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NOMINATION OF J. PATRICK ROWAN TO BE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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NOMINATION OF J. PATRICK ROWAN TO BE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY

THURSDAY, SEPTEMBER 25, 2008

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:39 p.m., in Room SDG–50, Dirksen Senate Office Building, the Honorable Jay Rockefeller (Chairman of the Committee) presiding.

Committee Members Present: Senators Rockefeller, Wyden, Bond, and Warner.

Chairman ROCKEFELLER. The Committee will come to order.

We meet to consider the nomination of J. Patrick Rowan to be Assistant Attorney General for National Security.

I would like to begin by congratulating the nominee and asking whether—as I sorely suspect is the case—he has anybody he'd like to introduce.

Mr. ROWAN. Yes, Senator. Thank you for providing me that opportunity.

Behind me here is my mother, Anne Rowan, a retired math teacher, and my father, William J. Rowan, who is a judge in the Montgomery County Circuit Court in Maryland. I'm also joined by a number of my colleagues from the Department of Justice, including a number of colleagues from the National Security Division. I really appreciate that they're able to come as well.

Chairman ROCKEFELLER. Good. We welcome you. A math teacher and judge.

Mr. ROWAN. A lot to live up to.

Chairman ROCKEFELLER. Yes.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, CHAIRMAN, A U.S. SENATOR FROM WEST VIRGINIA

In the PATRIOT Act Reauthorization in 2006, Congress established the National Security Division of the Department of Justice and the position of Assistant Attorney General to head that division. That legislation also established a somewhat unique, at least rare, procedure which brings to our Intelligence Committee the nomination of a Justice Department official. The nomination was first considered by the Judiciary Committee, which favorably reported it two weeks, glad to say. It was then automatically referred to our Committee.

There is an important reason why the 2006 statute provided for an automatic sequential referral to the Intelligence Committee. The Assistant Attorney General for National Security carries out intelligence-related functions that are at the heart of the legislative and oversight responsibilities of this Committee. These include representing the government before the FISA Court and being the government's chief counterterrorism and counterespionage prosecutor.

Mr. Rowan is a career Department of Justice prosecutor who has rendered very important service in the U.S. District Attorney's Office in the District of Columbia, at the FBI, and in several offices in the Department of Justice. Of particular relevance to the nomination that brings him here today, Mr. Rowan has been in the leadership of the National Security Division from its beginning in 2006. He first served there as Principal Deputy Assistant Attorney General. In that capacity, he managed the Department of Justice's national security investigations and prosecutions. And from April, 2008 to the present he has been the Acting Assistant Attorney General.

That's the only thing I don't like about the Justice Department, is all the assistant levels. It's difficult for those of us who aren't in that profession. But that's not your fault.

Mr. ROWAN. It certainly is. Thank you.

Chairman ROCKEFELLER. Mr. Rowan has obviously earned the confidence of Attorney General Mukasey, and I am advised that the Director of National Intelligence, DNI, strongly supports his nomination. We treat both as high recommendations.

If confirmed, Mr. Rowan will head his office at a time of important challenges and responsibilities for the National Security Division. The National Security Division has a leading role in implementing the recently-passed FISA Amendments of 2008—a very noncontroversial matter—in a manner that is true to the twin objectives of the law—providing for the effective collection of intelligence and preserving the liberties and privacy of Americans, if those two are entirely reconcilable. And that's, I would think, one of the fascinations of what probably lies before you.

Robust congressional oversight of the new law, as well as older parts of FISA that were unchanged by that law, is essential. Our ability to conduct this oversight will depend on full and informative reporting by the Attorney General, which will rely in turn on comprehensive and penetrating reviews and reporting by the National Security Division.

Our oversight responsibilities will be particularly important in areas that are not subject to judicial review. Key among them is the adequacy and adherence to the Attorney General's guidelines required by the FISA Amendments to ensure adherence to the Act's limitations, including the prohibition on reverse targeting. We will be looking forward to the National Security Division's full participation in that effort.

It is not too soon to note that several FISA provisions added by the 2001 PATRIOT Act, and extended in the 2006 reauthorization, will sunset at the end of 2009. One is the business records title of FISA. A challenge Congress will face that will also occur when provisions of the FISA Amendments sunset at the end of 2013 is how

to enable public considerations of interpretations of these laws by the FISA Court and its Court of Review.

We would welcome the nominee's thoughts on what he would do, if confirmed, to work with those courts and the intelligence community to release publicly any opinions on important issues of law, to the extent consistent with national security.

There are important challenges for the National Security Division apart from FISA. The Assistant Attorney General is the government's chief counterterrorism prosecutor. The time is rapidly approaching when, in my opinion, this Senator's opinion, there needs to be a thorough reconsideration of the effort to substitute military commissions for military court martial or federal criminal trials.

Simply put, seven years have passed since the terrorist attacks of September 11th, and more than that since the USS COLE attack. And it is clear that the effort to bypass established ways, both military and civilian, for trying terrorism cases has failed to bring to justice the participants in those attacks. While the nominee may be limited in what he can say at this time, I hope that if confirmed he will quickly and energetically make the National Security Division an active participant in the search for a better course.

I now turn to the distinguished Vice Chairman for his opening remarks.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, VICE CHAIRMAN, A U.S. SENATOR FROM MISSOURI

Vice Chairman BOND. Thank you, Mr. Chairman. I join with you in welcoming Mr. Rowan, his parents, Judge and Mrs. Rowan.

You have adequately described, Mr. Chairman, very eloquently how we got to this position. I add just a few comments about Mr. Rowan's predecessor, Ken Wainstein, now serving as the President's Homeland Security advisor.

We provided an outline for this position, but there are many competing visions and some very strong opinions on what the NSD should look like. And I think Ken sifted through them and made some very tough decisions. So far, overall it appears to me that they were good decisions, and for that we owe Ken our country's gratitude and praise.

There is still a lot to be done. Executive Order 12333 and its implementation to NSD will be on the frontline. As the Chairman said, the IC continues to implement this summer's FISA Act amendments and the new extensive oversight and reporting requirements on the IC and the NSD.

As I understand it, virtually on a daily basis the FBI seeks FISA applications for physical search, electronic surveillance on terrorists, spies inside the U.S. It has to be drafted by the NSD in coordination with the FBI.

And that's why I think it's important that we get a permanent leader at the helm. Having a Senate-confirmed AAG would enable him to act in the place of the Attorney General to certify FISA applications or authorize emergency FISAs when the Attorney General is not available. And if we cannot confirm him, that means there could be lengthy delays while we wait to track down General Mukasey.

There are also a number of other issues we'll get into on the proposed new guidelines for FBI criminal national security investigations. And I'd like any wisdom you have as a career prosecutor and solid security experience if this works well, and I also look forward to hearing your opinion on the impact the FISA Act amendments have had on the National Security Division in its processing of FISA applications.

But Mr. Chairman, since we're running very short of time, I hope we can move it quickly to the floor, assuming that none of the people here have any problems with this nominee, that we could get him confirmed before we leave town to give the Attorney General the resources he needs.

I thank the Chairman and thank our witness.

Chairman ROCKEFELLER. I agree with the Vice Chairman. Mr. Rowan, we will welcome your opening statement at this point.

STATEMENT OF J. PATRICK ROWAN, ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY-DESIGNATE

Mr. ROWAN. Thank you, Chairman Rockefeller, Vice Chairman Bond.

It's my pleasure to appear before you today as the President's nominee to be the second Assistant Attorney General for National Security. As a federal prosecutor and attorney for the FBI and in my work in the last several years at the Department of Justice, I've devoted much of my career to protecting the security of this nation and its citizens while defending our civil liberties. I hope to have the opportunity to continue this service as the Assistant Attorney General for National Security.

At the outset, I'd like to thank you for holding this hearing, knowing the many pressing demands you face at the end of this Congress and in this period of financial crisis. I appreciate your support for the critical mission of the National Security Division.

Since the attacks of September 11th, 2001, the first priority of the Department of Justice has been combating terrorism and other threats to our national security. The department worked hard in the years immediately following September 11th to fulfill this mission, but it became clear that a restructuring of the department was needed. The President and the Congress authorized the creation of the National Security Division, and we've been up and running for almost two years now.

We've made significant strides in realizing the benefits of bringing together the department's prosecutors and its counterterrorism and counterespionage sections with its intelligence lawyers in the Office of Intelligence Policy Review to form a new, streamlined national security organization. As one who's been there since the beginning, I'm proud to report that the transition has gone well. Our new structure enables us to provide quick, fully coordinated responses to national security threats.

Of particular importance to this Committee, the creation of the division makes the department more responsive to the needs of the intelligence community by having the Assistant Attorney General for National Security provide a single Justice Department point of coordination and contact for our colleagues in the intelligence community. If confirmed, I will act as the primarily liaison to the Di-

rector of National Intelligence, and I look forward to developing further the already strong relationship between our offices.

I recognize that congressional oversight plays an important role in promoting accountability and improving government operations, especially those of the intelligence community. I'm committed to ensuring that we provide information responsive to Congress's oversight needs, consistent with our law enforcement and national security responsibilities, in a thorough and expedited manner.

Specifically, I look forward to discussing national security issues of significant interest to this Committee, including what the National Security Division has done and is planning to do to implement the FISA Amendments Act. I'd like to pause here to thank this Committee for its invaluable and tireless efforts in pursuing the modernization of FISA. It was a historic achievement, and I'm proud that the NSD was a part of it.

In conjunction with the DNI and the agencies of the intelligence community, the NSD has made significant strides in implementing the FISA Amendments Act. And in particular, consistent with Section 702 of the FISA Amendments Act, the NSD has taken appropriate steps to ensure there's an efficient and effective transition from the Protect America Act to the newly enacted authority.

The specific details of the certifications and related procedures are necessarily classified and must remain so. Staff members of this Committee have been fully briefed on these certifications and related procedures and any court action on them. In addition, the NSD has implemented other provisions of the FAA, including provisions that streamline the applications under FISA.

In closing, I want to thank the President and the Attorney General for the trust they have placed in me. I want to assure this Committee that if I'm confirmed I'll continue to devote all my energies to the mission of protecting our national security and defending the civil liberties and freedoms that give meaning to our security.

I look forward to working with the Committee should I be confirmed as an Assistant Attorney General, and I welcome any questions that members of the Committee may have.

[The prepared statement of Mr. Rowan follows:]

PREPARED STATEMENT OF J. PATRICK ROWAN

Chairman Rockefeller, Vice Chairman Bond, Members of the Committee:

It is my pleasure to appear before you today as the President's nominee to be the second Assistant Attorney General for National Security. As a federal prosecutor, Special Counsel for the Office of General Counsel of the Federal Bureau of Investigation, Associate Deputy Attorney General, Principal Deputy Assistant Attorney General in the National Security Division, and Acting Assistant Attorney General for National Security, I have devoted much of my career to protecting the security of this nation and its citizens and defending our civil liberties. I hope to have the opportunity to continue this service as the Assistant Attorney General for National Security.

At the outset, I would like to thank the Chairman, Vice Chairman, and the Members of the Committee for holding this hearing knowing the many pressing demands you face at the end of this Congress and in this period of financial crisis. I appreciate your support for the critical mission of the National Security Division.

