE: Section 213 of the USA PATRIOT Act codified long-standing precedent that delaying notice of a search is constitutional under specified circumstances. Under section 213, if the Government demonstrates "reasonable cause" to believe that immediate notification may have a specified adverse result, then a court may authorize delay of notification for a reasonable amount of time given the facts before the court. In some cases, a seven-day delay may be appropriate, and courts have set such a time limit before.

When assessing whether or not the government could delay notice of a search, courts prior to the enactment of the USA PATRIOT Act considered whether delay was reasonable and what period of delay was reasonable, a standard that section 213 expressly

incorporates. As was the case before the USA PATRIOT Act, the government must demonstrate probable cause to obtain the warrant and must make a showing justifying delayed notification. Section 213 allows a court to authorize delay only for the length of time that is reasonable under the circumstances. Moreover, section 213 expressly codified those circumstances in which delay is appropriate, providing uniformity and certainty in the use of this authority. Section 213 did not limit the role of the judiciary in authorizing and monitoring delayed-notice search warrants, and in fact provides greater statutory limitations on the circumstances in which they may be used than existed prior to the passage of the USA PATRIOT Act.

8. In an April 4, 2005 letter to Senator Leahy, Assistant Attorney General William Moschella states that from April 1, 2003, to January 31, 2005, the Justice Department has delayed notification of searches 108 times pursuant to Section 213 of the USA PATRIOT Act. According to the letter, "The bulk of uses have occurred in drug cases; but section 213 has also been used in many cases including terrorism, identity fraud, alien smuggling, explosives and firearms violations, and the sale of protected wildlife." For the 108 times notice was delayed, please provide the number of investigations involved and a breakdown of the suspected criminal violations being investigated.

RESPONSE: It is my understanding that this question was posed to the Attorney General after his appearance before the Senate Judiciary Committee on April 5, 2005, and that the Office of Legislative Affairs has been gathering the necessary information to answer this inquiry. It is my understanding that this information will be transmitted to you shortly.

9. According to the April 4, 2005 letter, the Justice Department cited "seriously jeopardizing an investigation" as the grounds for delaying notice 92 times, and at least 28 times, "seriously jeopardizing an investigation" was the only grounds cited for delaying notice. For the 92 times, please provide the number of investigations involved and a breakdown of the suspected criminal violations being investigated. For the 28 times, please provide the number of investigations involved and a breakdown of the suspected criminal violations being investigated.

RESPONSE: It is my understanding that this question was posed to the Attorney General after his appearance before the Senate Judiciary Committee on April 5, 2005, and that the Office of Legislative Affairs has been gathering the necessary information to answer this inquiry. It is my understanding that this information will be transmitted to you shortly.

10. In testimony before the Senate Terrorism, Technology and Homeland Security Subcommittee on June 22, 2004, you said, "Administrative subpoenas are one tool that will enable investigators to avoid costly delays ... Although grand jury subpoenas are a sufficient tool in many investigations, there are circumstances in which an administrative subpoena would save precious minutes or hours in a terrorism investigation." Can you cite any examples of terrorism investigations

where the Justice Department encountered difficulty obtaining a grand jury subpoena in a timely fashion?

RESPONSE: I do not have personal knowledge of any examples of terrorism investigations where the Justice Department encountered difficulty obtaining a grand jury subpoena in a timely fashion. However, as I testified to the Senate Judiciary Committee, Subcommittee on Terrorism, Technology and Homeland Security on June 22, 2004, the following example underscores the potential importance of an administrative subpoena in a terrorism case. On Friday night, counter-terrorism investigators learn that members of an al Qaeda cell have bought bomb-making materials from a chemical company. They want to obtain records relating to the purchase that may reveal what chemicals the terrorists bought and delivery records that might reveal the terrorists' location. Investigators reach a prosecutor, who issues a grand jury subpoena for those records. But because the grand jury is not scheduled to meet again until Monday morning and the recipient of a grand jury subpoena is not required to produce the records until the next time the grand jury meets, investigators may not be able to obtain the information for three days – during which time the al Qaeda cell may have executed its plan. If investigators had the authority to issue an administrative subpoena, they could obtain the records immediately and neutralize the cell.

June 3, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

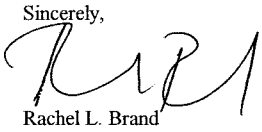
Dear Mr. Chairman:

This is in response to Senator Durbin's request for further responses to Questions 2(b), 2(c), 2(d), 3(a), 3(b), 3(c), 3(d), 8 and 9.

Questions 2(b) 2(c), and 2(d) asked how many times since enactment of the USA PATRIOT Act the Department has sought – under any legal authority – library records, medical records, or gun sale records. The Office of Legal Policy does not collect statistics that would answer these questions. I am informed that no other component of the Department collects statistics that would answer these questions either. I am able to report that, with respect to section 215 orders specifically, the Attorney General has reported publicly that, as of March 30, 2005, section 215 had not been used to obtain any of these types of records.

Questions 3(a), 3(b), 3(c), 3(d), 8 and 9 are identical to questions posed to the Attorney General after his appearance before the Senate Judiciary Committee on April 5, 2005. I have referred these questions to the Office of Legislative Affairs for separate response since that office has been gathering the necessary information to answer the questions posed to the Attorney General.

Sincerely,



Rachel L. Brand

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

The Honorable Richard Durbin

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

June 3, 2005

The Honorable Richard Durbin
United States Senate
Washington, D.C. 20510

Dear Senator Durbin:

Acting Assistant Attorney General Rachel Brand referred Questions 3(a), 3(b), 3(c), 3(d), 3(e), 8, and 9 that you posed to her as part of the Senate Judiciary Committee consideration of her nomination. The Office of Legal Policy has no information relating to these questions.

All of the above-referenced questions are identical to questions posed to Attorney General Gonzales following his appearance before the Senate Judiciary Committee. The Office of Legislative Affairs, which is responsible for coordinating answers to questions such as yours, is in the process of clearing responses to the questions and you should be receiving them shortly.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable Arlen Specter
Chairman
Committee on the Judiciary

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary

Written Questions for Alice Stevens Fisher
Nominee to be Assistant Attorney General, Criminal Division
May 24, 2005

1.

a) When did you first become aware that interrogation techniques had been approved for use at Guantanamo Bay?

I am not aware of what interrogation methods were approved for use at Guantanamo Bay. I was never asked to advise or consult the Department of Defense on interrogation methods for use at Guantanamo Bay. At some point I learned the Department of Defense had established a working group to consider interrogation methods, but I did not participate in this working group. I recall general discussions about interrogations at Guantanamo Bay as described in detail below.

b) When did you first become aware of the August 1, 2002, memo from the Justice Department's Office of Legal Counsel to White House Counsel Alberto Gonzales (DOJ torture memo), which interpreted the anti-torture statute (18 U.S.C. Section 2340A)?

I did not see the August 1, 2002, memorandum, or any draft of the memorandum, until sometime after it was issued.

c) Were you involved in reviewing the legality of any interrogation techniques or in reviewing the DOJ torture memo? If so, please provide a detailed description of your involvement.

I was not asked to comment on the August 1, 2002, OLC memorandum or any draft thereof. I played no role in the drafting of that memorandum. I did not pre-approve or provide legal advice on the legality of particular interrogation techniques.

2. A May 10, 2004 e-mail from an unnamed FBI official regarding interrogation techniques at Guantanamo Bay was released in response to a request from Senator Carl Levin. In the e-mail, the FBI official wrote:

> In my weekly meetings with DOJ [Department of Justice] we often discussed DoD [Department of Defense] techniques and how they were not effective or producing intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC [Office of General Counsel].

a) Did you attend weekly meetings including DOJ and FBI personnel during which DoD interrogation techniques at Guantanamo were discussed? If yes, please provide a detailed description of those discussions.

I left the Department of Justice almost two years ago. When I was at the Department of Justice from July 2001-July 2003, I attended various meetings with FBI personnel on a variety of topics relating to the war on terrorism.

This May 2004 e-mail was written almost a year after I left the Department of Justice. One paragraph of the e-mail refers to weekly meetings with the FBI. While I cannot be sure as to which meetings the author of the email is referring, I recall there was a weekly meeting set up between various members of the Criminal Division (attorneys from the Office of the Assistant Attorney General and the Counterterrorism Section) and the FBI, that I attended at times. My recollection is that these meetings were generally designed to ensure information sharing regarding FBI terrorism investigations, threats and Criminal Division prosecutions. I do not recall that interrogation techniques were discussed at these meetings.

I recall that there were discussions with the FBI about whether the FBI and other government agents should give advice of rights pursuant to Miranda to detainees prior to interviews. I also recall discussions about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court.

I recall being aware of FBI concerns about interviews, but I cannot recall the content of specific meetings about detainee interrogation at Guantanamo Bay with FBI personnel. In general, what I recall about the tenor of the discussions about interviews at Guantanamo Bay concerned what information was being furnished by detainees and whether the Department of Defense methods were effective in obtaining intelligence. For example, I recall discussions about whether detainees should be encouraged to provide information in return for more favorable treatment. I also recall that the FBI believed that establishing a rapport with a detainee is an effective manner to obtain information. I do not recall the FBI expressing to me concerns about illegal activity at Guantanamo Bay regarding detainee treatment or mistreatment.

b) At these meetings, did DOJ or FBI personnel express concerns that DoD interrogation techniques "were not effective or producing intel that was reliable"? Did you express such concerns and/or agree with the concerns others expressed?

Please see my response to question 2a), *supra*.

c) Did DOJ or FBI personnel express the view that "DoD tactics were going to be an issue in the military commission cases"? If yes, why did they believe these tactics would be an issue? Did you express such concerns and/or agree with the concerns others expressed?

I recall discussions about what might be the evidentiary standards adopted by the judges for the military commissions, but I do not believe that any detainee had been charged in the military commissions at the time that I left the Department of Justice in

July 2003. I do not recall discussions concerning Department of Defense "tactics" being an issue in the military commission cases.

d) What action did you and/or other DOJ personnel take in response to concerns expressed by FBI personnel regarding DoD interrogation techniques?

I don't recall taking any particular action with respect to the FBI concerns about effectiveness of Department of Defense interview methods other than having discussions internally at the Department of Justice as described in subpart e), *infra*.

In addition, I believe I discussed some of the FBI's concerns about effectiveness with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place; however, I do not have a specific recollection about these discussions. I believe I also discussed particular detainees housed at Guantanamo Bay and what information was being obtained from a particular detainee.

e) Did you and/or other DOJ personnel inform then-Assistant Attorney General Michael Chertoff about the concerns expressed by FBI personnel regarding DoD interrogation techniques?

This May 2004 e-mail was written almost a year after I left the Department of Justice. Likewise, then Assistant Attorney General Chertoff (now Secretary Chertoff) left the Department of Justice in June 2003. When I was at the Department of Justice, I recall having general discussions with him about the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence. I also recall that we had discussions about particular detainees and whether there might be an opportunity to charge a detainee with a violation of criminal law in Article III courts.

f) Did you, Bruce Swartz, and/or other DOJ personnel bring these concerns to the attention of the DoD Office of General Counsel? If yes, please provide a detailed description of these discussions, including DoD OGC's response. If yes, to whom in DoD OGC were these concerns relayed?

I am not aware of Mr. Swartz's communications with the Department of Defense. I recall that I may have discussed some of the FBI's concerns about effectiveness with members of the Office of General Counsel at the Department of Defense, or was present when those discussions took place. I do not recall any particular response.

3. In an April 12, 2004 panel discussion at Columbia Law School, you described the process for obtaining an order pursuant to Section 215 as follows:

We need to think about what Section 215 actually is. It is an intelligence warrant issued by the Foreign Intelligence Surveillance Act [FISA] court, which is made up of federal

judges. An FBI agent conducting an intelligence investigation into foreign intelligence or clandestine activities needs to obtain business records from a chemical plant, from a library or another business. So that agent will go to this court and ask [it] to grant a warrant. The court will then either issue the warrant or refuse.

a) Isn't it true that if the FBI's application meets the requirements of Section 215, primarily a certification that the records are "sought for" an international terrorism or intelligence investigation, the court is required to issue an order?

Section 215 describes the standards for obtaining a FISA order for third-party records. The statute does not require the court to issue such an order when, in the court's judgment, these standards are not met. For example, section 215 provides that a court "shall" issue an order "if the judge finds that the application meets the requirement of th[e] section." Additionally, my understanding is that the provision references the ability of the FISA court to issue the order "as requested, or as modified." It is my understanding that the FISA Court can refuse to issue a 215 order.

b) On May 10, 2005, in testimony to the Senate Judiciary Committee, Andrew McCarthy, a strong supporter of Section 215, acknowledged that, "if the government makes the prescribed representations, the FISA court is without discretion to deny the order." Do you agree with Mr. McCarthy?

