

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 12, 2005

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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
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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 stark 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 than 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.