Since the attacks of September 11, 2001, the first priority of the Department of Justice has been combating terrorism and other threats to our national security. The Department worked hard in the years immediately following September 11th to fulfill this mission, but it became clear that a restructuring of the Department was needed. The President and Congress authorized the creation of the National Se-

curity Division. The Division has been up and running now for almost two years and we have made significant strides in realizing the benefits of bringing together the Department's prosecutors in its Counterterrorism and Counterespionage Sections with its intelligence lawyers in the Office of Intelligence Policy and Review to form a new, streamlined national security organization. I am proud to report that the transition has gone well and the National Security Division now consists of the fully integrated Office of Intelligence (01) (formerly the Office of Intelligence Policy and Review), the Counterterrorism and Counterespionage Sections, and a new Office of Law and Policy devoted to national security issues. Our new structure enables us to provide quick, imaginative, and agile responses to national security threats. Of particular importance to this Committee, the creation of the Division makes the Department more responsive to the needs of the Intelligence Community by having the Assistant Attorney General for National Security provide a single Justice Department point of coordination and contact for our colleagues in the Intelligence Community

The Attorney General expects that the National Security Division will continue to pursue the following primary objectives that led to the creation of this new division: the centralization of the management of the Department's national security program; the coordination of operations and policy across the national security spectrum; the implementation of comprehensive national security oversight; and the further development of national security training and expertise. If confirmed, I will act also' as the primary liaison to the Director of National Intelligence (DNI) and I look forward to developing further the already strong relationship between our offices. In addition, the Attorney General expects that if confirmed I will help ensure that our national security responsibilities are met during the first transition of government following September 11, 2001.

I recognize that congressional oversight plays an important role in promoting accountability and improving government operations, especially those of the Intelligence Community and, if confirmed as the Assistant Attorney General for National Security plan to actively participate in the congressional oversight process. In my previous positions at the National Security Division I have participated directly in the oversight process by testifying at hearings before House Committees and by briefing numerous members of the Senate and House, as well as the staff of their committees. I am committed to ensuring that we provide information responsive to Congress's oversight needs, consistent with our law enforcement and national security responsibilities, in a through and expedited manner.

Specifically, I look forward to discussing national security issues of significant interest to this Committee, including what the National Security Division has done and is planning to do to implement the FISA Amendments Act (FAA). I would like to pause here to thank this Committee for its invaluable and tireless efforts in pursuing the modernization of FISA. It was an historic achievement, and I am proud that the NSD was a part of it. It will always serve as a reminder of what we can achieve when we work together.

In conjunction with the DNI and the agencies of the Intelligence Community, the NSD has made significant strides in implementing the FISA Amendments Act. In particular, consistent with Section 702 of the FAA, the NSD has taken appropriate steps to ensure there is an efficient and effective transition from the Protect America Act to the newly enacted authority. The specific details of the certifications and related procedures are necessarily classified and must remain so. Staff members of this Committee have been fully briefed on these certifications and related procedures and any court action on them. In addition, the NSD has implemented other provisions of the FAA including provisions that streamline applications under FISA.

In closing, I want to thank the President and the Attorney General for the trust they have placed in me. I want to assure this Committee that if I am confirmed, I will continue to devote all my energies to the mission of protecting our national security and defending the civil liberties and the freedoms that give meaning to our security.

I look forward to working with this Committee should I be confirmed as the Assistant Attorney General for National Security and I welcome any questions the members of this Committee may have.

Chairman ROCKEFELLER. Thank you, sir. We have our tradition, Mr. Rowan, and we always ask individual questions of our members before we get to that. We have several questions that we ask all of our nominees.

Do you agree to appear before the Committee here or in other venues when invited?

Mr. ROWAN. Yes, Senator.

Chairman ROCKEFELLER. Do you agree to send officials from the National Security Division to appear before the Committee and designated staff when invited?

Mr. ROWAN. Yes, Senator.

Chairman ROCKEFELLER. Do you agree to provide documents or any other material requested by the Committee in order for it to carry out its oversight and legislative responsibilities?

Mr. ROWAN. I do, Senator.

Chairman ROCKEFELLER. You're sure about that?

Mr. ROWAN. Yes.

Chairman ROCKEFELLER. Will you ensure that the National Security Division provides such material to the Committee when requested?

Mr. ROWAN. I will, Senator.

Chairman ROCKEFELLER. Good. Well, you're virtually confirmed.

As I said in my opening statement, seven years after the attacks on 9/11, eight years—seems a lot longer since the attack on the USS COLE—it's clear that the effort to bypass established ways, both military and civilian, for trying terrorism cases has failed to bring to justice the participants in those attacks, and it's a rather stunning fact, because they were very large events.

From your long experience in the U.S. Attorney's Office, at the FBI, in the Criminal Division at Justice, and now in the National Security Division, can you describe both the challenges and the successes that the Department of Justice has had in trying terrorism cases in the United States district courts? Specifically, I would like your comments on the risks posed by abusive interrogation methods to the ability of the United States to successfully prosecute terrorists.

Mr. ROWAN. Well, Senator, there are, obviously, quite a few examples in which we've been able to successfully prosecute in the federal criminal courts individuals involved in international terrorism. There's obviously been a number of successful trials in the Southern District of New York. The most recent case involving something associated with the 9/11 attacks, of course, is Mr. Moussaoui's prosecution and conviction in the Eastern District of Virginia.

And that case is actually, I think, an example of, on the one hand, how we have very talented, very dedicated prosecutors who are dealing with very experienced judges, and they work their way in a very impressive fashion through some very difficult problems—problems with the classified information that is put at risk by a prosecution, problems with a defendant who doesn't accept our courts as being legitimate in the first instance, the myriad of issues that everybody who watched the Moussaoui case saw arise. And the court and the prosecutors and the defense attorneys, all being very professional, worked their way through them, and of course, he's been convicted.

At the same time, I think it's fair to say that wasn't an easy road. There were a lot of difficulties that were encountered along the way. So I think it demonstrates that these cases do present unique challenges for our courts, particularly in the context of protecting classified information.

Mr. Moussaoui was someone who obviously was caught here in the United States and quickly placed in immigration custody. I think it's even more challenging when you consider the examples of individuals who are detained and there's a concern that they have urgent threat information. And so the first interest of the government is what kind of intelligence information can we get from this person?

So I think that wrinkle is what adds a great deal of complexity to the problem that we face. And I think that that issue is one that we have tried to work on on a case-by-case basis, but we struggle with that in each instance.

Chairman ROCKEFELLER. Okay. That doesn't sort of get at the—I know it's a popular subject, and I don't want you to think that I'm starting out in a badgering mood, but the whole question of the so-called abusive techniques thing. Because, as you know, there are schools of thought on that, some saying, particularly the FBI and the military officials, JAG officials, et cetera, that you don't get your best information that way, and others saying that that may be true in a variety of cases, but sometimes you just have to—if there's an imminent national security—something that you see on the horizon, and this person might be able to tell you about that. How that would be surmised I don't know. Do you have any thoughts on that?

Mr. ROWAN. Again, my experience has been as a federal prosecutor, and in that context I've certainly seen how effective an experienced FBI agent can be in building rapport and extracting information from a defendant when it's clearly not in his interest to provide that information. So I certainly have a great deal of respect for a rapport-building technique.

I think that they are difficult issues when you're trying to—when you're on the front line of trying to determine how to interrogate a person where there's a concern about them having imminent information.

I do think that, regardless of what technique you're pursuing, that we need to keep in mind that the Miranda model, which we obviously use here in the United States, is a difficult one to apply. I'm not talking about coercion. I'm talking about like the traditional set of protections that we have expected to be provided to detainees when we want to use their statement in an Article 3 court. I think that the Miranda protections are difficult to square with some of the urgencies of overseas interrogations.

You know, I think there's plenty of room, obviously, over and above Miranda, to determine how an interrogation should take place, and I think that we are now in a better position than we've ever been to judge the relative adequacy and effectiveness of rapport-building techniques against more coercive techniques.

And we're obviously also working through in the military commissions context how do we address statements that were obtained in the aftermath of techniques that were certainly more aggressive than the classic FBI rapport-building techniques.

So to the extent that there continues to be a substantial disagreement about how to go about this, I would hope that we would at least be able to draw on everything that we've learned over the last years since 9/11 as the entire intelligence community and the

law enforcement community was mobilized to try to extract information. We've got a lot more experience now than we did on 9/11.

Chairman ROCKEFELLER. I want to pursue that a little bit, but my time is up.

Vice Chairman Bond.

Vice Chairman BOND. Thank you very much, Mr. Chairman.

I am concerned about some of the implications of trying to apply all of our constitutional protections for U.S. citizens to people we may detain on the battlefield. Obviously, we have standards by which they must be handled, but exposing in public witnesses who may be undercover assets—there are a lot of things that I'm concerned about. So we will get into the discussion of what kind of justice system is appropriate.

I would like to turn to the new Attorney General guidelines. As I said, you're a prosecutor. You were with the FBI in the National Security Division. What's your personal opinion of it, or did you have such a big hand in writing it that that's your handiwork?

Mr. ROWAN. Senator, the National Security Division, we did have plenty of opportunity to input into the new guidelines, so I am somewhat biased, but I believe even if I did not have that bias I would have little trouble concluding that the basic premise of the guidelines—which is we should have one set of guidelines for all investigations—is a rock solid point. I think it really is the case that FBI agents in the field are very concerned about following the guidelines properly. The amount of confusion that can result when you don't know which box you're in, and so therefore you're not sure which guidelines to pull out and refer to, can be maddening at the least, if not dangerous to agents in the field.

Vice Chairman BOND. Good. Quick question. Since the FISA Act Amendments were signed earlier this summer, have you seen any benefit in attorney resources, improved oversight? How is that working?

Mr. ROWAN. Well, it's a little bit early, I think, to say with any certainty, but so far we are starting to see numbers that would suggest that we're going to enjoy—that the amount of work that's going to be done under Section 702 is such that our attorneys are going to have a little bit more time for the oversight work that is also, obviously, required by the FISA Amendments.

So I think we are going to find over time that it will reduce the demands on our resources, particularly in the context of Section 702 coverage, and we will hopefully then have more of an opportunity to pursue other FISAs that maybe people haven't been in a position to pursue in the past, and more generally, we'll certainly have more time for our oversight work.

Vice Chairman BOND. Well, we really want to make sure you are exercising oversight to accomplish the additional duties and observe the additional limitations placed in the amendments. I think that's important.

I understand the Executive Order has been drafted. Do you know when it will be signed by the President to designate a Deputy Director of the FBI to certify FISA applications? Do you know where that stands?

Mr. ROWAN. Senator, I don't. Like you, I'm aware that it has not yet been signed, but I'm not certain of where beyond that it is.

Vice Chairman BOND. Can you tell us briefly the steps you're taking to ensure that the privacy interests of U.S. persons are being protected when the government requests or implements a FISA order?

Mr. ROWAN. Well, Senator, you know, obviously, we have minimization procedures that we were required to put into place under FISA, and those procedures are something we've spent a lot of time working on. It's an issue that we want to make sure that the procedures themselves are up to date, that they are consistent with the age of information sharing that we are in now. I think we are doing a reasonably good job of updating them to ensure that U.S. person information is properly protected under those procedures while at the same time giving the members of the intelligence community, the FBI and the other agencies, the opportunity to share the proper information.

Vice Chairman BOND. NSD has reviewed FBI's use of national security letters. Have you identified any abuses?