In my view, the granting of orders under FISA is within the discretion of the FISA court, which reviews government applications in accordance with the standards set forth in the statute and must determine whether those standards have been met. I do not agree that Section 215 eliminates the FISA court's discretion to issue orders for the production of third-party records.

4. On August 20, 2003, on the MSNBC program *Buchanan and Press*, you defended the USA PATRIOT Act's authorization of delayed notification search warrants, claiming, "We don't want to tip off the terrorists. When we have to go search their house to see if they're building a bomb in their house, we need to go to a court and say it's reasonable. It relates to a terrorist investigation."

a) Isn't it true that delayed notification searches pursuant to Section 213 of the USA PATRIOT Act are not limited to terrorism cases?

It is true that the standards for delayed-notice search warrants reflected in Section 213 are not limited to terrorism investigations. The fact that I used an example of a terrorism investigation to illustrate the need for these types of warrants was not intended to suggest that Section 213 was so limited.

In your talking points for a November 2003 panel discussion at Boston University and a February 2004 panel discussion at New York University, you defended delayed-

notification search warrants, saying:

If we didn't have it, we would be tipping off terrorists. Hypothetical: If we have information priot [sic] to 9-11 that showed Mohammed Atta was planning an attack using an airliner and the Government could intercept a package he was sending to Ziad Jarrah (another 9-11 hijacker) would you want us to give notice to him that we were going to search that package, or would you rather we go to court, get authority to delay notice, and then search the package to find out who else might be involved in the plot before tipping off Atta that the government was watching him?

b) Isn't it true that the government had the authority to conduct secret searches in international terrorism investigations pursuant to the Foreign Intelligence Surveillance Act before enactment of the USA PATRIOT Act.

It is true that FISA-approved surreptitious entries were available in intelligence investigations prior to the PATRIOT Act. Section 213 was designed to establish uniform standards for a law enforcement tool - delayed-notice search warrants in criminal cases - where previously the standards varied from district to district. I believe that we should not be limited to FISA-approved searches in terrorism cases, because there may be circumstances in which we would want to employ criminal investigatory tools, rather than tools authorized under FISA. For example, a FISA search would not be permissible in the investigation of a domestic terrorism case.

5.

a) When did you first become aware that a Professional Responsibility Advisory Office (PRAO) attorney had advised a Criminal Division attorney that it would be unethical to question John Walker Lindh without his attorney? What action did you take when you became aware of this?

My recollection is that Mr. Lindh was interviewed by the FBI on December 9 and 10, 2001, and Mr. Lindh had waived his Miranda rights and consented to the interviews. It was sometime after those interviews that I became aware of the noted exchange of emails about this topic between a PRAO attorney and an attorney in the Counterterrorism Section (then the Terrorism and Violent Crime Section). I worked to ensure that the prosecutors had all of the relevant documents to review for disclosure in the discovery process. At some time, I participated in discussions about legal issues related to the interviews of Mr. Lindh with the prosecutors in charge of the Lindh case, none of whom were in the Counterterrorism Section.

b) When did you first learn about the interrogation tactics that were used against Lindh? What action did you take when you learned about them?

My recollection is that Mr. Lindh was first questioned in the battlefield in

Afghanistan by FBI agents who had read Mr. Lindh his Miranda rights. My recollection is that Mr. Lindh waived his Miranda rights and consented to the interview. I recall that he provided more statements thereafter. I did not direct the interviews of Mr. Lindh, although at some point I did discuss the interviews with the prosecutors in charge of the case.

c) Were you aware, and if so, when did you become aware, that interrogation techniques authorized for use in the war on terrorism might be exposed in Lindh's suppression hearing? What action did you take when you became aware of this?

I recall that the circumstances surrounding Mr. Lindh's statements were the subject of suppression motions in United States v. John Walker Lindh. I recall that generally the suppression motions related to how Mr. Lindh was treated by military personnel and the conditions under which the statements were taken. I don't recall discussing any particular interrogation "techniques" in this regard. My recollection is that Mr. Lindh was first questioned in the battlefield in Afghanistan by FBI agents who had read Mr. Lindh his Miranda rights. My recollection is that Mr. Lindh waived his Miranda rights and consented to the interview.

d) Were you involved in the decision to authorize a plea in the Lindh case? If yes, please provide a detailed description of your involvement in this process. Were you involved in any discussions about the possibility that a plea bargain would prevent Lindh's suppression hearing from exposing interrogation techniques authorized for use in the war on terrorism? If yes, please provide a detailed description of these discussions.

I was involved in discussions about the plea agreement in the Lindh case. I did not have direct discussions with Mr. Lindh's attorneys. I do not recall discussions about the fact that the plea bargain would prevent the suppression hearing from exposing particular interrogation techniques in the war on terrorism. My recollection is that much of the information regarding Mr. Lindh's statements, and the conditions under which they were taken, was already in the public realm and the subject of motions filed in front of Judge T.S. Ellis prior to the plea agreement. My recollection is that the prosecutors were prepared to proceed with the court hearing relating to Mr. Lindh's suppression motion.

e) Did you participate in any discussions and/or contact anyone in the Justice Department or outside the Justice Department about Jesselyn Raddack, the PRAO attorney who provided advice to the Criminal Division on the Lindh case? If yes, please provide a detailed description of these discussions and/or contacts.

At some point, I became aware that Ms. Raddack had exchanged emails with an attorney in the Counterterrorism Section about Mr. Lindh's interrogation and I participated in discussions about the e-mails. PRAO is not part of the Criminal Division

and Ms. Raddack did not report to me. I didn't have any discussions about Ms. Raddack with any of her supervisors.

Questions for Alice Fisher

PATRIOT Act

1. In defending the USA PATRIOT Act, you have emphasized the provisions that include explicit checks and balances on executive power – you've often stated that controversial provisions require judicial review, and you've also mentioned Congressional reporting requirements. I agree on the importance of these checks and balances; in fact, I pushed for them during negotiations on the PATRIOT Act, generally against the Administration's strong objections. I also pushed for the sunset provision, which ensured that Congress would revisit the PATRIOT Act. You have stated, however, that you oppose the sunset provision and believe that these controversial parts of the PATRIOT Act should be made permanent.

   a. Would you agree that this debate – about the controversial portions of the PATRIOT Act and about the balance between appropriate counterterrorism measures and individual rights – is an important and healthy exercise for our democracy?

As I have emphasized in the past, debate on the provisions of the Patriot Act is important. I believe that debate about striking the balance between appropriate counterterrorism measures and individual rights is critical to our democracy and should continue to be considered carefully by all branches of the government.

   b. Assuming that Congress reauthorizes provisions of the PATRIOT Act this year with modifications, why shouldn't we use the sunset mechanism again, if only to ensure the sort of close congressional oversight that you have said is so important when reassuring people about the Act?

Congressional oversight and public scrutiny of the operations of our government are crucial to our democracy. It is thus important to continue to evaluate the use of the Patriot Act and consider modifications if appropriate. I am not sure, however, that the sunset provisions in the Patriot Act are a necessary mechanism to ensure that Congressional oversight occurs. While serving in the Justice Department, I saw how critically important it is to have certainty in the law and in operational practices so that national security officials can effectively, efficiently, and timely perform their duties and responsibilities. It was my experience that the Patriot Act provided much-needed tools for law enforcement. If I am fortunate enough to be confirmed, I look forward to consulting with the Committee on how these important tools are utilized.

   c. Given that you have noted the importance of Congressional checks, would you support more punctual, regular, and complete reporting to the Senate Judiciary Committee, to other Congressional committees, and as much as

possible, to the public about use of those PATRIOT Act provisions of concern to many Americans?

As I have noted above and in the past, Congressional oversight is key to ensuring that law enforcement tools are utilized as Congress intended. If I am fortunate enough to be confirmed, I will do my part to provide punctual responses to Congressional inquiries, and will work with Congress to satisfy its informational needs in an appropriate manner so that Congress can discharge its oversight responsibilities effectively.

2. Let's talk about a government power that is not subject to meaningful checks and balances, in my view. Section 214 of the PATRIOT Act lowered the standard for obtaining a pen register or trap and trace authority under FISA. Under current law, the government need only certify that the information sought is relevant; the judge then has no discretion – he must issue the order. I believe that, at a minimum, the government should be required to make a showing that the information sought is relevant, and the judge should make a finding to that effect. Do you agree or disagree, and why?

I have not been in the Department of Justice since July 2003 and therefore I am not familiar with how Section 214 has worked in practice in the past two years. I would want to consult with the attorneys at the Department of Justice to be able to fully consider this proposal. The FISA pen register/trap and trace provision that you have referenced is overseen by the Justice Department's Office of Intelligence Policy and Review ("OIPR"), not the Criminal Division. My understanding is that the standards for obtaining orders authorizing pen registers and trap-and-trace devices are comparable, whether the underlying investigation is primarily relating to a foreign-intelligence matter pursuant to FISA and thus overseen by OIPR, or involves a criminal matter that falls within the Criminal Division's area of expertise.

The standard to obtain pen register or trap and trace information in the criminal context is a certification by the supervising government attorney that "the information likely to be obtained is relevant to an ongoing criminal investigation...." *See* 18 U.S.C. 3122(b). This standard allows the government to obtain pen registers early in an investigation.

Guantanamo Detainees

3. An FBI email memorandum recently made public revealed that you "attended weekly meetings with F.B.I. officials in which the military's interrogation methods were frequently discussed and criticized as ineffective and unproductive."

   a. When did you first learn that the military was using harsh interrogation techniques that the FBI disagreed with?

When I was at the Department of Justice from July 2001-July 2003, I attended various meetings with FBI personnel on a variety of topics relating to the war on terrorism. This May 2004 e-mail was written almost a year after I left the Department of Justice. One paragraph of the e-mail refers to weekly meetings with the FBI. While I cannot be sure as to which meetings the author of the email is referring, I recall there was a weekly meeting set up between various members of the Criminal Division (attorneys from the Office of the Assistant Attorney General and the Counterterrorism Section) and the FBI, that I attended at times. My recollection is that these meetings were designed to ensure information sharing regarding FBI terrorism investigations, threats, and Criminal Division prosecutions. I do not recall that interrogation techniques were discussed at these meetings.

I left the Department of Justice almost two years ago so it is difficult to recall specifics. In general, I recall participating in, or being aware of, discussions with the FBI about whether the FBI and other government agents should give advice of rights pursuant to Miranda to detainees prior to interviews. I also recall discussions about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court. I recall being aware of FBI concerns about interviews, but I cannot recall the content of specific meetings about detainee interrogation at Guantanamo Bay with FBI personnel. In general, what I recall about the tenor of the discussions about interviews at Guantanamo Bay concerned what information was being furnished by detainees and whether the Department of Defense methods were effective in obtaining intelligence. For example, I recall discussions about whether detainees should be encouraged to provide information in return for more favorable treatment. I also recall that the FBI believed that establishing a rapport with a detainee is an effective manner to obtain information.

I do not recall the FBI expressing to me concerns about illegal activity at Guantanamo Bay regarding detainee treatment or mistreatment. I also do not recall that anyone informed me that the FBI was not behaving consistent with FBI policies and procedures regarding interviews (other than perhaps not providing Miranda warnings).

b. What did you do about it?

As noted above, I participated in discussions about the FBI concerns about obtaining intelligence at Guantanamo Bay, the effectiveness of interview methods, information about particular detainees, and the possibility of charging a detainee with criminal charges in an Article III court with others at the Department of Justice.

In addition, I believe I discussed some of the FBI's concerns about effectiveness with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place; however, I do not have a specific recollection about these discussions. I believe I also discussed particular

detainees housed at Guantanamo Bay and what information was being obtained from a particular detainee.

c. In the meetings referenced in the May 10 email, attendees discussed "DOD techniques and how they were not effective or producing intel that was reliable." What was your role in these meetings?

Please see my response to subpart a., *supra.*

d. The May 10 email states that FBI officials voiced their concerns to General Miller and the Pentagon Detainee Policy Commission, but the Department of Defense refused to alter its interrogation techniques. The email also states that Bruce Swartz took the FBI's concerns to DOD General Counsel William J. Haynes. What role did you have in these communications with Mr. Haynes? How did Mr. Haynes respond to the FBI's concerns?

I was not involved in any discussions between Mr. Swartz and Mr. Haynes about such matters and do not recall being aware at the time that any such discussions had taken place.

4. You have frequently and strongly defended the government's designation of detainees as enemy combatants and their resulting detention "for the duration of the conflict." How do you think the government can institute sufficient safeguards to make sure that all those detained are in fact enemy combatants, that they are treated properly, and that they are not held indefinitely without appropriate procedural rights?

I agree that the government should have appropriate safeguards in place to ensure that detainees are indeed enemy combatants and that detainees are not mistreated. I am not familiar with the details of the current safeguards put in place by the Department of Defense, but believe that there should be some review of detainees to ensure that we have detained them appropriately. I also believe that the government's procedures must be consistent with the decisions of the United States Supreme Court in *Rasul v. Bush*, *Al Odah v. United States*, and *Hamdi v. Rumsfeld*. I am not familiar with the steps that have been taken in this regard as I was not employed by the government when these court decisions were announced. As Assistant Attorney General for the Criminal Division, my role would be to ensure that the criminal laws are enforced, and I commit to ensuring the investigation of any credible allegations of violations of criminal law brought to my attention.

Tom DeLay

5. Newsweek reported that the Public Integrity Section of DOJ is overseeing a federal investigation into lobbyist Jack Abramoff and his payments – alleged to potentially be bribes, gratuities, or illegal contributions – to members of Congress, possibly including House Majority Leader Tom DeLay. As Assistant Attorney General of the Criminal Division, you would oversee the Public Integrity Section and, presumably, this investigation. Newsweek further reported that you are "socially close to DeLay's defense team." What ties, if any, do you have with Congressman DeLay and his defense team? How will you insure that any such ties do not create a conflict of interest with the Department's investigation, or in any way hinder that investigation?

I have not been employed by the Department of Justice since July 2003 and therefore I am not aware of the scope or breadth or any ongoing criminal investigations. However, I have read the *Newsweek* article to which you refer. I understand your question to relate to any relationships I may have to Mr. Abramoff or Mr. Delay. I am not acquainted with either of these gentlemen. I do not know whom they may have hired as their "defense" team. I am acquainted, on a social basis, with one lawyer who I believe may be representing Mr. Delay, but I am not aware of the nature or scope of the representation nor whether it relates to any criminal investigation.

I am not aware of any facts that could create a conflict of interest with the Department's investigation as reported by *Newsweek*. If facts were brought to my attention signaling a potential conflict of interest, I would consult with the appropriate ethics officials at the Department of Justice at that time.

Sentencing

6. On January 12 of this year, the Supreme Court held that the United States Sentencing Guidelines were no longer binding, but that judges should continue to consider them in sentencing decisions. Attorney General Gonzales, during his confirmation hearings, committed to working with this Committee with respect to issues arising out the Court's sentencing decisions. Will you make a similar commitment to consult with us – and by "us" I mean members on both sides of the aisle – before proposing legislation in this area?

I am committed to working with Congress on issues such as sentencing if I am fortunate enough to be confirmed. I recognize the value of this dialogue. I also recognize that one of the greatest strengths of the Sentencing Reform Act was that it was a bipartisan effort and the product of careful deliberation.

Criminal Division Priorities

7. You have spoken and written about the importance of the Criminal Division's anti-terrorism efforts and major corporate fraud investigations, both of which are rightly central DOJ priorities. You also spoke about expanding obscenity prosecutions. At the same time, other components of the Criminal Division have experienced longtime hiring freezes and significantly less public attention over the past few years.

   a. How do you intend to insure that other important prosecutorial priorities, like combating fraud and public corruption, are adequately addressed?

If I am fortunate enough to be confirmed, I will ensure that all Sections of the Criminal Division receive my attention and due credit for their invaluable contributions to preserving our national security and enforcing our federal criminal laws.

In particular, I agree that combating fraud and public corruption is central to fulfillment of the Criminal Division's mission. As Deputy Assistant Attorney General, I supervised the Division's Fraud Section and, in that capacity, managed efforts to combat identity theft and Internet fraud. For example, in May 2003, the Department and the FBI conducted "Operation E-Con" in which the Department brought criminal charges against approximately 130 individuals and companies as part of a nationwide sweep of Internet fraud schemes. The schemes exposed as part of this operation represented more than 89,000 victims who suffered cumulative losses in excess of $176 million. I believe that combating fraud with such vigorous enforcement efforts not only in the area of Internet Fraud, but also in such other areas as health care fraud and bankruptcy fraud, remains critical to the Division's role and I would intend to treat it as a continuing priority.

In addition, I believe that enforcement in the public corruption area is very important. Public corruption causes citizens to lose faith in our government. Therefore, it is vital for the Department of Justice to enforce the criminal laws to combat and thwart those who engage in such activity. I plan to ensure that the Criminal Division's resources are used effectively and efficiently in these areas.

   b. In particular, the problems of computer crime, intellectual property theft, and identity theft have grown exponentially in recent years. Do you plan to correspondingly increase the resources and attention devoted to this important and debilitating new type of crime?

As I noted at my confirmation hearing, I believe that crimes committed on the computer, whether they are computer hacking that threatens the security of our infrastructure or crimes such as intellectual property theft, child pornography or illegal drug sales, deserve great attention. I am firmly committed to maintaining

the central role of the Department in preventing and responding to all online crimes. This will be a priority.

Based on my prior work at the Department of Justice, I am aware that the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) is the cornerstone of the Division's efforts to address computer intrusions and attacks. Working with the FBI's Cyber Division, the United States Secret Service, and other investigative agencies and the nationwide network of prosecutors trained in this area, CCIPS will continue to prosecute cutting-edge computer crime cases and will assist others to do the same across the United States. CCIPS will also continue to support prosecution of a wide variety of crimes involving computer networks and electronic evidence, from terrorism to drug distribution to organized crime. Because online crimes so often cross international borders, the Criminal Division will also continue to work with our international partners to investigate and prosecute such crimes. CCIPS's work in addressing the threat of computer crime also includes legislative and policy work that underpins investigations and prosecutions.

In addition, I share your concern for protecting the intellectual property of this nation. Strong intellectual property rights enforcement is essential. Criminals around the world who seek to profit off the creativity of others pose a threat to the individuals and companies that are the victims and to our economy. The Criminal Division will continue to pursue complex multi-district and international investigations and prosecutions involving on-line piracy cases and other intellectual property offenses.

If I am fortunate enough to be confirmed as Assistant Attorney General, as co-chair of the National Intellectual Property Law Enforcement Coordinating Council ("NIPLECC"), I will work with my co-chair, the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, as well as other Council members (e.g., USTR and State), to coordinate and improve efforts among all U.S. government agencies with a stake in IP enforcement. In addition, I look forward to working with the new Coordinator for International Intellectual Property Enforcement, a position recently established through Congressional appropriations. I also look forward to reviewing the recommendations of the Department of Justice's Intellectual Property Task Force ("IPTF"), which I understand issued a comprehensive Report in October 2004.

Similarly, I share your concern relating to combating identity theft, which is a rapidly growing problem throughout the United States that harms individuals and companies and threatens our security. As Deputy Assistant Attorney General, I directly oversaw a program of vigorous and coordinated prosecutions against identity theft and worked with others in the Department of Justice to secure new legislation to increase criminal penalties against identity theft offenders. In May 2002, the Attorney General made public a nationwide sweep of federal prosecutions directed at identity theft, which included 73 criminal prosecutions against 135

individuals in 24 districts, involving everything from traditional fraud schemes to murder. Also, in May 2003, Operation E-Con, which I oversaw, included a number of prosecutions in which the defendants committed identity theft in furtherance of various Internet fraud schemes. In addition, during my tenure, the Department -- in cooperation with the United States Secret Service, the Federal Trade Commission, and the Postal Inspection Service — initiated an ongoing series of regional training seminars on identity theft for state and local law enforcement authorities. I would continue this combination of vigorous enforcement actions and law enforcement training.

Experience

8. You have had a substantive law firm career, and you oversaw key sections of the Department of Justice Criminal Division during your two years as Deputy Assistant Attorney General. However, you are nominated for one of the most visible prosecutorial positions in the country without ever having prosecuted a case, and you bring to the position minimal trial experience in any context. Many of your predecessors in this position were seasoned prosecutors at the time of their appointment. What experience and advice will you be able to draw upon to rise to the challenge of supervising prosecutors in some of the most high profile trials and prosecutions conducted by the Department of Justice?

If I am fortunate enough to be confirmed as Assistant Attorney General of the Criminal Division, I will draw upon my own experience as a manager of prosecutors, my substantive experience in criminal law, and the important advice of the prosecutors in the Criminal Division as well as the U.S. Attorneys' Offices.

I will draw upon my own experience as a manager of criminal prosecutors and high profile prosecutions. As Deputy Assistant Attorney General of the Department's Criminal Division, I supervised the Counterterrorism Section, Fraud Section, Appellate Section, Capital Case Unit, and Alien Smuggling Task Force. I managed approximately 160 prosecutors and employees, and supervised and coordinated such complex, high-profile, and diverse matters as the prosecutions of Richard Reid, Zacarias Moussaoui, John Walker Lindh, Iyman Faris, and Sami Al Arian, as well as matters handled by the Enron Task Force and the HealthSouth cases. Working at the Department for almost two years in the wake of the September 11 attacks, I had the opportunity to work on policies, investigations and litigations with the talented attorneys in the Criminal Division, as well as the talented attorneys in the field.

In addition, I will draw upon my experience defending individuals and corporations in criminal investigations and cases both as an associate at two major law firms and as a partner at Latham & Watkins. My decade of private sector experience has included advising corporations, banks, audit

committees of corporate boards of directors, and individuals on a broad range of complex criminal and corporate fraud issues, including matters involving health care fraud, the Foreign Corrupt Practices Act, securities and accounting fraud, bank fraud, procurement fraud, public corruption, antitrust, the Patriot Act, and other criminal statutes. I have represented clients in proceedings brought by the Department of Justice, U.S. Attorneys' Offices, Securities & Exchange Commission, and other federal agencies. I have also represented an individual on death row in Georgia in a *habeas corpus* appeal investigation. This experience enables me to bring to the table not only the prosecutor's perspective that I gained during my tenure as Deputy Assistant Attorney General, but also the defense perspective that will be valuable in spotting weaknesses in cases and ensuring that the Criminal Division at all times respects the rights of criminal defendants.

Moreover, and significantly, I will be fortunate and privileged to augment my own experience by drawing upon the invaluable experience and advice of the career prosecutors and staff of the Criminal Division and others throughout the Department of Justice.

Written Questions of Senator Edward M. Kennedy
For Alice Fisher, nominee to be Assistant Attorney General for the Criminal Division

DETAINEE ABUSES AT GUANTANAMO BAY

In response to an ACLU Freedom of Information Act (FOIA) lawsuit, the FBI released a May 10, 2004 e-mail (attached) that described FBI agents witnessing the results of abuse and receiving reports of abuse against detainees held at Guantanamo Bay, Cuba. The e-mail reflected FBI concern over Defense Department interrogation tactics, particularly those that might have hampered the ability to successfully prosecute detainees in military commissions. Initially, several names in the e-mail were redacted. After Senator Levin forced a re-examination of the redaction decision, the e-mail was provided with your name. You were identified as participating in weekly meetings with FBI representatives in which the ineffectiveness of Defense Department interrogation techniques were discussed. If any response requires providing classified information, provide one copy of your responses under appropriate seal pursuant to the applicable rules and provide a redacted version directly to the Judiciary Committee.

1. Please provide a detailed description of your responsibilities while employed at the Justice Department. Please include the dates and title for each position you were assigned, the title and identity of people to whom you reported, and any that you supervised.

From July 2001 to July 2003, I was a Deputy Assistant Attorney General in the Criminal Division of the U.S. Department of Justice. I reported to Michael Chertoff, Assistant Attorney General of the Criminal Division, until June 16, 2003, and then to Christopher Wray, then Acting Assistant Attorney General for the Criminal Division. I supervised the Counterterrorism Section, Fraud Section, Appellate Section, Capital Case Unit, and Alien Smuggling Task Force (for 1 year only). The chiefs of each of these entities reported to me. Overall, I managed approximately 160 Justice Department Criminal Division prosecutors and employees. I worked on implementation of criminal enforcement policy and litigations, including coordination with U.S. Attorneys' Offices, other Department of Justice components, and other federal agencies.

2. Please identify by date, and people present, each meeting that you attended with FBI representatives that addressed interrogation techniques being used or for use at Guantanamo Bay by American personnel.

I left the Department of Justice almost two years ago so it is difficult to recall specifics. When I was at the Department of Justice from July 2001-July 2003, I attended various meetings with FBI personnel on a variety of topics relating to the war on terrorism. This May 2004 e-mail referenced above was written almost a year after I left the Department of Justice. One paragraph of the e-mail refers to weekly meetings with the FBI. While I cannot be sure as to which meetings the author of the email is referring, I recall there was a weekly meeting set up between various members of the Criminal

Division (attorneys from the Office of the Assistant Attorney General and the Counterterrorism Section) and the FBI, that I attended at times. My recollection is that these meetings were designed to ensure information sharing regarding FBI terrorism investigations, threats and Criminal Division prosecutions. I do not recall that interrogation techniques were discussed at these meetings.