Mr. ROWAN. Nothing—you know, Senator, we've been doing these field office reviews since 2007, since the IG determined that there had been abuses of national security letters. And to my knowledge, while we've done a number of those reviews in field offices, both in 2007 and so far in 2008, we do provide feedback to the FBI. Certainly what we have observed so far is that the FBI is learning the lessons of what happened with national security letters. And I don't have knowledge that we've uncovered anything like a systemic problem that existed.

Vice Chairman BOND. Thank you. We'll be interested to hear if you do, and, Mr. Chairman, I'm going to have some other routine questions, informational questions, I'm going to submit to the nominee for his reply. One or two of them may require a classified answer. I apologize, but not surprisingly, I've got a few other things to do this afternoon for a change.

Chairman ROCKEFELLER. Are you the one with the $700 billion in your hip pocket?

Vice Chairman BOND. No, but I've got a couple of strings on it. I want to make sure that it works right.

Chairman ROCKEFELLER. Thank you.

Vice Chairman BOND. Thank you.

Chairman ROCKEFELLER. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman, and let me thank the nominee. I've very much enjoyed our visit and the chance to get together.

As I indicated to you, when the Committee was writing the Foreign Intelligence Surveillance Act Amendments, I authored the legislation to expand privacy protections for the law-abiding Americans who travel overseas. It was co-authored with Senator Feingold and Whitehouse. Senator Rockefeller and Vice Chairman Bond were all involved. So it was a great deal of effort from our Committee on it.

The amendment said if the government wants to target the communications of an American overseas, the government would have to get a warrant, just like it would if the American was located in the United States. So my first question is, now that the amend-

ment has become law, is the process of implementing it going smoothly?

Mr. ROWAN. Thank you, Senator, for that question, and I do appreciate the opportunity to have met with you the other day. As I told you then, we have implemented—the provision you're referring to we know as Section 704. We have implemented Section 704, and we have not encountered any obstacles in the course of implementing that provision.

Senator WYDEN. And this is an open session, but because I want this to be a learning experience, let's see how much additional information we can put on the record. Has the Department gotten warrants already?

Mr. ROWAN. We have used Section 704 to get warrants. I would be uncomfortable getting into a number, but I'm certainly comfortable telling you that we have used it to get warrants.

Senator WYDEN. And it's fair to say—and again, I want to respect the fact we're an open session you all have used it multiple times already.

Mr. ROWAN. Certainly more than once.

Senator WYDEN. Okay. With respect to the timeliness question—this was something we worked with the Vice Chairman on, we worked with the Department on, because we all felt very strongly about making sure that when we really were dealing with those individuals that represented a threat to our country we had to be in a position to move in a timely fashion—have you all felt that you could pursue these warrants and still protect the security interests of the United States in a timely way?

Mr. ROWAN. Senator, I'm not aware of us having any timing problems in connection with our implementation of Section 704.

Senator WYDEN. Very good. Let me just ask you one other question, again because you in the private session did really address many of my concerns.

I want to see what can be done in cooperation with the Executive Branch and the Judicial Branch to provide greater access to the opinions of the Foreign Intelligence Surveillance Court. As we talked about, it seems clear to me that you've got to make sure that any matter that goes to targets or collection methods, the kinds of things that are operational, absolutely has to remain classified.

But at the same time I want to make sure that when you're talking about legal analysis, for example, interpretations, matters that don't go to these operational matters involving targets and collection methods, I think that that kind of area ought to be something that there could be opportunity for more understanding by the people of this country and how the courts handle these matters.

First, do you think that that's the case? Do you think that more of this can be given broader access? And two, if confirmed, would you be willing to work with me—and we'll do this in a bipartisan fashion here under the Chairman and the Vice Chairman—work with this Committee to try to strike the right balance, to keep classified court matters that absolutely must be classified, but get these issues of legal analysis and interpretations—to find a way to make more of that accessible.

Mr. ROWAN. Senator, with respect to the second question, I certainly would be willing to work with you and other members of the Committee on the issue. We are aware of the importance of trying to identify those decisions that can be released to the public.

The problem that we've run into on occasion when we've looked at this in connection with specific decisions is that the analysis and the facts are so intertwined that there's really nothing left that's meaningful once we declassify it. That's not to say that we wouldn't continue to look at this and work on this, but it's a bit more of a challenge than I think one would have imagined in the abstract.

We do recognize it's an important issue. Obviously, the FISA Court of Review decision from 2003 is very important, that that's a matter of public record, and so we do feel that we need to keep a very close eye to determine if there are decisions that we can assist in getting released so the public will get some sense of what's going on with the FISA Court.

Senator WYDEN. My time is expired. I understand that there are a number of these areas that are intertwined, where you're talking about legal analysis and you're talking about facts. At the same time, I think that to have the kind of informed, reasonable debate about national surveillance law, people have got to understand how these laws are interpreted by the courts. And I will especially look forward to the fact that you're willing to work with us, because I think it is possible to strike a balance and expand access and still be sensitive to protecting matters that absolutely have to be protected to ensure the security of the country.

Thank you, Mr. Chairman. I've been very impressed with Mr. Rowan in both our private session and this afternoon.

Chairman ROCKEFELLER. Thank you, Senator Wyden.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. I share my colleague's high professional regard for our nominee, Mr. Rowan. I enjoyed a rather lengthy office consultation that we had here this week. So I wish you well.

I'd also like to have the record reflect my view, and I think the view of many on this Committee, that his predecessor, Kenneth Wainstein, discharged his responsibilities very professionally and capably.

I'd like to return to the general subject that my colleague raised, Vice Chairman, the Chairman, all of us, this question of privacy interest. You have a division in your organization that does oversight, correct?

Mr. ROWAN. That's correct, Senator.

Senator WARNER. So perhaps we should have in this record a little description of that and what supervision you have over that division, and what mission do they have?

Mr. ROWAN. Senator, one of the clear mandates that when we had when we set up the National Security Division was to create a more robust and systematic oversight mechanism in connection with our intelligence work. So our Office of Intelligence Policy and Review, which is what it was called back then, basically the core problem was they had always had an oversight function, but they had been drowning in FISA work post-9/11 and they hadn't been

in a position to do as much as they would have liked because of the urgency of the FISA work.

So one of the things that my predecessor, Ken Wainstein, did working with the Deputy Assistant Attorney General Matt Olsen and others in the Division, was to reorganize that office—we actually now call it the Office of Intelligence—to have a dedicated oversight section within it. And the attorneys in that section, they are able to call on other resources of the Division, but their whole job is to do oversight.

And in particular, they do national security reviews, which is a new concept that we've begun in the Division where they go out to an FBI field office. They look through all the case files on their intelligence matters. And they try to ensure that the predication is there for every step in an investigation, try to ensure that the facts that are pleaded in the FISA application are accurate, try to make sure that the national security letters that have been obtained in the course of an investigation were properly obtained, a sort of searching review of investigations, intelligence investigations.

Those reviews, we did—I think in 2007 we did 15 of those. Fifteen separate field offices were reviewed. We're going to hopefully do even more in 2008. We also do what we call minimization reviews where we go to the FBI to make sure that they're properly handling the information that they're getting from FISA collection.

And of course we also, in the context of the FISA Amendments Act, have a new obligation to work with the ODNI and members of the intelligence community to do six-month reviews of the operations of the intelligence community as they relate to how they're collecting under the FISA Amendments.

Senator WARNER. That's reassuring, but I'd like to point out that our records here in the Committee show that since September 11th, the terrorist attacks, the number of applications for electronic surveillance and physical search that have been approved by the FISA court have increased from 934 to 2,370. Now, that's understandable in view of the absolutely extraordinary attack on our country, and I think it doesn't reflect any weakness to the FISA court.

So we'd like to have your impression of the FISA court, how it functions, and what steps you would take to oversee that so that it doesn't ever have a foundation in fact that would give rise to the infamous term that it's a rubber stamp.

Mr. ROWAN. Senator, I think it's actually far from a rubber stamp in my experience. The judges of the FISA court—obviously, these are Article 3 judges who are taking on an additional duty. They're very familiar with the probable cause standard from their work in Article 3 cases. And they quickly learned the intelligence community and the nature of the work they're doing on the FISA court.

We have a great deal of back and forth with the court where we will come to understand that a judge believes that our application is deficient in some way, and we work with the agents and the members of the intelligence community to try to make sure our applications are solid. And for that reason I think we have a fairly high success rate when it comes time for the court to actually sign an application. But that's not an indication that they're a rubber stamp there. They put us through our paces every day, and we un-

derstand and appreciate the importance of their work, and we have learned to live under that kind of a regime.

Chairman ROCKEFELLER. I thank you. I thank the witness.

Senator WARNER. Mr. Chairman, will you indulge me for a minute?

Chairman ROCKEFELLER. Of course.

Senator WARNER. Mr. Chairman and members who are absent and the staff, this is my last meeting with this Committee. I complete very shortly 30 years of service in the Senate, and I was on one six-year term, another term for a couple of years, and now I've enjoyed with your chairmanship several more years, actually had the title of Vice Chairman. I took a lot of pride in that title, but I just talked to my colleague here about it, and I don't want to put in the record his remarks about it, but I think it's a very important recognition. I recall one time making arrangement that the title was given to you. Do you recall that?

Chairman ROCKEFELLER. I do.

Senator WARNER. I do, indeed. And I also just want to take this opportunity. It's been a marvelous, marvelous perspective of my life here in the Senate for these many years, and that's been largely possible through the extraordinary men and women who've served on this Committee. And I also want to recognize the tremendous support that has been given me and the means by which I've been able to learn from a superb professional staff. So I thank all present, and with that, I bid you all a fond farewell.

Chairman ROCKEFELLER. Not yet.

Senator WARNER. Oh.

Chairman ROCKEFELLER. I gave a fairly lengthy peroration filled with truth and sobriety and some emotion about Senator Warner's leaving, as well as Senator Hagel's leaving, and the sadness of that, not knowing that we would be doing this today simply because when you're dealing with a $700 billion crisis you don't know what you're doing the next ten minutes, much less the next day and who's going to be at the hearing.

Senator Warner, I don't think you can dismiss yourself so easily. We cry out in this Congress for comity, for statesmanship, for civility, all of which seems to flow from you as from springs of Dunmore, which is very near a farm that Sharon and I have in Pocahontas County, West Virginia, just on the Virginia border right across from Highland County.

And it isn't just the colleagues that you work with, because you've got some contentious colleagues on both sides. I think a lot of this hope stems that there will be more people like you, Senator Warner, who are profoundly engaged in public service and who will commit themselves, as you have for a period of 30 years, in many areas and gain through your nature your—simply, it's just within you. You either have it or you don't, and you do, a special kind of integrity.

And it's been an enormous honor for me to be associated with you, if I reach that level of praise, because you're honest. You vote your convictions. You're not afraid to break when you want a break and to not break when you don't want a break. You're real. Some people would say that you're old school. Some people would say

that Thomas Jefferson was old school. And I don't think that you would be unhappy with that comparison.

I think you're remarkable, and frankly I'm just going to miss you enormously in spite of the fact that when you had your picture taken in your recent marriage that you invited my wife to join the photograph, but not me. I'm a forgiving man, so I only remember the nobility of your service. [Laughter.]