In general, I recall discussions with the FBI about whether the FBI and other government agents should give advice of rights pursuant to Miranda to detainees prior to interviews. I also recall discussions about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court. I recall being aware of FBI concerns about interviews, but I cannot recall the content of specific meetings about detainee interrogation at Guantanamo Bay with FBI personnel. In general, what I recall about the tenor of the discussions about interviews at Guantanamo Bay concerned what information was being furnished by detainees and whether the Department of Defense methods were effective in obtaining intelligence. For example, I recall discussions about whether detainees should be encouraged to provide information in return for more favorable treatment. I also recall that the FBI believed that establishing a rapport with a detainee is an effective manner to obtain information.

I believe the meetings between the Criminal Division and the FBI where these concerns may have been expressed were with FBI terrorism agents. I do not recall the FBI expressing to me concerns about illegal activity at Guantanamo Bay regarding detainee treatment or mistreatment. I also do not recall that anyone informed me that the FBI was not behaving consistent with FBI policies and procedures regarding interviews (other than perhaps not providing advice of rights).

3. For each meeting described in your response to Question 2, please describe whether any notes, minutes, or recordings of the meeting were created. If so, by whom, in what format, and the current location of the materials.

I do not recall what notes, if any, were taken about these discussions relating to FBI concerns about interrogation methods at Guantanamo Bay. I do not possess any such notes.

4. For each meeting described in your response to Question 2, please identify any notes, memoranda, correspondence (including in electronic form), or reports that you created or that were created with your knowledge or direction, that described the substance of the meeting and/or recommendations based on the substance of the meeting.

I do not recall what notes, if any, were taken about these discussions relating to FBI concerns about interrogation methods at Guantanamo Bay. I do not possess any such notes.

5. For each meeting referred to in Question 2 that you attended or of which you have knowledge, please describe:
    a. The substance of reports conveyed by the FBI, including but not limited to discussions of:
        i. Specific interrogation techniques
        ii. References to physical or psychological coercion
        iii. Reliability of intelligence and/or confessions obtained
        iv. Concerns about admissibility of detainee statements in military trials, e.g. hearings, tribunals, commissions, Combatant Status Review Tribunal (CSRT)
        v. Injuries sustained by detainees resulting from interrogation
        vi. Efficacy of FBI interrogation techniques
        vii. Substance of discussion between the FBI and Defense Department on issues covered by i – vi

I am not familiar with communications between the Criminal Division and the FBI after I left the Criminal Division in July 2003. While I was employed by the Criminal Division, no one brought to my attention any allegations of criminal conduct or any criminal referrals relating to potential criminal conduct occurring at Guantanamo. In general, what I recall about the tenor of FBI concerns regarding interviews at Guantanamo Bay concerned what information was being furnished by detainees and whether the Department of Defense methods were effective in obtaining intelligence. For example, I recall discussions about whether detainees should be encouraged to provide information in return for more favorable treatment.

I do not recall discussions with the FBI about concerns regarding the admissibility of detainee statements in military trials, although I do recall expressing the view that I did not believe that the general rules of evidence standards for statements in the military trials would be significantly different from the standards in U.S. Article III courts.

I do not recall discussions with the FBI about injuries sustained by detainees resulting from interrogation and I do not believe I was aware of any such injuries.

I am not aware of what discussions took place between the FBI and the Department of Defense about these issues.

b. Discussions about applicability of the Geneva Convention, the Army Field Manual, United States Constitutional Law, any Presidential Directives, any internal Justice Department guidelines or memorandum, any Defense Department guidelines or memoranda to practices conducted by Defense Department and/or FBI personnel.

Other than the discussions noted above, I do not recall participating in any discussions with FBI personnel about the Geneva Convention, the Army Field Manual,

Presidential Directives, or Department of Justice/Department of Defense guidelines. I recall I was involved in discussions such as whether Miranda warnings were appropriate for the interrogations in Afghanistan or at Guantanamo Bay.

c. Any opinions you or other Justice Department officials offered about how the FBI should participate or not participate in interrogations.
   i. For each such opinion, describe its justification and reasoning.
   ii. For each such opinion, describe the FBI's response in the meeting and whether the opinion was followed at an operational level.

I was aware that the FBI and the Department of Defense were working together at Guantanamo Bay and believed them to be coordinating on detainee interrogations. I recall that at some point I learned that there were some differences of opinion on interviewing methods and approach to detainees, as described above. The FBI did not ask me for advice on whether to participate in interrogations at Guantanamo Bay, and I do not recall offering any advice on whether the FBI should participate in particular interrogations at Guantanamo Bay.

d. Please describe the substance of your reports and/or communication, whether written or oral, to your superiors in the Administration, including, but not limited to, the Assistant Attorney General for the Criminal Division, the Deputy Attorney General, the Attorney General, White House Counsel, the Vice-President, the President or any member of their staffs.

I recall that there were general discussions about the effectiveness of the Department of Defense techniques in obtaining information from detainees. For example, I recall discussions about whether detainees should be encouraged to provide information in return for more favorable treatment. I also recall that the FBI believed that establishing a rapport with a detainee is an effective manner to obtain information. Given that it has been nearly two years since I left the Department of Justice, I believe that I participated in discussions internally within the Department of Justice about this but I do not recall any specific discussions. I do not recall discussing this with the White House Counsel, the Vice President or the President or their staffs.

e. For each report and/or communication described in 5(d), please describe the response you received, in what form it was delivered, any action that was ordered, and identify any documents (including electronic) that were created as a result.

I am not aware of any specific direction or response other than the general discussion.

6. Describe any action you or anyone else in the Justice Department undertook to address the concerns of the FBI reflected in the May 10, 2004 e-mail, including, but not limited to, the officials that were contacted, the recommendations that were made, the orders that were issued, and any legal action undertaken. Describe in detail the reasons and justification for undertaking all such action.

I was not at the Department of Justice at the time of the May 10, 2004, e-mail and therefore I am not aware of what, if any, response was taken regarding this e-mail. Please also see my answers to question 8, *infra*.

7. Describe in detail the results of all actions undertaken described in Question 6, including, but not limited to whether instructions or policies were issued by the White House or Vice-President's office, whether interrogation practices were changed, specific interrogations were affected, detainees were released, prosecutions were affected, legal policy was altered, or FBI responsibilities were altered.

I am not aware of what specific actions were undertaken in response to the discussions detailed above.

8. Did you or anyone else in the Justice Department contact Defense Department personnel regarding the concerns raised by the FBI in the May 10, 2004 e-mail?
    a. If so, please identify the contact by date, the form of the contact, the people involved, and describe the substance of the communication.
    b. If no actions were undertaken, describe in detail the reasons for failing to do so.

I believe I discussed some of the FBI's concerns about effectiveness with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place; however, I do not have a specific recollection about these discussions. I believe I also discussed particular detainees housed at Guantanamo Bay and what information was being obtained from a particular detainee.

Please describe in detail all conversations you have had with Michael Chertoff regarding the substance of the concerns of the FBI reflected in the May 10, 2004 e-mail, including your comments and the comments of Michael Chertoff. Please identify the date of the conversations and all those who were present either in person or on the telephone.

I do not recall specific conversations so I cannot state who else might have been present during these discussions. When I was at the Department of Justice, I recall having general discussions about the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence. I also recall that we had discussions about particular detainees and whether

there might be an opportunity to charge a detainee with a violation of criminal law in Article III courts.

9. Please describe in detail all instructions you received from Michael Chertoff about how to proceed in response to the concerns of the FBI and reflected in the May 10, 2004 e-mail.

I do not recall any instructions from then Assistant Attorney General Chertoff concerning this matter.

10. Have you ever expressed a concern, either in writing or orally, about the way interrogations were being conducted of detainees at Guantanamo Bay?
    a. If so, please identify the person to whom you expressed concerns, the date, the format, and the substance of the concerns.

I do not recall expressing a concern about the way interrogations were being conducted other than participating in the discussions I have described above.

    b. If not, why not? Do you approve of all the interrogation techniques utilized by American personnel at Guantanamo Bay? Please explain your opinion in detail with specific reference to individual conduct and techniques.

I am not in a position to answer this question because I am not aware of what techniques have been utilized by American personnel at Guantanamo Bay. However, I abhor torture; it is illegal and, if credible allegations of torture were brought to my attention during my employment at the Justice Department, I would have vigorously pursued them.

11. If you were Assistant Attorney General at the time that the FBI expressed the concerns reflected in the May 10, 2004 e-mail, describe in detail how you would have responded, including but not limited to describing the officials you would have contacted, the positions and recommendations you would have made, and any other actions you would have undertaken. Please explain in detail the basis for these actions.

If allegations of criminal conduct were brought to my attention as Assistant Attorney General of the Criminal Division, I would direct that the allegations be investigated and the criminal law enforced. To the extent the FBI had a concern about the interview methods of the Department of Defense, I would expect that the FBI would discuss those concerns internally at the FBI and directly with the Department of Defense, and I would certainly encourage them to do so if they brought this to my attention. If the FBI brought allegations of mistreatment to my attention short of violations of criminal law, I would discuss it with the appropriate officials at the Department of Justice and at the FBI, including the Deputy Attorney General.

Post 9/11 Abuses Affecting Arabs, Muslims and Other Immigrant Communities

After September 11, thousands of immigrant men from Arab and Muslim countries were fingerprinted, photographed, interrogated and detained under Justice Department anti-terrorism programs. An estimated 80,000 persons were registered, 8,000 persons were interviewed, and 5,000 persons were detained and not a single one stands convicted of a terrorist crime to this day. Individuals were targeted based on their religion or national origin, instead of evidence of danger. The result was massive fear in many Muslim and Arab communities and cooperation, and anti-terrorism efforts were undermined. At a time when we needed critical intelligence, members of Arab and Muslim communities were unfairly stigmatized and were discouraged from coming forward to assist our law enforcement and counter-terrorism efforts.

1. Will you make a commitment to review these so-called "anti-terrorism" programs that have an inordinate and unfair impact on Arab, Muslim, and other immigrant communities?

In the essential task of protecting the citizens of the United States from further terrorist attacks, the Department of Justice and the Criminal Division are committed to enforcing the Nation's laws in an even-handed, non-discriminatory manner. The manner in which anti-terrorism programs are undertaken are vitally important so that the government may obtain, as you state, critical intelligence. This must be done so consistent with our constitutional values and liberties. I will certainly review any program or practices within the Criminal Division that are allegedly having an inordinate and unfair impact on Arab, Muslim, or any other immigrant community.

After 9/11, the Justice Department enacted other policies, including abusive detention practices that denied immigrants due process of law. The Administration approved searches and detention without warrants or probable cause, incarcerated citizens and non-citizens without hearings or counsel, and conducted secret proceedings.

In June 2003, Glenn Fine, the Inspector General for the Justice Department, found "significant problems in the way the detainees were handled" following 9/11. He found a failure to distinguish detainees suspected of a connection to terrorism from detainees with no such connection. He found inhumane treatment of detainees at federal detention centers, unnecessarily prolonged and often secret detentions without formal charges, interference with access to counsel, and closed hearings. These policies have not been effective, legal, or fair, and ignored basic rights in our society.

2. Detainees should receive access to counsel and other constitutional safeguards they are entitled to. What steps will you take to prevent such abuses from occurring in the future?

If I am confirmed as the head of the Criminal Division, I will not be charged with the actual responsibility for the detention of any person. Other components of the Department of Justice and, in the case of aliens unlawfully in the United States, the Department of Homeland Security are charged with their detention. I am aware of the shortcomings in the post 9/11 detention practices discussed in the Inspector General's report, and believe that efforts have been made to rectify perceived improper handling. I believe this is important. If I am fortunate enough to be confirmed as the Assistant Attorney General, I will work to uphold the Constitution and enforce the criminal laws.

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

June 7, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to the second round of questions from Senators Kennedy and Durbin relating to the nomination of Alice Fisher to be Assistant Attorney General for the Criminal Division of the Department of Justice.

While Ms. Fisher has made every effort to respond to these additional questions, she is not in a position to provide information about internal Executive Branch deliberations relating to law enforcement and intelligence matters. The Department has substantial confidentiality interests in this type of information because we believe that its disclosure would unavoidably chill the candid and unfettered exchange of views that is essential to the integrity of our prosecutorial and litigation decision-making as well as other Executive Branch functions. Our disclosure of that internal discourse would surely discourage employees from communicating frankly about their assessments of the law and evidence, thereby potentially depriving Department decision makers of their valuable advice and recommendation.

I hope that this information is helpful and that the Committee will report favorably on Ms. Fisher's nomination. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Responses to Follow-Up Written Questions for Alice Stevens Fisher
Nominee to be Assistant Attorney General, Criminal Division
Submitted by Senator Richard J. Durbin and Senator Edward M. Kennedy
May 27, 2005

1. Discussions Regarding Interrogation Techniques

a. In your responses to our questions, you indicate, "I recall there was a weekly meeting set up between various members of the Criminal Division (attorneys from the Office of the Assistant Attorney General and the Counterterrorism Section) and the FBI, that I attended at times." How often did you attend these weekly meetings? What percentage of the weekly meetings would you estimate you attended during your tenure at the Department of Justice? To the best of your recollection, please identify by name and title the other people who were present during the meetings. Were you the highest-ranking Justice Department official present at the meetings?

I cannot recall the frequency of my attendance at these particular meetings, although the percentage decreased during my tenure at the Criminal Division. As I noted in my initial response, I recall that there was a weekly meeting set up between various members of the Criminal Division (attorneys from the Office of the Assistant Attorney General and the Counterterrorism Section) and the FBI that was designed to ensure information sharing regarding FBI terrorism investigations, threats and criminal prosecutions. My recollection is that we discussed the progress of various domestic and international terrorism investigations. I do not recall any other Deputy Assistant Attorney General attending these particular meetings.

b. You state in your responses that you "do not recall that interrogation techniques were discussed at these weekly meetings." How do you reconcile this with the statement in the May 10, 2004 e-mail from an unnamed FBI official that, "In my weekly meetings with DOJ we often discussed DoD techniques"?

I cannot reconcile my recollection with statements contained in the e-mail described above because I do not know what the author intended to describe or even if the weekly meetings described in the e-mail are the same weekly meetings that I recall. I recall discussions about interviews at Guantanamo Bay about whether the Department of Defense (DOD) methods were effective in obtaining intelligence. For example, I recall discussions about whether the detainees should be encouraged to provide information in return for more favorable treatment. The FBI believed that establishing a rapport with a detainee was an effective way to obtain information.

c. You state that these weekly meetings included "discussions about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court." On what basis were meeting participants concerned about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court? Were there discussions concerning whether an Article III

court would permit information obtained using DoD interview methods to be admitted? If so, please provide a detailed description of these discussions.

As I noted in my prior responses, I recall discussions within the Department of Justice about preserving the ability to prosecute detainees in criminal proceedings in an Article III court. The discussions I recall focused on the potential of charging a few individual detainees in an Article III court. We discussed issues such as whether the FBI and other government agents should give advice of rights pursuant to Miranda to detainees prior to interviews and the admissibility of those statements in an Article III court proceeding.

d. You state that you "do not recall discussions concerning Department of Defense 'tactics' being an issue in the military commission cases." How do you reconcile this with the statement in the May 10, 2004 e-mail from an unnamed FBI official that, "We all agreed DoD tactics were going to be an issue in the military commission cases." Do you recall any discussions regarding the impact of DoD interview methods on military commission cases? You state that you "recall expressing the view that I did not believe that the general rules of evidence standards for statements in the military trials would be significantly different from the standards in U.S. Article III courts" and "recall discussions about what might be the evidentiary standards adopted by the judges for military commissions." In what context did you express this view and in what context did the discussions about military commission evidentiary standards take place?

I cannot reconcile my recollection with statements contained in the e-mail described above because I do not know what the author intended to describe or even if the meetings described in the e-mail are the same meetings that I recall. I do not recall discussions concerning DOD interview tactics being an issue in the military commission cases but I do recall general discussions about what rules the military commission judges might adopt. For example, I believe we discussed material evidence and the difficulties with evidentiary standards such as chain of custody and authentication issues for evidence obtained abroad.

e. You state that during your tenure at the Criminal Division, "no one brought to my attention any allegations of criminal conduct or any criminal referrals relating to potential criminal conduct occurring at Guantanamo." You state that you "do not recall the FBI expressing to me concerns about illegal activity at Guantanamo Bay regarding detainee treatment or mistreatment." You also state, "I abhor torture; it is illegal and, if credible allegations or torture were brought to my attention during my employment at the Justice Department, I would have vigorously pursued them." During your tenure at the Criminal Division, did anyone express any concerns or bring any allegations to you about detainee treatment or mistreatment, including the use of abusive or inhumane interrogation methods, that did not rise to the level of criminal conduct or constitute torture? If yes, how did you respond?

As I noted in my prior responses, I do not recall the FBI expressing to me concerns, or allegations, that detainees at Guantanamo Bay had been mistreated and I believe I

would have been sensitive to those allegations. As Deputy Assistant Attorney General, I supervised the Criminal Division's Counterrorism Section, which conducted the investigations arising from CIA referrals regarding possible criminal abuse of detainees held abroad, but I have no information about the outcome of those investigations. In addition, I may have participated in internal discussions about press articles regarding detainees, but I do not recall the specifics of those discussions. Please also see below my response to item f.

f. For each of the practices listed below, please indicate whether, during your tenure at the Criminal Division, FBI personnel or anyone else expressed any concerns or brought any allegations to you that U.S. personnel were engaged in the practice, and whether you believe use of the practice would constitute torture or cruel, inhuman or degrading treatment or violate any other legal prohibition.

(i) Simulated drowning (including "waterboarding")
(ii) Stress positions (including forcing detainees to assume painful, contorted position for extended periods of time)
(iii) Prolonged isolation
(iv) Forced grooming
(v) Inducing stress by use of detainee's fears (e.g., dogs)
(vi) Removal of clothing (forced nudity)
(vii) Hooding
(viii) Sensory deprivation
(ix) Food deprivation (as distinguished from dietary manipulation)
(x) Sleep deprivation (as distinguished from sleep adjustment)
(xi) Removal of comfort items (including religious items)
(xii) Abuse of religious items, including the Quran.
(xiii) Environmental manipulation (including exposure to extreme temperatures, loud music and strobe lights)
(xiv) Physical contact such as a face or stomach slap
(xv) Forcible injection of mood-altering drugs
(xvi) Mock executions
(xvii) Threatening to send detainees to countries where they would be tortured

I do not recall FBI personnel or anyone else expressing to me allegations about mistreatment of detainees at Guantanamo Bay. As noted above, as Deputy Assistant Attorney General, I supervised the Counterterrorism Section, which conducted the investigations arising from CIA referrals regarding possible criminal abuse of detainees held abroad, but I have no information about the outcome of those investigations. Beyond that, it would be inappropriate for me to comment on discussions about particular interrogation techniques because the Department has substantial confidentiality interests in its internal deliberations regarding law enforcement and intelligence matters.

Some of the activities listed above, at least in certain factual contexts, might well be prohibited under the torture statute or under other federal prohibitions. I did not pre-

approve DOD interrogation techniques and I am not in a position to opine on the legality of particular interrogations techniques without the relevant facts.

g. Do you believe that U.S. personnel can legally engage in cruel, inhuman, or degrading treatment under any circumstances? If so, how do you reconcile this with applicable treaties and laws, particularly the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Section 1091 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375)?

I believe that U.S. personnel should abide by all applicable treaties and laws regarding detainee treatment and should treat detainees humanely. My understanding is that the United States is committed to complying with its obligations under the Convention Against Torture and, consistent with section 1091(b)(1) of the Defense Authorization Act, I understand that it is the policy of the United States to ensure that detainees are not subject to treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States. Torture is a serious crime under United States law, and the President has made clear that torture will not be condoned or tolerated. If I am fortunate enough to be confirmed as Assistant Attorney General of the Criminal Division, I will vigorously pursue any allegations of criminal law violations and do my best to ensure that the U.S. is abiding by all applicable laws and treaty obligations.

h. You state that you "don't recall taking any particular action with respect to the FBI concerns about the effectiveness of Department of Defense interview methods other than having discussions internally at the Department of Justice." Concerns about the effectiveness of DoD interview methods are extraordinarily serious. If these methods are ineffective, it could undermine our ability to obtain critical intelligence for the war on terrorism. Who did you talk to at DOJ regarding the concerns? What was the substance of your conversations? Why didn't you take any further action in response to these concerns? Wouldn't you have been the person responsible for responding to concerns that could impact criminal prosecutions of detainees?

As I noted in my prior responses, I recall having general discussions about the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence, with others at the Department of Justice and I believe I had similar discussions with members of the Office of General Counsel at the Department of Defense or was present when such discussions took place. As Deputy Assistant Attorney General of the Criminal Division, I was involved in criminal prosecutions in Article III courts, and as I have described in my previous responses, I did have conversations about the potential of charging a few individuals detained at Guantanamo Bay in Article III courts.

i. You state that if you were Assistant Attorney General of the Criminal Division, and the FBI had a concern about Defense Department interview methods, "I would expect that the FBI would discuss those concerns internally at the FBI and directly with the Department of Defense,

and I would certainly encourage them to do so if they brought this to my attention." When the FBI raised concerns about DoD interview methods, did you suggest that the FBI contact DoD? Wouldn't it be appropriate for you to raise these concerns with DoD?

The FBI was housed at Guantanamo Bay with the Department of Defense and my understanding is that there was an ongoing dialogue and coordination between the FBI and DOD regarding the interviews at Guantanamo Bay. In addition, as I noted in my prior responses, I recall having general discussions about the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence, with others at the Department of Justice and I believe I had similar discussions with members of the Office of General Counsel at the Department of Defense or was present when such discussions took place.

2. Meetings with Defense Department Office of General Counsel

a. In your answers you state that you "discussed some of the FBI's concerns about effectiveness [of DoD interview methods] with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place."

(i) Please identify how many such discussions you participated in, and the time period during which these discussions took place.
(ii) Please identify who else from DOJ was present during these discussions.
(iii) Please identify who in DoD's Office of General Counsel (OGC) was present during these discussions.

As I noted in my prior responses, I believe I discussed some of the FBI's concerns about effectiveness with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place; however, I do not have a specific recollection about these discussions (which would have taken place over two years ago).

b. You state that you discussed with DoD/OGC "particular detainees housed at Guantanamo Bay and what information was being obtained from a particular detainee." The Church Report states that it was concerns about the military's interrogation plans for Mohamed al Kahtani that led the Defense Department Criminal Investigative Task Force (CITF) to object to some of the interrogation techniques being planned and to decide to "disassociate itself from the interrogation and its methods, ostensibly to preserve the integrity of its own investigation."

(i) Was one of the "particular detainees" you refer to Mohamed al Kahtani?

I did participate in discussions about what information, if any, was being obtained from detainees at Guantanamo Bay, including Mohamed al Khatani.

(ii) To your knowledge, did the FBI ever discuss with you or others in the Criminal Division DoD's interrogation plans for Kahtani? If so, did they raise concerns about the reliability or admissibility of the information being obtained from Kahtani?

I do not recall having any such discussions with the FBI. It is possible that others in the Criminal Division had such discussions with the FBI.

(iii) Did you ever discuss with DoD/OGC concerns about the admissibility of detainee statements in military trials? Did you discuss with DoD/OGC the admissibility of information obtained by military interrogators from Kahtani in criminal proceedings?

I do not recall discussions with the Department of Defense Office of General Counsel regarding concerns about the admissibility of particular detainee statements in military trials. I recall discussions about the potential use of interview statements of detainees at Guantanamo Bay in criminal proceedings but it would be inappropriate for me to discuss specifics about any particular detainee or investigations that were ongoing when I was at the Department of Justice.

c. The May 10, 2004 e-mail states that the "LEA (Law Enforcement Agencies) at GTMO [Guantanamo] were not in the practice of using [REDACTED] and were of the opinion that results obtained from these interrogations were suspect at best." Did your discussions with DoD/OGC regarding "some of the FBI's concerns about effectiveness" of DoD interview methods include FBI concerns that such methods would result in information that might not be reliable?

I do not recall discussions with the Department of Defense that DOD interview methods were resulting in information that was not reliable. I recall being aware of FBI concerns that DOD interrogations at Guantanamo Bay were not effective and were not resulting in additional intelligence.

d. Did anyone present during these discussions with DoD/OGC, in addition to expressing concerns about the "effectiveness" of DoD interview methods, express concern about detainee treatment or mistreatment, including the use of abusive or inhumane methods?

I do not recall discussions with the Department of Defense Office of General Counsel in which anyone expressed concern that detainees were being mistreated at Guantanamo Bay.