Senator WARNER. I thank you, Mr. Chairman. We have enjoyed a very close working friendship and professional relationship these many years.

I think some of the staff might be interested to know I first came to know you—not having met you, but having the privilege of working with your father for some several years on a project of mutual interest. And you have carried on the traditions and the heritage of an extraordinary family with great dignity and modesty, if I may say. You serve your state as well, and our states adjoin.

And in the few remaining days I have here I wonder if once again we could determine whether or not we could put the two states back together. I'm stepping down; therefore, you could continue on. They'll have to replace me. Simple as that.

Chairman ROCKEFELLER. And you do have a Democratic governor, don't you? [Laughter.]

Senator WARNER. Yes, yes. Thank you, Mr. Chairman. I thank the witness and the guests present for this indulgence. Thank you very much.

Chairman ROCKEFELLER. Thank you, Senator Warner.

I just want to pursue one matter, Mr. Rowan, that I brought up before in outline, and that is this really quite interesting and amazing debate which takes place in public, but really takes place much more in sort of private conversations, about ways of interrogation. How do you best get information out of people? And the feelings are very, very strong.

I think the CIA, if you want to be cynical about it, you can say that they have a facility down at Guantanamo, and therefore, they're going to hold on to that facility. They say there are things they don't do anymore which they used to. But that doesn't get into the nature of how you interrogate.

And it is very interesting to me how SERE, those who say that you can get interrogation and then your, the Department of Justice and particularly the FBI is one of those. When you treat people with dignity, they will tell you things because they don't expect that, particularly because they've read the recent history since 2001 of what we do do, that they're surprised and are willing to cooperate.

Now, I guess in one sense I have two questions. One is, people are dug in. That's human nature. If you've done it a certain way for the FBI—we've had so many—I'm just thinking of so many people who've come before us, open session and closed session, and talked about how they extracted information. And there's groups from the outside, there's professionals who've been doing it all their lives. And they talk about the way to be respectful and yet end up with that because of persistence, and I'm not going anywhere, and I'll be here a month from now. And, you know, they're tough, but they're respectful.

And then you hear from the other side. Well, if there's going to be—and I mentioned this before—an incident, and we think there is that chance, we don't want to take the chance of letting somebody get it by without saying something.

And then you get into the question of how much can people take? And the fact that the Koran, in fact, actually provides a method by which you can say I can take one more of these things but I can't take anymore, so if you do it once again, I'll tell you what you want—and it gets very confused. And if what you want is what the truth is, there's also a very important consideration of that.

My question of you is, is this a debate which has no solution, or ought not to have a solution, or is this a debate which as we get further in, as our soldiers are subjected to some of this and the American people learn about it, where there can be some kind of reconciliation? Is that possible in this business?

Mr. ROWAN. I think that it may be very hard to have a reconciliation. One of the things that's always struck me is there's—it seems from what I have heard—there seems to be some value—unfortunately, for the public debate there seems to be some value in leaving the capabilities and powers of our interrogators vague—in other words, that I do believe that al-Qaida trains to meet in those interrogation techniques. And to the extent that they are able to get on the web and understand exactly what they are and what they are not, I fear that we lose a little bit by that kind of openness, which is the kind of thing that you'd want to have——

Chairman ROCKEFELLER. May I interrupt? I'd like to take that aspect of it off the table. I'd like to pretend that these discussions have all been held behind closed doors, classified, and that therefore the business of informing the enemy, which your case is hands down—if they don't already know—I'd like to take that off the table, just have your view.

Mr. ROWAN [continuing]. Right. Well, I think that one of the things I said before is, you know, we really didn't have any experience in this from what I can see at 9/11 except for the rapport-building experience that the FBI and other law enforcement agencies had.

And now we do have much more of a record to look back upon and try to determine—you know, if a certain set of techniques, if one of the arguments in favor of those techniques is, yeah, but—I understand rapport building may work over time, but we need the information urgently, then I think we now have a little bit better handle on it. I can't say I've seen anything systematically used to examine this, but I think we'd be in a better position now to look back and say, well, how long did it take to get that, how long did it take to get that, and get a better handle on whether or not the sort of urgency argument is one that the evidence supports or the evidence doesn't support it.

As I sit here, I don't know the answer to that. But it does strike me that that's a critical fact in favor of those who say rapport-building isn't viable in all instances. But if in fact it is the case that you look back and you say you know what, it took some lengthy period of time before these other techniques worked also, then I think that that would obviously be an important factor that I'm not sure has really been analyzed in any systematic way.

I also think that since we have more experience, we have more experienced interrogators, it's clear to me that some people just have a talent for this. And I'm really talking about here rapport-building techniques. I think sometimes rapport-building techniques don't work because the person who's conducting the interrogation just isn't very good at it. I mean, it's something that you see even in a law enforcement setting as a prosecutor in the District of Columbia. Some Metropolitan Police detectives were good at getting a confession. Others were not good. And it's a skill like other skills.

And I think that some of what occurred after 9/11, particularly in the context of DOD interrogators, may have been sort of frustration and inexperience that manifested itself, frankly, in abusive techniques, the kind of things that have been studied and reported on in the Schmidt-Furlow Report and the various studies that have been done.

So I think that the people need to come up with rules, with the understanding that either these are going to be used by a small and an elite group of interrogators who are very well trained, very disciplined, and very good at what they do, or you're going to have a set of rules for a much larger set of people who don't have the experience, and you don't want to give them nearly as much flexibility because it will probably go bad at some point.

So I think those are some things that we've learned, and I think that if we looked more at this in the context of a classified setting it may be that there's other factors that we could tease out that would help us to understand where the balance ought to be struck to determine what's the appropriate system for us going forward?

I also think at some point we need to determine how we use intelligence interrogations in the context of prosecutions, because the problem arises that even in a rapport-building context it's hard to go in and advise somebody of their Miranda rights and hope to get useful information.

So we need to sort of decide that we're either going to give up an admissible statement, in the case of an Article 3 court, or we're going to use the military commissions because that doesn't require—these statements, we need to be able to prove that they're reliable, that they were—just under all circumstances use them, but we don't have to prove that there was a waiver of Miranda.

So I think it's a very difficult issue, and I don't think that it would be easy to nail down, but I still believe there's a possibility of having a consensus that's clearer than may exist right now about the way we ought to do this.

Chairman ROCKEFELLER. That's helpful and thoughtful.

I have other questions and I'll submit them; I won't give them now. I do want to call particular attention to the math teacher and to the judge. And I think you've been very fortunate to start out in life with that. And I think there's a lot of respect for you in this Committee. It's interesting when people say what they feel before they've even talked to you. That means they have a judgment, and the judgment's been on the circuit, and they hear their—people they hear that they respect, what they have to say. And I think you've come out very well on that.

And with that in mind, under Committee Rule 5.5, a Committee vote on a confirmation shall not be sooner than 48 hours, which is

not in your favor the way things appear to be going on this bailout. After the Committee receives transcripts of the confirmation hearing, unless the time limit is waived by unanimous consent to provide us with the flexibility in proceeding with this nomination in the closing days of Congress, closing hours of Congress, whatever it might be, I ask unanimous consent that this time limit be waived. And since I'm the only person here, it is waived without objection.

And this hearing is adjourned, and I thank you.

[Whereupon, at 3:37 p.m., the Committee adjourned.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

Pre-hearing Questions
for
Mr. J. Patrick Rowan
upon his nomination
to be
Assistant Attorney General for National Security
Department of Justice

Responsibilities of the Assistant Attorney General for National Security

QUESTION 1:

The USA PATRIOT Improvement and Reauthorization Act of 2005 created the National Security Division (NSD) and the position of Assistant Attorney General (AAG) for the NSD.

a. What is your understanding of the unique role of the NSD with respect to the Intelligence Community?

Answer: The National Security Division has the unique role of being the Justice Department's primary liaison to the Intelligence Community. As outlined in Department regulations, found at 28 C.F.R. § 0.72, the NSD's role with respect to the Intelligence Community can be described as follows: represents the Department on interdepartmental boards, committees, and other groups dealing with national security, intelligence, or counterintelligence matters; provides legal assistance and advice, in coordination with the Office of Legal Counsel as appropriate, to government agencies on matters of national security law and policy; formulates policy alternatives and recommends action by the Department and other executive agencies, in coordination with the Office of Legal Policy, to achieve lawful United States intelligence, counterintelligence, or national security objectives; analyzes and interprets current statutes, executive orders, guidelines, and other directives pertaining to intelligence, counterintelligence, or national security matters; formulates legislative initiatives, policies, and guidelines relating to intelligence, counterintelligence, or national security matters; provides oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives and reports to the Attorney General on such activities; participates in the development, implementation, and review of United States intelligence, counterintelligence, and national security policies, including procedures for the conduct of intelligence, counterintelligence, or national security activities; and coordinates with government departments and agencies to facilitate prevention of terrorist activity through daily detection and analysis.

b. What is your understanding of the specific statutory responsibilities of the AAG for NSD?

Answer: Under the USA PATRIOT Improvement and Reauthorization Act of 2005, which created the position of Assistant Attorney General for National Security and established the National Security Division, the Assistant Attorney General for National Security is given the following statutory responsibilities:

- To serve as the head of the National Security Division of the Department of Justice, § 507A(b)(1);

- To serve as the Department of Justice's primary liaison to the Director of National Intelligence, § 507A(b)(2);
- To act for the Attorney General in carrying out the Attorney General's various designated responsibilities under the Foreign Intelligence Surveillance Act (FISA), § 507A(b)(5);
- Has authority to authorize applications to federal judges for the interception of communications in the course of investigating the crimes enumerated in section 2516(1) of Title 18, United States Code, granted under § 507A(b)(6);
- Has authority to act for the Attorney General in witness relocation or protection functions, as enumerated under section 3521(d)(3) of Title 18, United States Code, granted under § 507A(b)(7);
- Under the Classified Information Procedures Act, 18 U.S.C. App, § 9A, has responsibility, as appropriate, for briefing the senior agency official, or the designee of such official, with respect to any case involving classified information that originated in the agency of such senior agency official, granted under § 507A(b)(8);
- Has the responsibilities the Office of Intelligence Policy and Review (now the Office of Intelligence) formerly had over intelligence and national security aspects of espionage prosecutions, pursuant to section 341(b) of the Intelligence Authorization Act for Fiscal Year 2004 (28 U.S.C. 519 note), granted under § 507A(b)(9);
- Has the authority formerly possessed by the Counsel for Intelligence Policy to make certifications for certain undercover foreign intelligence and counterintelligence investigative operations, pursuant to section 102(b)(1) of Public Law 102–395 (28 U.S.C.533 note), granted under § 507A(b)(10); and
- Perform "such other duties as the Attorney General may prescribe," § 507A(b)(3).

c. Since assuming the responsibilities of Acting AAG, have you discussed with the Attorney General his specific expectations of you, first, as Acting AAG and then, if confirmed as AAG, and his expectations of the NSD as a whole? If so, please describe these expectations.

Answer: Following the attacks of September 11, 2001, the first priority of the Department of Justice is to combat terrorism and other threats to our national security. The Department established and designed the National Security Division to achieve a set of organizational and institutional objectives that will help us fulfill that critical mission. The Attorney General expects that the National Security Division will continue to pursue the following primary objectives that led to the creation of this new division: the centralization of the management of the Department's national security program; the coordination of operations and policy across the national security spectrum; the implementation of comprehensive national security oversight; and the further development of national security training and expertise.