3. Discussions with then Assistant Attorney General Chertoff

a. You recall discussing with then Assistant Attorney General Chertoff "the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence." Did you also discuss with him, or any other Administration official, the reliability of information obtained through DoD interview methods?

I do not recall discussions that the information obtained from detainees through Department of Defense interviews was not reliable. I recall being aware that the FBI was concerned that particular interviews were not effective and were not resulting in additional intelligence.

b. You state that you had discussions with Mr. Chertoff regarding "particular detainees and whether there might be an opportunity to charge a detainee with a violation of criminal law in Article III courts." Did you discuss with him, or any other Administration official, admissibility of information obtained through DoD interview methods? Did you inform him, or any other Administration official, about your discussions with the FBI regarding "preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court"?

As I noted in my prior responses, I recall discussions within the Department of Justice about particular detainees and whether there might be an opportunity to charge a detainee with a violation of criminal law in an Article III court. I also recall discussions within the Department and with the FBI regarding the fact that Miranda warnings were not provided to detainees at Guantanamo Bay. I do not recall the content of specific discussions about the admissibility of information obtained through DOD interview methods.

c. In addition to discussing concerns about the "effectiveness of the Department of Defense's interview methods" with Assistant Attorney General Chertoff, did you ever discuss with him, or any other Administration official, concerns about detainee treatment or mistreatment, including the use of abusive or inhumane methods?

I do not recall discussions with anyone about allegations of mistreatment of detainees at Guantanamo Bay. I do not recall being aware of allegations of mistreatment of detainees at Guantanamo Bay. As noted above, as Deputy Assistant Attorney General, I supervised the Counterterrorism Section, which conducted the investigations arising from CIA referrals regarding possible criminal abuse of detainees held abroad, but I have no information about the outcome of those investigations.

d. You state, "I do not recall any instructions from then Assistant Attorney General Chertoff concerning this matter." Are you aware if Mr. Chertoff, or any other Administration official, took any actions in response to the concerns you relayed?

I am not aware of what actions others in the Administration took in response to the concerns raised by the FBI regarding the effectiveness of the DOD interview methods.

4. USA PATRIOT Act Section 215

You were asked:

> a) Isn't it true that if the FBI 's application meets the requirements of Section 215, primarily a certification that the records are "sought for" an international terrorism or intelligence investigation, the court is required to issue an order?
>
> b) On May 10, 2005, in testimony to the Senate Judiciary Committee, Andrew McCarthy, a strong supporter of Section 215, acknowledged that, "if the government makes the prescribed representations, the FISA court is without discretion to deny the order." Do you agree with Mr. McCarthy?

In response, you stated:

> In my view, the granting of orders under FISA is within the discretion of the FISA court, which reviews government applications in accordance with the standards set forth in the statute and must determine whether those standards have been met. I do not agree that Section 215 eliminated the FISA court's discretion to issue orders for the production of third-party records.

Isn't it true that if the FISA court determines that the government's application meets the requirements of Section 215, namely it specifies that the records are "sought for" an international terrorism or intelligence investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, the court is required to issue an order?

A judge of the FISA court is required to issue an order if, and only if, the judge is satisfied that the government has met all of the statutory prerequisites, including that an investigation of a United States person for which the records are "sought" is not conducted solely upon the basis of activities protected by the First Amendment.

5. USA PATRIOT Act Section 213

You were asked, "Isn't it true that the government had the authority to conduct secret searches in international terrorism investigations pursuant to the Foreign Intelligence Surveillance Act before enactment of the USA PATRIOT Act" [emphasis added]. In response, you stated:

> I believe that we should not be limited to FISA-approved searches in terrorism cases, because there may be circumstances in which we would want to employ criminal investigatory tools, rather than tools authorized under FISA. For example, a FISA search would not be permissible in the investigation of a domestic terrorism case. [emphasis added].

In an international terrorism investigation, in what circumstances would the government want to conduct a Section 213 delayed-notification search rather than a FISA secret search?

Depending on the dynamics of a particular investigation, a Section 213 delayed-notification search may be the more appropriate tool in an international terrorism investigation. For example, if time is of the essence, the investigators may decide that applying for and obtaining criminal process from a local federal judge is likely to be more efficient than preparing and filing an application with the FISA court in Washington, D.C. The fundamental point is that counterterrorism investigators should have all lawful and appropriate tools at their disposal.

6. Lindh Case

You were asked:

> Did you participate in any discussions and/or contact anyone in the Justice Department or outside the Justice Department about Jesselyn Raddack, the PRAO attorney who provided advice to the Criminal Division on the Lindh case? If yes, please provide a detailed description of these discussions and/or contacts.

You responded, "I participated in discussions about the e-mails ... I didn't have any discussions about Ms. Raddack with any of her supervisors."

With whom did you have discussions about Ms. Raddack? What was the substance of these discussions? Did you have discussions with anyone outside the Justice Department about Ms. Raddack?

I became aware that Ms. Radack had exchanged emails with an attorney in the Counterterrorism Section about Mr. Lindh's interrogation and I participated in discussions about the e-mails with Department of Justice attorneys and staff. At some point while I was at the Department of Justice, there were media articles about the e-mails, and I had discussions about the substance of those articles with others in the Department of Justice. I do not recall discussions about Ms. Radack outside the discussions of these e-mails. In addition, after I left the Department of Justice, there were media articles about the e-mails and I believe I had conversations, including with persons outside the Department of Justice, about the substance of the media articles after they appeared in the press.

SENATOR RICHARD J. DURBIN
WRITTEN QUESTIONS FOR REGINA SCHOFIELD
NOMINEE TO BE ASSISTANT ATTORNEY GENERAL
OFFICE OF JUSTICE PROGRAMS

1. On March 29, 2005, President Bush announced his intent to nominate you to be Assistant Attorney General (Office of Justice Programs) at the Department of Justice. The post has been vacant since the January 31, 2005 resignation of Deborah Daniels after over four years in the job. Your nomination was received by the Senate on April 4, 2005.

   (a) Did you seek out this appointment, or were you asked?

   I am honored that the President and the Attorney General have asked me to serve in this position.

   (b) What sparked your interest?

   After initially being asked if I would be interested in being considered for this nominated, I researched the various programs and grants offered through Office of Justice Programs (OJP), and was intrigued by the variety and importance of these offerings. Also, I sensed complex challenges in the management of OJP and became convinced that I could make a positive contribution.

   (c) Why do you believe the President selected you to fill the vacancy in this post?

   Over the past four years, in my capacity as White House Liaison and as Director of Intergovernmental Affairs, I have had numerous interaction with White House staff and other colleagues throughout the executive branch. The reputation I have worked to build is one of hard work, integrity, and dedication to public service, coupled with my professional emphasis on sound management. I believe that these attributes led the President and the Attorney General to consider me for this post.

   (d) What aspects of the position of Assistant Attorney General for the Office of Justice Programs most appeal to you?

   The Office of Justice Programs, through the diversity of its portfolio of issues and grant programs, seems a natural point through which to help the Department of Justice with partners at every level: state, local, tribal, and community, as they do the important work of providing for the public safety and building strong communities.

   In particular, the important work being done at the Office of Juvenile Justice and Delinquency Prevention, where efforts are undertaken to help keep kids off the

street; the important research at the National Institute of Justice, where research is trying to help keep our police officers safe through bullet-resistant technology; or the vital support being given by the Office of Victims of Crime, where we extend a supportive hand to those among us who have been through a challenging time in their life, the Office of Justice Programs, to me, is a position where it is possible to touch many lives.

(e) What do you consider the most challenging aspects of assuming this post?

As with any organization of the size and scope of OJP, it will be a genuine management challenge to develop a sense of institutional history on both issues and programs. Additionally, I would seek to undertake an aggressive personal outreach strategy to our law enforcement partners at the state and local level to develop a comprehensive understanding of their concerns and priorities. Both of these processes would be challenging aspects of this post.

(f) What particular goals would you like to accomplish in your tenure if confirmed as Assistant Attorney General for Justice Programs?

Three of my highest priorities, if confirmed, would be, 1) To continue the implementation of the President's DNA Initiative to help spread knowledge and training in the use of this advancing technology; 2) To help support and strengthen the work being done at the Office for Victims of Crime; and 3) To work aggressively to build strong and productive working relationships with our state and local law enforcement partners which will put me in a position to advise the Attorney General and the President about issues related to the needs of law enforcement and the work of law enforcement in protecting the public.

2. Your previous career experience in both the private sector (Philip Morris, International Council of Shopping Centers) and in public service (Department of Education, Postal Service, & Department of Health & Human Services) do not evidence a particular interest or extensive focus on any matters involving law enforcement or criminal and juvenile justice programs.

(a) What is your degree of familiarity with the various programs administered by the Office of Justice Programs?

I am familiar with the agencies within OJP through my personal research and education over the last several months. These efforts have involved the study of

OJP from an organizational standpoint, and from a programmatic standpoint. While clearly I would have more to learn, I feel confident that I am prepared to be effective, if confirmed.

(b) What strengths do you bring to this post?

The strengths that I believe that I have gathered over the past 20 years of my professional career include being a strong communicator and a sound manager. I believe that I can use these strengths to further the mission of OJP, better communicate with our stakeholders, and deliver grant programs to them more efficiently.

(c) What do you consider to be the weaknesses in your knowledge and skills in the programmatic areas within the scope of OJP's jurisdiction?

In preparing for my confirmation hearing I was provided briefing materials about the initiatives within the Office of Justice Programs and had the opportunity to discuss a full range of topics with the leaders of a prominent national law enforcement organization. If fortunate enough to be confirmed, I would look forward to receiving in-depth briefings about all of the ongoing OJP initiatives from the many dedicated career employees of OJP. Additionally, I look forward to meetings with OJP partners and grantees and other law enforcement partners to better understand all of the OJP policy areas.

(d) How do you plan to educate yourself in the substantive areas to build and enrich your knowledge?

If confirmed, I would work tirelessly with the staff in OJP, and in a face-to-face manner with OJP partners and grantees, in order to help enhance my personal knowledge of the substantive policy areas under the umbrella of OJP. Additionally, I would seek to encourage and develop a very strong relationship with state and local law enforcement leaders as well as other grantees, to learn about issues of concern.

3. In assuming this post, you will be responsible for the overall management and oversight of the Office of Justice Programs (OJP). You will head up a senior management team charged with providing federal leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. As the Assistant Attorney General you will have lead authority for promoting coordination among the bureaus and offices within OJP, which include the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency

Prevention, the Office for Victims of Crime, the Community Capacity Development Office, the Office of the Police Corps and Law Enforcement Education, and OJP's American Indian and Alaska Native (AI/AN) Affairs Desk. In addition, you will be at the helm over seven other offices which provide agency-wide support within OJP, including the Office of Communications, the Office of Administration, the Equal Employment Opportunity Office, the Office for Civil Rights, the Office of Budget and Management Services, the Office of the Comptroller, and the Office of General Counsel.

(a) How would you characterize your personal management style and leadership skills?

In my professional history I have sought to lead by example. I fully believe in, "management by walking around," or the process of getting out from behind my desk to engage staff and colleagues. Additionally, I believe in the importance of mentoring young staff and in challenging staff at all levels to excel in their professional growth.

(b) If a former supervisor was asked to describe your leadership style, what might they say?

I think that former colleagues and supervisors alike would comment on my interest in helping employees to develop and improve, on my loyalty to employees who put in an honest day's work, and on my unwillingness to accept a work product about which an employee could not be proud. Further, I think they would comment on my high personal expectations and on my interest in always accepting and working through challenges.

(c) If a subordinate whom you supervised was similarly asked, what would likely be their response?

A former employee might say that I am a leader who sets high goals, encourages creative thought, and who is willing to put my own name on the line for the benefit of the organization. I would probably be referred to as someone who is interested in team building and who has tremendous respect for the workplace and fellow employees.

4. In your response to question #17 relating to significant legal activities, you indicate that your Federal government experience has afforded you "the invaluable skills necessary to shepherd change, manage complex staffing issues, and reform the policy-making process."

(a) What are the "skills necessary" to perform these activities?

I believe that it is necessary to be a strong communicator, a fair-minded observer, and active listener who isn't afraid to embrace new ideas.

(b) Can you elaborate on specific work experiences where you were tasked to "shepherd change"?

As Director of Intergovernmental Affairs at HHS, I helped lead the Department in facilitating and directing two key bodies for the coordination of issues affecting rural communities and tribes. The HHS Rural Task Force and Intradepartmental Council on Native American Affairs represent a major shift in the way that HHS deals with and coordinates issues affecting these key constituencies. Changing the attitude of individual agencies within the Department from a single-tier strategy in working with these groups to a more Department-wide approach has been a specific task and a formidable challenge.