The Attorney General specifically expects the Assistant Attorney General for National Security to continue to manage the NSD as it grows and matures.

In addition, the Attorney General expects that I will work to ensure that our national security responsibilities are met during the first transition of government following September 11, 2001.

d. Since assuming the responsibilities of Acting AAG, have you discussed with the Director of National Intelligence (DNI) his expectations of the NSD as a whole? If so, please describe these expectations.

Answer: I have discussed the work of the National Security Division (NSD) with the Director of National Intelligence (DNI). Based on that discussion, I believe that, consistent with the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub.L. No. 109-177, title V, section 507A(b)(2) (Assistant Attorney General for National Security), 120 Stat. 192, 249 (March 9, 2006), the DNI expects that I will serve as the primary liaison to the Director of National Intelligence for the Department of Justice and that under my leadership the NSD as a whole will continue to support the intelligence and intelligence-related activities of the United States Government.

General NSD Matters:

QUESTION 2:

Although the NSD plays a vital role in intelligence operations and activities, it is not a member of the Intelligence Community.

What are the advantages and disadvantages of including the NSD within the Intelligence Community?

Answer: While there perhaps may be some surface appeal to the idea that including the NSD within the Intelligence Community (IC) would make the NSD more responsive to the needs of the IC, I do not believe that such a change would be beneficial. The NSD is already responsive to the IC; moreover, the IC receives direct support from attorneys at the DNI and individual departments and agencies within the IC. The NSD's close relations with—but formal separation from—the IC allows it to provide independent advice that takes into account the effect of decisions on activities throughout the IC as well as on civil and criminal actions in other contexts. Further, the NSD's formal separation from the IC facilitates its ability to provide responsible and objective oversight.

The National Security Division provides independent legal advice to and has an important oversight responsibility regarding the IC, tasks that are made easier to perform because the NSD stands apart from, though in close contact with, the IC. Also, to the extent that the NSD makes independent legal judgments, including prosecutions and FISA applications, it is appropriate for the NSD to report to the Attorney General. Moreover, a reporting chain that placed NSD wholly

or partly within the IC would weaken its ties to the rest of the Department of Justice. Those ties are critical for ensuring decisions made in the national security context do not have adverse effects on other criminal or civil proceedings, and vice versa.

QUESTION 3:

The Office of Intelligence was formally created within the NSD in April 2008 and consists of three sections devoted to oversight, operations, and litigation.

a. What is your preliminary assessment of this reorganization?

Answer: The Department of Justice has played a critical role in the nation's effort to prevent acts of terrorism and to thwart hostile foreign intelligence activities. Since the September 11th terrorist attacks, the Department's Office of Intelligence (OI) (formerly the Office of Intelligence Policy and Review (OIPR)) has grown dramatically because of the steady increase in the number of applications it has handled under the Foreign Intelligence Surveillance Act (FISA) in an effort to ensure that Intelligence Community agencies have the authorities necessary to conduct intelligence operations.

The creation of the National Security Division in September 2006 brought OIPR under the umbrella of the NSD and presented an opportunity to review the office's structure and expanding mission. Based on this review, the NSD decided to modify the structure of the office, given that its professional staff has grown from fewer than 20 lawyers in 2000 to almost 100 today, primarily due to the increase in the FISA caseload. Moreover, the office has assumed an expanded role in conducting intelligence oversight and in coordinating FISA-related litigation.

To meet the needs of its multi-faceted intelligence mission, the NSD developed a new structure called the Office of Intelligence, which consists of three specific sections aligned with the Division's core functions: operations, oversight and litigation. Each section is supervised by a chief who reports directly to the Deputy Assistant Attorney General for the Office of Intelligence. A description of each new section is below:

Operations Section:

The Operations Section handles the NSD's intelligence operations workload, including representing the Government before the Foreign Intelligence Surveillance Court (FISC) and implementing the FISA Amendments Act of 2008. The mission of the section is to ensure that the FBI and other intelligence community agencies have the legal tools necessary to conduct intelligence operations in adherence with the requirements and safeguards of the law.

The Justice Department is handling more requests for FISA authority than ever before. From 2001 through 2007, the annual number of FISA applications approved by the FISC rose from

934 to 2,370. Even with this increased workload, the NSD has increased its efficiency in preparing and submitting applications to the FISC, while ensuring that these applications are accurate and comply with the privacy protections in the FISA statute. The formation of the Operations Section will enhance the National Security Division's ability to meet the demands of this critical mission.

Oversight Section:

The NSD also faces increased responsibilities in its mission to conduct oversight of the intelligence and counterintelligence activities of the Federal Bureau of Investigation, as well as those of other intelligence agencies, as appropriate, to ensure adherence to the Constitution and applicable laws of the United States. In July 2007, the Department announced that a significant new national security and oversight effort would be implemented by the NSD. To meet this mandate, Justice Department attorneys for the first time have been given comprehensive authority to examine the FBI's national security program for adherence to all applicable laws, regulations, and guidelines.

In conjunction with the FBI's Office of General Counsel, NSD attorneys now review national security investigation files at the FBI to identify and provide guidance on a range of issues. Among other things, the reviews examine FBI compliance with Attorney General national security investigation guidelines, use of national security letters, predication for national security investigations, and referrals to the Intelligence Oversight Board. The NSD conducted 15 national security reviews at FBI offices in 2007 and plans to complete another 15 reviews in 2008. In addition, under section 702 of the FISA Amendments Act of 2008, every six months the Attorney General and the Director of National Intelligence must assess compliance with the targeting and minimization procedures issued pursuant to that section. The formation of a new Oversight Section dedicated to this mission will enable the NSD to carry out these responsibilities effectively and efficiently.

Litigation Section:

With the lowering of the "wall" between intelligence and law enforcement investigations, and the enhanced coordination between intelligence and law enforcement personnel, the NSD has seen a steady increase in the number of requests to use information from FISA-authorized activities as evidence in criminal prosecutions of terrorists and spies. As a result, the NSD has created a separate Litigation Section to ensure sufficient resources are devoted to FISA-related litigation and to help prosecutors handle evidentiary and discovery issues in such matters.

The Litigation Section reviews and prepares requests for Attorney General authorization to use FISA information in criminal and non-criminal proceedings. The section also drafts motions and briefs and responds to defense motions to disclose FISA applications and to suppress the fruits of FISA collection. Finally, the section works to ensure the consistent application of FISA in trial and appellate courts nationwide. To support this effort, the NSD in January 2008 developed a new policy, approved by the Attorney General, for investigators and prosecutors on the use of information obtained or derived from FISA collections.

In my view, as a result of the reorganization, OI now has a more substantial management structure, which will make OI more productive and more responsive to emergencies and other changes in priorities. The reorganization will also allow us to pursue our operations, oversight, and litigation work with greater focus.

b. Do you believe that the creation of this Office has enabled the NSD to channel its resources more appropriately to address changing priorities?

Answer: Yes. Please see my response to Question 3 a.

QUESTION 4:

a. Please describe the staffing of the NSD.

Answer:

National Security Division staffing as of July 31, 2008

NSD Attorney and Support Staff	**Number of Personnel**
All Attorneys	156
Support Staff	77
Total	**233**

NSD Staff by Section as of July 31, 2008

Section/Office	Number of Attorneys	Number of Support Personnel
Office of the Assistant Attorney General for National Security/Executive Office	9	32
Counterespionage Section	15	7
Counterterrorism Section	37	11
Office of Intelligence	91	25
Office of Law and Policy	4	1
Office of Justice for Victims of Overseas Terrorism	0	1
Total	**156**	**77**

b. Please describe any sections or specialties within the NSD that you believe are currently understaffed.

Answer: Any staffing needs are addressed in the Department's budget and hiring process.

c. What actions will you take, if confirmed as the AAG, to alleviate any understaffing in priority areas?

Answer: To address short term staffing needs I will continue to push our hiring efforts, and I will also shift resources within the Division as needed to ensure proper staffing of our highest priority matters. Additionally, I will continue to work with the Justice Management Division and the Department leadership in the budget process to ensure the Division's staffing needs are met.

d. Do you believe the personnel of the NSD have sufficient background and expertise in intelligence matters? If not, how should the NSD address this issue?

Answer: Most of our supervisory attorneys and experienced line attorneys have a background and expertise in intelligence matters. We have a number of less experienced recent hires. We address any lack of experience through careful supervision by more experienced attorneys and in-house training.

The establishment of the National Security Division is an opportunity to develop a strong and growing cadre of national security lawyers who "see themselves as acting in concert to serve a common mission," and thereby promote the WMD Commission's goal for the Department's national security program. The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Report to the President of the United States 472 (2005). The Division has seized that opportunity by substantially enhancing the scope and quality of the training programs that develop expertise in the investigation and prosecution of national security cases. In fiscal year 2007, the NSD increased the number of training courses for national security prosecutors by more than 50 percent and significantly increased the number of personnel trained.
These programs begin with component-specific orientation sessions for new lawyers and the assignment of mentors. The programs continue with periodic follow-up training by instructors from the NSD; from other Justice Department components including the FBI, the Privacy and Civil Liberties Office, and the Professional Responsibility Advisory Office; and from agencies of the Intelligence Community.

QUESTION 5:

a. What is your assessment of the NSD's current strengths and weaknesses?

Answer: The NSD has efficiently pursued the primary objectives that led to the creation of the National Security Division. We have centralized the management of the Department's national security program, coordinated operations and policy across the national security spectrum, implemented comprehensive national security oversight, and further developed national security training and expertise. By bringing together the Department of Justice's national security, counterterrorism, counterintelligence, and foreign intelligence surveillance operations under a single authority we are better able to connect the dots to prevent another terrorist strike. The NSD has a talented cadre of experienced and hard working attorneys who strive to work together to serve our common mission. We must continue to look for new ways to take full advantage of this new structure and our personnel.

b. What do you believe are the greatest challenges facing the NSD?

Answer: The greatest challenge facing the NSD is to continue to adapt to and anticipate current and future threats to national security, be they from terrorist groups or individuals or nation-states. To meet this challenge, the NSD needs to continue to work closely with the Intelligence Community and to provide careful and effective oversight. Additionally, the NSD is the newest Division of the Department of Justice, having commenced operations on September 28, 2006, and there is a need to assure that proper management is in place, personnel needs continue to be met, and proper procedures have been clearly established so the Division can grow and continue to efficiently maintain its heavy national security workload. Finally, the Division will have to continue to meet its national security responsibilities during the first transition in the U.S. Government since September 11, 2001.

c. Please describe your current and future priorities for the NSD.

Answer: My two top priorities will be to guide the NSD's continuing maturation and development and to ensure that the NSD meets its national security responsibilities during the first transition in the U.S. Government since September 11, 2001.

QUESTION 6:

a. Please describe in general terms the types of cases, including the major issues of law involved, currently being prosecuted by the Counterterrorism and Counterespionage Sections.

Answer: The Counterterrorism Section (CTS) is responsible for cases involving domestic and international terrorism, including terrorist financing. Its prosecutions fall under a variety of statutes, including material support of terrorism, weapons of mass destruction crimes, hostage-taking, conspiracy within the United States to murder, kidnap, or maim persons or to damage property overseas, and murder of United States nationals abroad, to name just a few offenses.

The Counterespionage Section (CES) supervises the investigation and prosecution of cases affecting national security, foreign relations, and the export of military and strategic commodities and technology. The Section has executive responsibility for authorizing the prosecution of cases under criminal statutes relating to espionage, sabotage, neutrality, and atomic energy.

The cases handled by the Counterterrorism and Counterespionage Sections often involve challenging issues including the scope of U.S. jurisdiction over overseas offenses, admissibility of statements obtained by agents of other governments, the applicability of the Classified Information Procedures Act, the application of the Foreign Intelligence Surveillance Act to admission of certain evidence, issues of statutory interpretation, and constitutional challenges.

b. In the allocation of responsibilities within the Department of Justice, as between the NSD and the Criminal Division, are there jurisdictional questions whether a case should be categorized as a counterterrorism case and assigned to NSD? If so, please describe those questions.

Answer: Jurisdictional issues are ordinarily resolved with reference to the U.S. Attorneys' Manual, which outlines the responsibilities of the National Security Division. *See* U.S. Attorneys' Manual, § 9-90.000. These responsibilities include the enforcement of all criminal laws affecting, involving or relating to the national security, and the responsibility for prosecuting criminal offenses, such as conspiracy, perjury and false statements, arising out of offenses related to national security, which are assigned to the National Security Division. *See* U.S. Attorneys' Manual, § 9-90.020A. There has not been disagreement between the two divisions over the assignment of cases.

c. Please describe in general terms the interaction that the NSD has with applicable Intelligence Community components in relation to these prosecutions, for example with respect to the impact of a prosecution on further intelligence collection or concerning the use of classified information to support any criminal charges.

Answer: Very early on in an investigation, before a decision is made regarding the prosecution of a case, we have discussions with the relevant Intelligence Community agencies. There is a process of collaborative consultation where we work with these agencies to resolve difficult issues.

There are some instances where Intelligence Community agencies are concerned about the impact of prosecution on further intelligence collection in ongoing investigations and we work with the agencies to address their concerns, including by carefully limiting the charges we bring. Ordinarily we resolve disputes in a way that both allows prosecutions and protects the equities of Intelligence Community components.

d. In your opinion, has the Intelligence Community been fully supportive of these and other national security investigations?

Answer: The Intelligence Community has been very supportive of these and other national security investigations.

e. To the extent that elements of the Intelligence Community have not been or may not be fully supportive, what improvements should be made and what steps have you or your predecessor taken, and will you take if confirmed as the AAG, to ensure that the Intelligence Community understands the unique role of criminal prosecutions in protecting our national security and the kind of cooperation NSD requires?

Answer: As indicated in my response to Question 6 d., the Intelligence Community has been very supportive. I will ensure that cooperation continues by continuing to work closely with the leadership of the Intelligence Community agencies so these leaders can understand both the critical role of criminal prosecutions in protecting our national security and the kind of cooperation the NSD requires. I will also continue to convey to them that the NSD will work to do all that we can to protect their intelligence equities.

f. In general, in connection with any continuing debate about the appropriate roles of intelligence and law enforcement in counterterrorism, how do you describe the role of law enforcement?

Answer: The first priority of the Department of Justice is to combat terrorism and other threats to our national security. Our first priority regarding counterterrorism is to prevent attacks from happening. Intelligence collection and law enforcement action represent different means to achieve these goals. In some cases we will use intelligence collection alone and in others law enforcement action and prosecution, often after a period of intelligence collection.

g. If a dispute arises between the NSD and the Intelligence Community about the merits or timing of a particular prosecution, how is this dispute resolved?

Answer: The National Security Division and the Intelligence Community resolve issues about the merits or timing of particular prosecutions through discussion and consultation. In my experience, when everyone is apprised and appreciates the facts and circumstances and the competing equities involved, we are able to arrive at a consensus decision.

QUESTION 7:

a. Has the NSD been providing support to the Military Commissions process and, if so, please describe?

Answer: Shortly before the creation of the National Security Division, President Bush announced that a number of high value detainees had been transferred to Guantanamo Bay Naval Base and would be considered for prosecution by Military Commission. This group of significant Al Qaeda operatives and leaders includes Khalid Sheikh Mohammed, Ramzi Binalshibh, Abu Zubaydah, and other detainees suspected of involvement in the September 11, 2001 attacks, the 2000 attack on the USS Cole, and the 1998 East Africa Embassy bombings. The first Assistant Attorney General for National Security designated one of his senior counsels as the main Justice Department liaison to the Chief Prosecutor of the Office of Military Commissions. This senior counsel leads a Justice Department team of approximately twelve experienced prosecutors detailed from several U.S. Attorneys' Offices and from the National Security Division, along with a large group of FBI agents and analysts. The team is working alongside the Department of Defense in assembling the evidence and putting together the cases that will underlie the Military Commission charges. For instance, on February 11, 2008, a team of Defense and Justice Department prosecutors charged a group of detainees, including Mohammed and Binalshibh, with offenses relating to their roles in the September 11th attacks. When this case and others go to trial, members of the NSD team will serve as co-counsel alongside the Department of Defense prosecutors. In addition to their work regarding the high value detainees, the NSD team also provides significant support to the Department of Defense's prosecution of other detainees, including reviewing evidence and possible charges, assisting with the analysis and drafting of pleadings on complex legal issues, and serving as co-counsel in certain instances.

b. What impact, if any, has this had on the resources available to the NSD?

Answer: The Military Commission process is important work and the NSD has managed to do it without impacting the Division's capability to perform its other responsibilities.

Training and Oversight

QUESTION 8:

a. How would you describe the NSD's oversight role with respect to intelligence activities by elements of the Intelligence Community that are within the Department of Justice?

Answer: While the Department must use its authority to protect the nation, we must also comply with the laws, rules, and policies that protect the rights and civil liberties of the American people. The National Security Division has the responsibility of overseeing the Department's foreign intelligence, counterintelligence, and other national security activities to ensure compliance with our laws and the protection of civil liberties.

Upon its establishment, the National Security Division assumed a number of specific oversight responsibilities that were already in place, including: (1) the review of all FBI notices of approval to initiate or continue international terrorism and domestic terrorism enterprise investigations and counter-intelligence operations; (2) the review of all requests for approval of certain investigative activities under Attorney General Guidelines; (3) the implementation and compliance review of FISA minimization procedures in FBI field offices; (4) the review and assurance of accuracy in the FBI's FISA applications; and (5) the review of FBI national security undercover operations. While these oversight mechanisms were significant, the Attorney General made clear that the new Division had a mandate to develop a much broader oversight capability.

In fulfilling that mandate, the National Security Division has expanded its national security oversight role well beyond the functions it inherited. The NSD conducts reviews of all FBI-reported Intelligence Oversight Board (IOB) violations, and, most importantly, reviews of national security investigations throughout the FBI field offices and national security headquarters units. To perform these expanded duties, the NSD has created an Oversight Section within the newly formed Office of Intelligence (formerly the Office of Intelligence Policy and Review) with supervisors and staff devoted to this critically important mission. With this new section, the NSD has the management and organizational structure that will institutionalize this new comprehensive national security oversight function.

b. How would you describe the NSD's oversight role with respect to intelligence activities by elements of the Intelligence Community that are outside the Department of Justice?

Answer: The National Security Division's oversight role with respect to intelligence activities by elements of the Intelligence Community that are outside of the Department of Justice is based in part on the Foreign Intelligence Surveillance Act as amended. All applications to use the authorities of the Act come through NSD, a process which adds a check on the use of these authorities. In addition, the NSD conducts oversight to monitor compliance with orders of the Foreign Intelligence Surveillance Court. With respect to acquisitions pursuant to section 702, the Office of the Director of National Intelligence (ODNI) and the NSD conduct periodic oversight reviews to ensure compliance with targeting and minimization procedures adopted for use under each authorization made pursuant to section 702(a) of the FISA. NSD's oversight role, however, does not relate exclusively to FISA. For instance, the NSD reviews IOB notices from members of the Intelligence Community beyond the FBI.

QUESTION 9:

Based on your experiences at the NSD, what is your assessment of the Intelligence Community's compliance with laws and regulations regarding the handling of U.S. person information?

Answer: My experience has been that the Intelligence Community typically acts in compliance with laws and regulations regarding the handling of U.S. person information. In those relatively rare instances where it appears there may have been some degree of non-compliance, the National Security Division, in its oversight role, works with the relevant agencies to ensure that appropriate actions are taken.

QUESTION 10:

In several sections, the new Executive Order 12333 calls for guidelines approved by or subject to the approval of the Attorney General.

Please describe the role of the NSD in the development, approval, and issuance of such guidelines required under the new Executive Order, specifically identifying the relevant sections of the Executive Order where the NSD will be involved and the nature of the issues to be addressed.

Answer: The revised Executive Order 12333 calls in several places for guidelines to be approved by the Attorney General. Some of these requirements existed previously, but others are new. The National Security Division will have primary responsibility for working with the Director of National Intelligence and elements of the Intelligence Community as new guidelines are developed and for reviewing the guidelines in order to recommend whether the Attorney General should approve them. The work of the NSD will help to ensure that the guidelines provide adequate protection for information concerning United States persons and are consistent with the United States Constitution and other applicable law, including Executive Order 12333, as well as with one another. The NSD will also work with the Federal Bureau of Investigation to ensure the appropriate implementation, through policies and procedures, of the coordination role given to it by the Order with respect to certain domestic intelligence activities.

The purpose of the Attorney General-approved guidelines and thus the issues to be addressed varies according to each guideline requirement, but in general they can be divided into two categories. First, the purpose of having involvement by the Attorney General is to protect the civil liberties of United States persons consistent with the Intelligence Community's need to exercise its authority to protect the Nation. *See, e.g.*, Part 1.3(a)(2) (requiring Attorney General-approved guidelines for "how information or intelligence is provided to or accessed by the Intelligence Community . . . and for how the information or intelligence may be used and shared

by the Intelligence Community"); Part 1.3(b)(18) (requiring Attorney General-approved procedures to implement the DNI's advisory tasking authority); Part 1.6(g) (requiring Attorney General-approved procedures to "govern[] production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad); Part 1.7(g)(1) (requiring Attorney General guidelines to govern the FBI's collection "(including through clandestine means), analy[sis], produc[tion], and disseminat[ion of] foreign intelligence and counterintelligence to support national and departmental missions); Part 2.3 (requiring Attorney General-guidelines to govern the collection, retention and dissemination of United States person information and to govern the dissemination of signals intelligence information for purposes of allowing the recipient Intelligence Community element to determine whether the information is relevant to its responsibilities); Part 2.4 (requiring Attorney General-guidelines to govern use of collection techniques by the Intelligence Community); Part 2.9 (requiring Attorney General-guidelines to govern undisclosed participation in organizations in the United States by the Intelligence Community).

Second, Attorney General approval of other guidelines will ensure appropriate implementation of the Executive Order's requirements for coordination. *See, e.g.*, Part 1.3(b)(20)(C) (requiring Attorney General-approval for "[a]ll policies and procedures for the coordination of counterintelligence activities and the clandestine collection of foreign intelligence inside the United States"). This requirement is also protective of the civil liberties of Americans as it ensures Justice Department involvement in and knowledge of a wide range of foreign intelligence activities.

At this point, development of the new guidelines has just begun.