(c) Please cite particular examples of how you "managed complex staffing issues."

As White House Liaison, I managed the Department's political appointees through the interview and recruitment process, and served as a mentor and advisor to many of them after their appointments. Many complicated issues have arisen over the years involving relationships, professional disagreements, and other issues that have a required an open mind and creative approach to help resolve.

Furthermore, I have become knowledgeable in the application of Interagency Personnel Mobility Act agreements and other mechanisms to help agencies and other organizations provide staffing resources to address specific problems or work on special programs at no additional taxpayer cost. In addition, I have worked with Human Resources to ensure that every political appointee is held to the same or higher levels of professional accountability as career civil servants.

(d) In what instances and under what circumstances have you been responsible for "reforming the policy-making process"?

The most prominent example from my tenure at HHS was the development and signing of the HHS Tribal Consultation Policy, where I helped institutionalize the process of soliciting feedback on Departmental issues and policies from tribal leaders. The shift from occasional consultation to annual regional consultations, as well as strengthening the Department's annual budget consultation, was a major reform that I believe is now helping HHS to gather better feedback from a more diverse community.

(e) How do anticipate engaging in these particular activities and using these skills if confirmed as Assistant Attorney General for Justice Programs?

Without the benefit of time on the job, I would not want to venture a guess as to where in OJP I might encounter complex staffing issues or an area where the policy process needs reform. What I can say is that I would look forward to using

these skills to help enhance OJP's ability to work with a diverse group of partners in executing its mission if I am confirmed.

5. The President's FY 2006 budget recommends rescinding amounts in the Crime Victims Fund (the Fund), estimated to be over $1.26 billion. This Fund is a separate account populated by fines, forfeitures, penalties, and special assessments collected from Federal criminal offenders. It does not depend on taxpayer revenues. The Fund is the primary source of Federal support for programs providing critical assistance and compensation to nearly four million victims of crime annually. Amounts deposited in any given fiscal year are de available for victims services in the subsequent fiscal year. I am troubled that a proposal to zero out the Fund by rescinding amounts in excess of the proposed spending cap of $650 million for FY 2006 – including amounts to be deposited in FY 2006 – means there may be insufficient funds available for vital services in FY 2007 and beyond. This proposal flies in the face of two decades of Congressional intent that a "stable level of funding will remain available for these programs in future years" and that all deposits remain in the Fund for use in future years.

I know that the Administration has consistently supported the rights of crime victims and continues to recognize the need to empower and support those who provide vital services to crime victims. The President's Fiscal Year 2006 budget requests $650 million to support the Crime Victims Fund. This is $30 million more than Congress had enacted in Fiscal Year 2005. In addition, the Attorney General has stated his personal commitment to supporting services and assistance for crime victims and their families, and to ensuring improved treatment for crime victims in their dealings with the criminal justice system. If confirmed, I would offer the same commitment on behalf of crime victims.

With respect to funding for the Crime Victims Fund, which provides vital services and assistance to victims, I understand that the Fund will continue to be supported through criminal fines, forfeited bail bonds, penalties and special assessments, and gifts, bequests or donations from private entities.

(a) Can you explain the rationale for this recommendation?

The rationale for the rescission of remaining funds is that because the balances are controlled by obligation limitations only, the balances "rollover" and become available again every year -- a never ending offset. In essence, it's the same offset year after year. Rescinding the balances prevents them from rolling over on an annual basis, and is a more straight forward approach to budgeting.

(b) What is the intended use of these rescinded funds?

The rescinded funds would be returned to the U.S. Treasury for general use.

(c) Are you willing to work with Members of Congress and advocates to alleviate significant concern that this proposal to rescind the Fund severely jeopardizes

delivery of critical services and financial aid to millions of victims of domestic violence, sexual assault, child abuse, drunk driving, elder abuse, and other crimes?

I look forward to working with crime victims and their families, victim advocates, and the Congress to ensure that critical services continue to be available to crime victims, if I am confirmed.

Questions for Regina Schofield from Senator Patrick Leahy

Questions regarding Regina Schofield's Qualifications and Goals

1. You are not an attorney and have no experience or involvement with criminal justice, the legal profession, or justice-related programs. Your predecessors had significantly greater justice experience at the time of their nominations than you do right now. Laurie O. Robinson, President's Clinton's AAG for OJP, had been Director of the American Bar Association's (ABA's) Criminal Justice Section for 14 years at the time of her nomination and Deborah Daniels, President's Bush's first AAG for OJP, was an experiences prosecutor with prior DOJ experience at the time of her nomination. **Can you please comment on how you intend to offset your lack of experience in administering OJP?**

Thank you for the opportunity to discuss my background and how I hope to use my strengths and experience if fortunate enough to be confirmed.

Throughout my professional career, I have experienced numerous opportunities to develop in-depth expertise about diverse public policy issues and organizational management. These opportunities include a full range of complex topics associated with the commercial building industry (during my time working with the International Council of Shopping Centers); the highly complex operating structure of the U.S. Postal Service; and most recently during my tenure at the Department of Health and Human Services (HHS), a very strong, productive and successful relationship with our nation's Governors, Mayors, Tribal Leaders, and other intergovernmental partners.

I firmly believe that my relationships with Intergovernmental Affairs (IGA) partners and their related organizations will be an asset to the Office of Justice Programs (OJP). My commitment would be to use my existing relationships in order to further the mission of OJP, whether in continuing to strengthen the nation's AMBER Alert programs, furthering the President's DNA Initiative, or in helping to lead a national dialogue on how we can continue to improve our capacity to fight crime and care for victims of crime.

To this end, in preparation for my confirmation hearing I had a very productive conversation with the leadership of a prominent law enforcement organization, and I look forward, if confirmed, to building additional strong relationships with our partners in state and local law enforcement, our nation's prosecutors, and the many other vital components of the nation's criminal justice system.

As Director of IGA at HHS, my work with Governors in particular has focused my attention and energy on very complicated programs and policies between the federal and state governments. A specific example is the state-sought waivers from the Centers for Medicare and Medicaid Services and the multifaceted funding formulas for many HHS-funded human service programs.

The Department of Health and Human Services touches the lives of every American so I have gained invaluable experience in reaching out to a broad array of constituencies. In my role as IGA Director over the past two and a half years, I have worked aggressively to bring myriad affected stakeholders (state and local, provider and beneficiary) to the public policy table to resolve extremely complex and significantly crucial health care issues.. If confirmed I will work just a aggressively and make it a top priority to work with existing partners, but also identify and reach out to new groups to involve them in the important process of helping to enhance the public safety and to support victims of crime.

Also as IGA Director at HHS, I led the Department in developing a comprehensive Tribal Consultation Policy in order to give the leaders of Native American tribes an open door to address issues related to the federal government's delivery of health and human services. I am grateful for the relationships I have built through this process, and would look forward to furthering them in support of the mission of OJP, if confirmed.

Additionally, I believe that my management experience will be an asset to OJP. With its full array of programs and grant offerings through the Bureau of Justice Assistance, the National Institute of Justice, and the Office for Victims of Crime, I will work diligently to manage the taxpayers' money wisely.

At HHS, I worked collaboratively to develop a comprehensive grant post-award surrogate visitation program. This initiative helped to increase visitation to HHS grantees by senior department leadership and, ultimately, to increase public awareness of HHS grant opportunities. I would look forward to following this model at the OJP, if fortunate enough to be confirmed.

Furthermore, my experience on the HHS Grant Review Team will assist me in helping to improve the grants process at OJP. One of the many HHS practices that is applicable to OJP is a mechanism for reviewing grant announcements of all components prior to release in order to help assure technical accuracy and to help eliminate redundancy in funding opportunities.

Finally, I believe that my experience in managing the HHS portfolio of political personnel as Director of White House Liaison will serve me well if fortunate enough to be confirmed. At HHS we have taken strides to ensure that all political appointees are held accountable through cascading performance contracts. Through the implementation of performance management and other mechanisms, I am confident that my experience at HHS will serve me well if confirmed as Assistant Attorney General.

2. At HHS, you focused on improving coordination with Tribal governments regarding HHS' budget priorities and the delivery of health and human services to Tribal constituents. **What do you envision as your goals at OJP?**

As the mother of a young child I share with all parents across this country a desire to do anything in my power to help keep our streets safe from crime and to help law enforcement in enhancing the public's safety. If fortunate enough to be confirmed as Assistant Attorney General for Justice Programs, my primary goal would be to work diligently to this end.

In particular, I would be focused on supporting and helping to implement the President's DNA Initiative. Continuing to educate the law enforcement community about this new tool with seemingly endless potential is and should be a top priority for the U.S. Department of Justice. The President and Attorney General have committed $1 billion to ensure that we are doing everything that we can to help state and local law enforcement utilize DNA in the investigation, and ultimately the prosecution of crime. If confirmed, furthering this effort would be one of my top goals.

Also, I believe that the demonstrated commitment of the President and the Attorney General to caring for victims of crime is a vital effort that I would eagerly look forward to furthering, if fortunate enough to be confirmed. Some years ago I had the opportunity to volunteer as a rape crisis counselor and to work with victims of violent crime as they fought back awful memories and sought to move forward with their lives. Regardless of the extent to which you become involved with crime victims, inevitably, some of their pain is left forever in your soul. If confirmed, I would work diligently with the staff at the Office for Victims of Crime to make sure that victims across the country are aware of the resources available to them and that they have every opportunity to rely on someone to help them through such difficult memories.

Finally, if fortunate to be confirmed, I would place a high priority on an aggressive personal outreach strategy in working with our partners in state and local law enforcement. The President and the Attorney General value so strongly the work done by these men and women every day, and I would pledge my full dedication to meeting with and engaging as many of our partners as possible in order to develop the fullest understanding of their needs, questions, and concerns. I would seek to ensure that I am in the best possible position to advise the Congress, the President, and the Attorney General on how we can work together to support and strengthen law enforcement moving forward.

3. In an article you wrote in 1998, "Using Civil Rights Laws in Environmental Protection," (ICSC, Government Relations Report, December, 1998), you were critical of the EPA for issuing interim guidance regarding how the agency would process complaints that state and local permit decisions violate Title VI of the Civil Rights Act and you suggested that the EPA would likely ignore criticism in order to cater to environmental and civil rights groups. **How would you be able to work with civil rights groups in administering OJP programs?**

The majority of the article written in 1998 was a recap of a hot issue facing the Environmental Protection Agency that year. The interim guidance sparked a controversy

amongst many stakeholders at EPA that were, in the opinion of many, ignored during the consultation phase.

There was no criticism of civil rights organizations and, as a minority in this country, I will be able to dialogue with civil rights groups and any other stakeholders and partners of the Office of Justice Programs if I am fortunate enough to be confirmed.

I would seek further to build strong relationships with the leaders of civil rights organizations and would strongly encourage them to actively participate with me in a national dialogue on fighting crime and caring for victims of crime.

Additionally, working with other components of the Department of Justice, I would seek to provide the same open-door policy that I would afford to other partners for the purpose of raising concerns or questions about the mission of OJP or its programs.

Questions regarding OJP/OJP budget cuts

4. The Administration's FY 2006 budget proposal does not even mention the Justice For All Act of 2004 (P.L. 108-405), which Congress recently enacted with overwhelming bipartisan support and which President Bush signed into law on October 30, 2004. This landmark criminal justice package authorizes the appropriation of about $2 billion over the 2005-2009 period to expand the use of DNA analysis in the criminal justice system, assist victims of crimes, and provide safeguards to prevent wrongful convictions and executions. While the budget proposal does provide for funding for DNA analysis under the OJP's Justice Assistance Grants, by separately requesting this funding, the Administration has ignored the guidelines set forth by Congress in the Justice For All Act and the bipartisan consensus on how best to help crime victims, maximize the use of forensic DNA evidence, and reduce the risk of error in capital cases. Moreover, the proposed budget includes no money for Paul Coverdell Forensic Sciences Improvement grants, nor does the President request funding for the Victim Notification System or other programs for crime victims. **What was the rationale behind the Administration's decision not to request funding in accordance with the guideline in the Justice for All Act? Would you support approving the necessary funding?**

I understand the Department of Justice's budget request for Fiscal Year 2006 totaled $19.1 billion, once again emphasizing that the Department's first priority is to protect the American people from acts of terrorism, on the Federal, State and local levels. Given the need to focus on the fight against terrorism and the limited resources of the Federal government, tough choices had to be made in some instances. I understand that the Department requested $650 million from the Crime Victims fund to aid crime victims. Of that amount, $5.1 million is earmarked for the operation of the Victim Notification System (VNS) the Department currently operates. Additionally, I understand that OJP is currently in the process of implementing an $8 million congressionally earmarked grant program for Victim Notification Systems. Given these ongoing efforts, if confirmed as the Assistant Attorney General for the Office of Justice Programs, I will compare the current

Victim Notification Systems with the authorizations in the Justice for All Act to determine if additional funding is needed to properly implement an appropriate VNS.

In addition, in his State of the Union address, President Bush proposed a Capital Litigation Improvement Grants Program to provide $50 million over three years for training to private defense counsel and public defenders, state and local prosecutors, and state judges. The Department requested $20 million for this program in Fiscal Year 2006, to administer the program specifically for state and local defense attorneys for the defense of death penalty cases.

I understand that the Department requested $177, 057, 000 for OJP's DNA programs, similar to amounts authorized for many of the Justice for All Act programs. If confirmed, I will work with others in the Department, the Administration, and Congress to determine the most efficient mechanism for funding DNA/forensic science activities.

5. The administration's FY 2006 DOJ budget proposal continues recent trends by cutting the funding for OJP from $3 billion to $1.7 billion in 2006. These cuts include dramatic cuts for popular and successful programs like juvenile justice programs and the elimination of Byrne Memorial Justice Assistance Grants. At the same time, the dramatic declines in violent crime that occurred during the Clinton administration have leveled off, with the murder level beginning to rise. **In light of these significant cuts, and overall DOJ budget cuts (from $22.3- 21.2 billion in FY 2006), how do you intend to continue these programs' success in reducing violent crime?**

As I know from my experience at the Department of Health and Human Services, the Administration, faced with difficult and often competing priorities, was required to make difficult budget choices in its FY 2006 budget request. At the Department of Justice, the decision was made to focus departmental resources on counterterrorism, which I understand, is, and must be, the Department's overriding priority.

In times of diminishing dollars, I would look for ways to leverage resources to couple OJP's direct grant funds with its extensive training and technical assistance capability to make the best possible use of the funds provided to state and local entities. In addition, I would work to ensure that all of OJP's funds are invested in programs that produce positive, measurable results and demonstrate an effective use of tax dollars.

Finally, if confirmed, I would work within the Administration, with the Congress, state and local officials, and law enforcement to ensure that law enforcement needs are adequately addressed.

6. OJP recently gave a $100,000 grant to the National Center for State Courts to review court security and safety. In light of the recent tragedies that occurred in Chicago and Atlanta, it is vital that we continue to seek solutions to make our judges and our courts more secure. **In light of the significant cuts to OJP's budget, how do you intend to continue providing these types of grants to increase court security at the State level?**

As I understand it, this $100,000 grant to the National Center for State Courts helped facilitate a national summit to continue developing a plan for improving the safety and security of America's courts – an issue of great importance to all of us. It would be my hope that OJP can provide information, training, and technical assistance to assist courts in identifying and addressing their security needs.

7. A consensus has emerged over the last decade among criminal justice professionals and state and local government leaders that crime can't be effectively addressed with any "single answer" approach – but that comprehensive steps are needed embracing enforcement, punishment, prevention, early intervention, and treatment. **What is your philosophy? Will OJP under your direction continue to support programs that encompass this kind of multi-part approach?**

   In my experience across government, and certainly at the Department of Health and Human Services, I have learned that no one discipline or sector can solve society's complex issues alone, and that comprehensive approaches are not just desirable but mandatory. I know that OJP has a long history of supporting comprehensive efforts and encouraging these activities among its grantees. If confirmed, I would expect to continue this practice. For example, I especially look forward to working with the Community Capacity Development Office at OJP to further enhance the Weed and Seed strategy, which is one of the pioneer efforts in implementing a comprehensive, cooperative, and locally-driven approach to address crime and foster prevention activities in local neighborhoods. I would also continue to look for ways to collaborate across federal agencies, as the Department has done in the Serious and Violent Offender Reentry Initiative, which involved multiple federal agencies, including HHS, to address the broad range of needs in reintegrating ex-offenders safely into their communities.

8. As a follow-up to the last question, not only has the President proposed cutting the funding for juvenile justice programs, which have already experienced substantial cuts in recent years, by 45 percent ($175 million), but the President has proposed to eliminate the Juvenile Accountability Incentive Block Grant (JAIBG) program, which helps State and local governments address juvenile delinquency by, among other things, building new juvenile detention facilities, hiring additional judges and prosecutors, and training law enforcement personnel. In fact, the President has proposed eliminating the program in each of his last three budgets, but Congress has rejected that call, appropriating $55 million for FY 2005. **In light of the fact that these block grants are a critical element of a multi-part approach to crime prevention, would you support the elimination of these block grants?**

   As I understand the issue regarding Juvenile Accountability Block Grants (JABG), no funds were requested for this program because the Administration instead requested $42.8 million in FY 2006 for the Juvenile Delinquency Block Grant, as authorized in 2002, which funds many of the same purposes.

9. I am greatly troubled by the Administration's FY 2006 budget recommendation to rescind amounts in the Crime Victims Fund, estimated to be $1,266,563,000. The Fund is a separate account derived from federal fines, forfeitures, penalties and special assessments collected from offenders; it does not depend upon taxpayer revenues. It is the main source of Federal support for programs providing critical assistance and compensation to nearly four million victims of crime annually. Since its creation in 1984, amounts deposited into the Fund in a given fiscal year have been made available for victim services in the subsequent fiscal year. Zeroing out the Fund by rescinding amounts in excess of the proposed spending cap of $650 million for FY 2006 – including amounts to be deposited during FY 2006 – means there may be insufficient funds available in FY 2007 and later years to support vital victim services. This is absolutely shameful and unacceptable. **Do you support the rescission of the Crime Victims Fund? How will you propose, come the beginning of FY 2007 when there are no monies in the Crime Victims Fund, to support vital victim services? What will you propose to do should those funds fail to be replenished from criminal fines, forfeitures, penalties and special assessments?**

I know that the Administration has consistently supported the rights of crime victims and continues to recognize the need to empower and support those who provide vital services to crime victims. The President's Fiscal Year 2006 budget requests $650 million to support the Crime Victims Fund. This is $30 million more than Congress enacted in Fiscal Year 2005. In addition, the Attorney General has stated his personal commitment to supporting services and assistance for crime victims and their families, and to ensuring improved treatment for crime victims in their dealings with the criminal justice system. If confirmed, I would offer the same commitment on behalf of crime victims.

With respect to funding for the Crime Victims Fund, which provides vital services and assistance to victims, I understand that the Fund will continue to be supported through criminal fines, forfeited bail bonds, penalties and special assessments, and gifts, bequests or donations from private entities. The rationale for the rescission of remaining funds is that because the balances are controlled by obligation limitations only, the balances "rollover" and become available again every year – a never ending offset. In essence, it's the same offset year after year. Rescinding the balances prevents them from rolling over on an annual basis, and is a more straightforward approach to budgeting.

I look forward to working with crime victims and their families, victim advocates, and the Congress to ensure that services continue to be available to crime victims.

SUBMISSION FOR THE RECORD

Statement of Senator Patrick J. Leahy
Hearing for Nominees to be Assistant Attorney General for the Criminal Division, Assistant Attorney General for the Office of Legal Policy, and Assistant Attorney General for the Office of Justice Programs
May 12, 2005

Today, in an extraordinary late afternoon hearing, the Committee begins its consideration of three nominees to be Assistant Attorneys General at the Department of Justice: Alice Fisher, nominated to head the Department's Criminal Division; Rachel Brand, nominated to head the Office of Legal Policy; and Regina B. Schofield, nominated to head the Office of Justice Programs. Given an important hearing with Secretary Rice, I may not be able to attend these proceedings. I will follow them closely.

Alice S. Fisher

Alice Fisher comes before the Committee as the nominee to be Assistant Attorney General for the Criminal Division. Ms. Fisher has had a substantive law firm career, and she worked for two years in the Criminal Division overseeing the Department's prosecutions in the high-profile areas of counterterrorism and corporate fraud. She has also been a long-time protégé of Homeland Security Secretary Michael Chertoff. I am somewhat concerned, however, that Ms. Fisher is nominated for one of the most visible prosecutorial positions in the country without ever having prosecuted a case, and she brings to the position minimal trial experience in any context. In contrast, previous Criminal Division AAG's such as Mike Chertoff, James Robinson, and William Weld were seasoned federal prosecutors prior to taking this job.

I hope that this hearing will illuminate Ms. Fisher's views on checks of controversial provisions of the Patriot Act and her opposition to the Act's sunset provision; her participation in meetings in which the FBI expressed its disagreement with harsh interrogation methods practiced by the military toward detainees held at Guantanamo, and her ideas about appropriate safeguards for the treatment of enemy combatants. There have been reports that she has had ties to Congressman Tom DeLay's defense team. We will also want to know what steps she intends to take to avoid a conflict of interest in the Department's investigation of lobbyist Jack Abramoff and possibly Mr. DeLay. I would like to know her priorities for the Criminal Division. I will be interested in her plans with respect to the growing problem of computer crime and identity theft, the responses to the Supreme Court's recent sentencing decision, and prosecution of intellectual property theft. .

Rachel Brand

Rachel Brand is the President's nominee to be Assistant Attorney General for the Office of Legal Policy. Ms. Brand has held several impressive positions in her brief career, including working in the White House Counsel's Office and her current position as Principal Deputy Assistant Attorney General. Unfortunately, it appears she brings very little depth of experience to a position that is instrumental in setting out DOJ priorities and recommending new judges. By way of comparison, Eleanor Acheson, President Clinton's nominee for the same position, had practiced law for 19 years prior to her appointment, and Viet Dinh, President Bush's first nominee to head OLP was a professor at Georgetown University Law Center who had published several scholarly articles and op-eds and had held several congressional positions by the time of his appointments.

Ms. Brand has apparently been heavily involved in the judicial nominations process both at the White House and at DOJ. Given this administration's pattern of nominating ideologically extreme candidates for the judiciary and making politically aggressive nominations decisions such as re-nominating candidates previously disapproved, I would like to hear about Ms. Brand's role in crafting nominations policy and her views about ways to reach consensus in this process. I also look forward to hearing about Ms. Brand's views about the important congressional and judicial checks set out in the Patriot Act. I am interested in the policies and priorities she has developed for OLP. I would like to hear about DOJ's plans to carry out the mandates and priorities set out in the Justice For All Act.

Regina B. Schofield

Regina B. Schofield has been nominated to serve as Assistant Attorney General (AAG) for the Office of Justice Programs (OJP). This office plays a vital role in developing the nation's capacity to prevent and control crime, largely by administering grant programs in such areas as drug control, juvenile justice, victims' compensation, and victims' assistance. I am interested to learn how Ms. Schofield will approach this job. I will be interested in learning her experience with law enforcement. She comes to DOJ from HHS and a brief stint at the United States Postal Service. Her lack of justice experience stands in stark contrast to the relevant prior experience of both Laurie O. Robinson, President's Clinton's AAG for OJP, who had been Director of the American Bar Association's (ABA's) Criminal Justice Section for 14 years at the time of her nomination, and Deborah Daniels, President's Bush's first AAG for OJP, who was an experienced prosecutor with prior DOJ experience at the time of her nomination.

I would also like to hear from Ms. Schofield about her plans for OJP in light of the Administration's FY 2006 DOJ budget proposal, which continues recent trends by significantly cutting funding for OJP. The President proposed severe cuts for popular and successful programs like Byrne Memorial Justice Assistance Grants and juvenile justice programs. These budget cuts have serious consequences, as the dramatic declines in violent crime that occurred during the Clinton years have leveled off, and the murder rate has begun to rise.

In light of the Administration and Republican leadership's determination to trigger the nuclear option in the days ahead, I must note the manner in which we have expedited consideration of President Bush's Justice Department nominees. We did so with several of his initial controversial nominees. Although 42 Senators voted against the confirmation of John Ashcroft and 47 Senators voted against the confirmation of Ted Olson, we proceeded. This is in start contrast to the Republican filibusters against a number of President Clinton's executive branch nominees. The fact is that Senate Democrats have accorded this President significantly more leeway with respect to his executive branch nominations that Republican Senators accorded his Democratic predecessor. Those filibustered by Republicans included a United States Attorney nominee, State Department nominees, foreign service nominees and Surgeons General of the United States. Indeed, Republican Senators denied an outstanding nominee to be the Assistant Attorney General for Civil Rights, Bill Lann Lee, any opportunity for a Senate vote. He was one of more than 200 of President Clinton's executive branch nominees were denied an up or down vote by the Senate. I am not suggesting that any of the nominees appearing today will face the kind of treatment that Republicans used to visit upon Democratic nominees. Some acknowledgement by the Administration of the fairness and cooperation that has been shown by Democrats in the Senate would, however, be appropriate.

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