QUESTION 11:

The NSD performs critical oversight of the national security operations of the Federal Bureau of Investigation (FBI). There has been some criticism of the NSD that it is biased in favor of the FBI. Conversely, there have been complaints that authorizations to use certain techniques have been delayed because questions from NSD attorneys go well beyond the level of proof required for each authorization.

a. How do you respond to these criticisms?

Answer: Due to a new focus in the FBI's mission, the Department has greatly increased the level of oversight since September 11, 2001. The Department's primary oversight in the national security realm has traditionally focused on the FBI's use of FISA and compliance with Foreign Intelligence Surveillance Court (FISC) orders—a responsibility that derived principally from our obligations as the Government's representative to the FISC. This oversight regime, relatively robust in the FISA area but more limited in other areas, was designed at a time when the FBI's

national security program was much smaller in size and scope. Since the September 11th attacks, the FBI has fundamentally transformed itself from a law enforcement-focused agency to an agency whose top priority is the detection and prevention of terrorist attacks. The increased focus on national security operations—and the resultant increase in the FBI's use of investigative tools designed to discover relevant intelligence—has produced the need for a stronger and more comprehensive oversight capacity. The National Security Division's new oversight program provides that expanded oversight. The NSD's oversight program includes national security reviews; review of reported Intelligence Oversight Board violations; review of national security investigation notices prepared by the FBI to ensure that these investigations are conducted in accordance with the relevant Attorney General Guidelines; reviews in FBI field offices to ensure compliance with court-ordered minimization requirements and the factual accuracy of FBI declarations submitted to the FISC; review of FBI requests for Attorney General certifications to undertake particular activities with respect to undercover operations in the national security arena; and overseeing the FBI's implementation of Protect America Act and FISA Amendments Act authorities.

The National Security Division takes its oversight responsibilities seriously. In our work obtaining authorization to use certain techniques from the FISC, we work closely with the FBI to resolve any questions or obtain additional information as needed. To the extent there have been complaints about delay in general, we make careful judgments about what information is needed before seeking authorization from the FISC. We act expeditiously while following the law.

b. How would you describe the NSD's role with respect to the FBI's National Security Branch?

Answer: We work closely with the FBI's National Security Branch to advance critical national security operations while ensuring compliance with all applicable statutes and guidelines.

c. What specific steps have you taken, or will you take if confirmed as AAG, to ensure that all NSD attorneys are appropriately trained in intelligence matters?

Answer: We will continue our robust training of all NSD attorneys about the different legal and operational standards that apply to intelligence and criminal tools and techniques.

d. What specific steps have you taken, or will you take if confirmed as AAG, to ensure that all NSD attorneys understand the different legal and operational standards that apply to intelligence and criminal tools or techniques?

Answer: We will continue our robust training of all NSD attorneys about the different legal and operational standards that apply to intelligence and criminal tools and techniques.

QUESTION 12:

a. What steps can and should the NSD take to ensure that all U.S. Attorneys' Offices fully understand the role of intelligence collection in national security investigations?

Answer: The Department and the National Security Division have taken several significant steps to ensure that all U.S. Attorneys' Offices (USAOs) fully understand the role of intelligence collection in national security investigations.

Training

Section 908 Training: In January 2007, the Deputy Attorney General mandated that all Assistant United States Attorneys (AUSAs), as well as the Department's Trial Attorneys, both civil and criminal, undergo training in recognizing foreign intelligence information and the requirement and process to report such information when found in any case, investigation, and matter. The Deputy Attorney General further mandated that foreign intelligence training is an ongoing process and that newly hired AUSAs and Department Trial Attorneys must receive this training. The NSD's Counterterrorism Section (CTS), assisted by other components and the Intelligence Community, spearheaded the development of a model training program on identification and reporting of foreign intelligence information. This model training program was disseminated to the various USAOs to assist them in conducting foreign intelligence training in their districts. CTS also coordinated the production of a 30 minute video presentation entitled: "Foreign Intelligence Training: Recognize and Report" that was used to train the Department's Trial Attorneys. The video was shown on the Department's Justice Television Network (JTN) and continues to be aired periodically. JTN programs are available to all personnel in the Department and can be viewed on one's workstation computer.

Office of Legal Education: CTS, through the National Anti-Terrorism Advisory Council (ATAC) Coordinator, works closely with the Executive Office of U.S. Attorneys' Office of Legal Education to develop national security conferences for USAO personnel that are held at the Department's National Advocacy Center and other locations. In this fiscal year, a dozen courses were offered for AUSAs and others that focused on national security matters. For example, a 3 ½ day conference was held August 19-22, 2008, here in the Washington, D.C., area and was attended by approximately 140 AUSAs from across the country along with CTS Trial Attorneys. The conference focused on both the importance of foreign intelligence collection and investigations in the realm of international terrorism. The conference contained several highly classified presentations designed to increase the awareness of the foreign terrorist threat facing the United States as well as presentations from the Intelligence Community so that AUSAs who specialize in international terrorism investigations are better equipped to identify foreign intelligence information in their districts.

ATAC Program and the Counterterrorism Section

On September 17, 2001, Attorney General John Ashcroft issued an anti-terrorism directive that tasked each United States Attorney with coordinating operations of the Anti-Terrorism Task Force (later renamed the Anti-Terrorism Advisory Council ("ATAC")) within each district to ensure that each USAO maintains a long-term focus on the prevention of terrorism. The core objectives of the ATAC Program are 1) ensuring robust information sharing both with relevant agencies in the district and with the Department; 2) undertaking counterterrorism initiatives to ensure that each district's critical infrastructure is adequately protected; and 3) conducting counterterrorism training in the districts. The robust ATAC Program ensures that, across the country, the Department is focused on its top priority of preventing terrorism. CTS has primary responsibility for managing the ATAC Program. To that end, CTS has six regional ATAC Coordinators and a National ATAC Coordinator who provide oversight and guidance to the ATAC Coordinators in the various USAOs. The National and Regional Coordinators work with the USAO's ATAC Coordinators on a myriad of investigative, prosecutive, and programmatic issues. These issues include ensuring that the intelligence equities, including the collection of foreign intelligence information, in investigations and prosecutions are fully understood and considered.

The NSD, in its consultation, approval, and oversight role on international terrorism matters, ensures that CTS works collaboratively with the USAOs during all phases of investigations and prosecutions. Apart from the role of the Regional ATAC Coordinators, CTS often assigns a Trial Attorney to a matter that is being investigated in a particular district to work with the local federal prosecutors. As a part of the investigatory or prosecutive team, the CTS attorney brings subject matter expertise to the investigation and possible resulting prosecution that includes a heightened awareness of foreign intelligence collection requirements. When foreign intelligence information is discovered, these prosecutors have various incentives at their disposal to reward a subject of an investigation or defendant in a criminal case who provides such information. The NSD oversees and approves the award of these incentives for foreign intelligence information.

Apart from the AUSAs who handle terrorism matters, each USAO is allocated a position known as the Intelligence Specialist. One of the core duties for this position is to assist in the identification of foreign intelligence information arising in the district and ensure that it is shared appropriately. CTS, through its management of the ATAC Program, works with Intelligence Specialists in USAOs. CTS is in the process of hiring an Intelligence Specialist whose responsibilities will include working with the Intelligence Specialists in the USAOs. Among the responsibilities of the CTS Intelligence Specialist will be ensuring that intelligence collection requirements are communicated to the USAO's Intelligence Specialists and correspondingly, that the USAO's Intelligence Specialists have a conduit within the NSD to the Intelligence Community.

In addition, the Counterespionage Section (CES), which is very familiar with the role of intelligence collection in counterespionage and export investigations, monitors USAO investigations relating to these areas. Like CTS, CES, through an approval process, ensures that USAOs are pursuing prosecutions in a manner consistent with Intelligence Community equities.

b. When a conflict concerning prosecutorial objectives and intelligence collection arises between the FBI and a U.S. Attorney's Office, what role does the NSD have in resolving that conflict?

Answer: Given the NSD's oversight role in national security investigations and prosecutions, the NSD works closely with the FBI and the USAOs to resolve any issues in a cooperative way. The NSD interacts daily with FBI Headquarters components and the NSD's components have regular weekly meetings where the intelligence and criminal aspects of investigations and prosecutions are discussed to ensure that all points of view are debated and fully informed decisions are made. Simultaneously, the NSD's components work with the relevant USAOs to ensure that they have a full view of the intelligence equities at stake as well as understanding what a criminal prosecution can offer and the limits it might bring. The NSD often coordinates strategy meetings where all parties are present and options are discussed. The NSD explores with the FBI and the USAOs various strategies, including use of the Classified Information Procedures Act, that may be employed to protect intelligence equities in a resulting criminal prosecution in order to disrupt terrorist activities while still protecting intelligence equities and sources and methods and thereby resolves conflicts between the FBI and the USAOs. The NSD has a proven record of being able to resolve such issues on the rare occasions when they arise.

FBI Office of General Counsel:

QUESTION 13:

The FBI's Office of General Counsel, National Security Law Branch, provides direct legal support to FBI's national security investigations.

a. How would you describe the relationship between the National Security Law Branch and the NSD?

Answer: The NSD works closely with the National Security Law Branch, particularly in matters such as FISA authorization and discovery.

b. To the extent that there are any conflicts in legal advice between the NSD and National Security Law Branch, how are such conflicts resolved?

Answer: Such conflicts, to the limited degree they exist, are resolved through discussion and a cooperative attitude on both sides. If needed, the leadership of both organizations works together to resolve issues.

c. Are there situations in which you believe it is appropriate for the NSD to defer to the National Security Law Branch's legal judgments? If so, please describe.

Answer: There are certainly circumstances where NSLB makes legal judgments that are closely tied to the operational duties of the FBI where NSLB may be better situated to provide legal guidance. For instance, in an operational matter involving the FBI, and its authority to take action that does not implicate a court, the NSD would likely consult with the NSLB and defer to their legal judgments if appropriate.

Business Records Applications

QUESTION 14:

A recent Inspector General audit of applications to obtain business records under Section 215 of the Foreign Intelligence Surveillance Act (FISA) found lengthy time periods for processing such applications through the NSD. Past experience has shown that when administrative requirements are too burdensome or the approval process takes too long, FBI Special Agents may be reluctant to use these intelligence tools or may seek alternative ways to gather the same information.

a. Do you believe that Section 215 applications are being processed in the NSD in the most efficient manner?

Answer: Yes, I believe that Section 215 applications are now being processed in the NSD in the most efficient manner. FBI agents depend on Section 215 orders to support FBI national security investigations and to follow through on investigative leads. The process for obtaining these orders was designed to protect the privacy and civil liberties of Americans and to ensure that applications comply with statutory requirements. The Department of Justice's Inspector General in "A Review of the Federal Bureau of Investigation's use of Section 215 Orders for Business Records in 2006" found that this careful, measured approach—while resulting in some delay—has not caused any harm to the national security. In order to help ensure that the Department takes full advantage of this important tool in the future, the National Security Division has augmented the number of attorneys handling Section 215 applications, and is collaborating with the FBI to increase the efficiency with which requests for Section 215 authority are prepared. Indeed, the Inspector General noted that the FBI and the NSD were able to work together to obtain Section 215 authority expeditiously in 2006 when circumstances required immediate collection.

b. If not, what steps have you taken, or will you take if confirmed as the AAG, to improve this process?

Answer: See response to Question 14.a.

c. Is there any legal reason why National Security Law Branch attorneys should not be allowed to appear before the FISA Court for the purpose of seeking Section 215 orders?

Answer: It is the long standing practice of the Department of Justice that attorneys within the litigating departments, such as the National Security Division and the Criminal Division, appear before federal courts on behalf of investigating agencies, such as the Federal Bureau of Investigation. Indeed, criminal matters investigated by the FBI are prosecuted by the Criminal Division, National Security Division, or U.S. Attorneys' Offices. Similarly, it has been our practice that attorneys from the Office of Intelligence (formerly the Office of Intelligence Policy and Review) appear before the Foreign Intelligence Surveillance Court (FISC) for the purpose of seeking Section 215 orders, as well as in matters concerning other provisions of the FISA, on behalf of the FBI. While NSLB attorneys do not formally appear before the FISC, they routinely observe FISC proceedings involving the FBI.

Additionally, National Security Division lawyers appear on behalf of the other Intelligence Community agencies that have an interest in matters presented before the FISC. National Security Division lawyers, who represent the entire government rather than one agency or component of an agency, are aware of and protect the interests and equities of all of these agencies.

Department regulations support this practice. Section 0.72 of C.F.R. Title 28 outlines the functions that are assigned to and shall be conducted, handled, or supervised by the Assistant Attorney General for National Security (AAG). Paragraph (a)(6) states that the AAG shall administer the Foreign Intelligence Surveillance Act. Prior to the creation of the NSD, Department regulations concerning OIPR also supported this practice. Under those regulations, the Counsel for Intelligence Policy, who headed OIPR, supervised the representation of the United States before the FISC. In fact, several NSLB attorneys have been at some point detailed to OIPR, and represented the United States at the FISC.

Moreover, there is no need for NSLB lawyers to appear before the FISC in section 215 proceedings since applications for business records make up a very small number of FISA applications. In 2007, the Government made 2,371 applications to the FISC for authority to conduct electronic surveillance and physical search for foreign intelligence purposes and made only a tiny fraction of that number of applications to the FISC for access to certain business records (including the production of tangible things) for foreign intelligence purposes.

d. If confirmed as the AAG, will you recommend to the Attorney General that National Security Law Branch attorneys be given this access?

Answer: See response to Question 14.c.

DoJ Internal Structure:

QUESTION 15:

Under the previous Department of Justice internal structure, the Counsel for Intelligence Policy reported directly to the Attorney General. This allowed more direct access to the Attorney General for approval or notification of intelligence and national security matters. Since the creation of the NSD, the AAG for NSD reports through the Deputy Attorney General to the Attorney General.

a. What impact, if any, has this reporting structure had on NSD's ability to obtain expeditious approval from the Attorney General for operational activities or administrative requirements?

Answer: The Assistant Attorney General for National Security has to follow the same process as was followed previously. The Counsel for Intelligence Policy reported directly to the Deputy Attorney General; the Assistant Attorney General for National Security reports to the Deputy Attorney General as well. There has not been any impact on the NSD's ability to obtain expeditious approval from the Attorney General for operational activities or administrative requirements.

b. What statutory changes, if any, do you believe would be helpful to eliminate or reduce any operational delays resulting from these added reviews?

Answer: I do not believe that any statutory changes are necessary in this regard.

Attorney General Exemptions

QUESTION 16:

The Committee's Report accompanying its FY 2009 Intelligence Authorization Bill noted the Committee's concern that, because of statutory and administrative limitations, the current delegation levels for approving exemptions in undercover operations are insufficient to allow timely processing of such exemptions. The Committee further noted that while the creation of the NSD has improved the processing of some exemption requests, there remains room for improvement.

a. Please describe the authorities that have been delegated to the AAG for the NSD to certify undercover exemptions.

Answer: Various statutes limit the ability of the FBI to expend funds in a covert manner in support of undercover operations (UCOs). The Attorney General is permitted to authorize an exemption to these statutes in four circumstances for any undercover operation designed to collect foreign intelligence or counterintelligence. *See* P.L. 102-395, § 102(b)(1). First, the Attorney General may authorize the deposit of funds into a covert bank account. *Id.* at § 102(b)(1)(C). Second, the Attorney General may authorize the use of project-generated income to offset operational expenses. *Id.* at § 102(b)(1)(D). Third, the Attorney General may authorize the lease or purchase of property. *Id.* at § 102(b)(1)(A). Fourth, the Attorney General may authorize the establishment of a FBI proprietary business, a business entity created, owned, or controlled directly or indirectly by the FBI that holds itself out to the public and whose relationship with the FBI is concealed. *Id.* At § 102(b)(1)(B).

In 1990, then-Attorney General Thornburgh delegated to the Counsel for Intelligence Policy the authority to authorize certain of these exemptions: lease of property up to annual rent of $150,000; deposit of funds up to $150,000; and project-generated income up to $150,000 per year. *See* Attorney General Order 1415-1990. Congress, in creating the position of Assistant Attorney General for National Security, granted the Assistant Attorney General authority to approve exemptions if so designated by the Attorney General. *See* USA Patriot Improvement and Reauthorization Act of 2005, P.L. 109-177, § 506 (Mar. 9, 2006). With the establishment of the National Security Division, the Assistant Attorney General for National Security now possesses the authority previously delegated to the Counsel for Intelligence Policy, including the authority delegated with respect to the particular exemptions discussed above. *See* Attorney General Order 2839-2006.

b. Have such changes in delegation improved the process within the Department of Justice for certifying undercover exemptions?

Answer: While there have been no specific changes to the delegation beyond the assignment of the delegated authority to the Assistant Attorney General for National Security, the creation of the National Security Division has, among other things, improved the process within the Department of Justice for certifying undercover exemptions. As part of the reorganization of the

Office of Intelligence Policy and Review into the Office of Intelligence, the responsibility for overseeing undercover exemption requests has been assigned to the newly created Litigation Section, which consists of a small group of dedicated attorneys who are primarily responsible for the review of such exemption requests. In addition, the National Security Division has worked closely with the Federal Bureau of Investigation to improve the process by which information is shared and to expedite requests across the board, particularly when needed for operational reasons.

c. What authorities remain to be delegated and what is the status of those changes in delegation?

Answer: The Attorney General has delegated to the Assistant Attorney General for National Security the authority to approve the following types of exemptions: leases of property up to annual rent of $150,000; deposit of funds up to $150,000; and project-generated income up to $150,000 per year. All other exemption authority provided for by statute remains solely with the Attorney General. The Department of Justice continues to consider whether further delegations permitted by statute are necessary and appropriate at this time.

FBI briefings of ongoing investigations

QUESTION 17:

On several occasions, the FBI has declined to brief the Committee on matters relating to ongoing criminal investigations or prosecutions.

a. What is the policy of the Department of Justice regarding congressional briefings related to ongoing criminal investigations?

Answer: Although Congress has a clearly legitimate oversight interest in determining how the Department enforces statutes, Congressional inquiries during the pendency of a matter pose an inherent risk to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing. Consequently, we have sought whenever possible to provide information about closed, rather than open, matters. This enables Congress to analyze and evaluate how statutory programs are handled and the Department conducts its business, while avoiding the potential interference that inquiries into open matters entail.

The open matters concern is especially significant with respect to ongoing law enforcement investigations. The Department's longstanding policy is to decline to provide Congressional

committees with access to open law enforcement files. Over 60 years ago, Attorney General Robert H. Jackson informed Congress that:

> It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that the congressional or public access to them would not be in the public interest . . . .

40 Op. Att'y. Gen. 45, 46 (1941). Attorney General Jackson's position was not new. His letter cited prior Attorney General letters taking the same position dating back to the beginning of the 20th century (*id.* At 47-48).

The rationale for this policy is set forth in a published opinion of the Office of Legal Counsel issued by Charles J. Cooper, Assistant Attorney General for the Office of Legal Counsel during part of the Reagan Administration. *See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 76-77 (1986). Mr. Cooper noted that providing a Congressional committee with confidential information about active criminal investigations would place the Congress in a position to exert pressure or attempt to influence the prosecution of criminal cases. *Id.* at 76. Congress would become, "in a sense, a partner in the investigation," *id.*, and could thereby attempt to second-guess tactical and strategic decisions, question witness interview schedules, debate conflicting internal recommendations, and generally attempt to influence the outcome of the criminal investigation. Such a practice would significantly damage law enforcement efforts and shake public and judicial confidence in the criminal justice system. *Id.* at 76-77.

Decisions about the course of an investigation must be made without reference to political considerations. As one Justice Department official noted over 30 years ago, "the Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Submission of Open CID Investigation Files 2 (Dec. 19, 1969).

The disclosure of documents from our open files could also provide a "road map" of the Department's ongoing investigations. The documents, or information that they contain, could come into the possession of the targets of the investigation through inadvertence or a deliberate act on the part of someone having access to them.

In addition, the reputations of individuals mentioned in internal law enforcement and litigation documents could be severely damaged by the public release of information about them, even though the case might ultimately not warrant prosecution or other legal action. The Department takes very seriously its responsibility to respect the privacy interests of individuals about whom information is developed during the law enforcement process or litigation.

For all of these reasons, the U.S. Attorneys' Manual significantly limits the amount of information the components of the Department of Justice can provide related to ongoing criminal investigations. In most instances, Department of Justice personnel can only provide the public documents that have been filed in court and any information within the four corners of these documents. *See* U.S. Attorneys' Manual, §§ 1-7.500; 1-7.520; 1-7.530.

b. In your opinion, could these briefings be structured so as to provide the Committee with the information necessary for its oversight responsibilities while ensuring that prosecution strategies, discovery concerns, and privacy interests are protected?

Answer: We must work with Congress, pursuant to the National Security Act of 1947, 50 U.S.C. § 413, to ensure that appropriate information is provided for Congress to conduct oversight that does not implicate our concerns about prosecution strategies, discovery concerns, privacy interests, and other equities in pending cases.

Congressional Oversight

QUESTION 18:

Please describe in your own words the concept of congressional oversight of U.S. intelligence activities. In particular, characterize what you believe to be the obligations of the Department of Justice and the congressional intelligence committees, respectively, in the oversight process.

Answer: I believe that congressional oversight plays an important role in promoting accountability and improving government operations, including those of the Intelligence Community. Executive Branch leaders with intelligence responsibilities are obliged to work with the appropriate congressional committees to facilitate cooperation with the oversight process and resolve issues that may arise along the way. I believe that through the accommodation process, those committees and the Intelligence Community can and should work together in the oversight context to conduct oversight that supports the national security interests.

I have had a number of opportunities to participate directly in the oversight process by testifying at hearings before House Committees and by briefing numerous members of the Senate and House, as well as the staff of their committees. I have found the questioning that occurs in these hearings and briefings to be very helpful in prompting rigorous examination of difficult systemic issues faced by the Department. At the same time, it appeared that the information provided to the committees during these hearings and briefings gave members and staff greater understanding of the challenges

confronted by the Department.

QUESTION 19:

If confirmed as the AAG for the NSD, will you support the free flow of information needed for proper congressional oversight; if so, what will you do to ensure this free flow of information?

Answer: I appreciate the important role of Congressional oversight and will work to assure that we provide information responsive to committee oversight needs, consistent with our law enforcement and national security responsibilities.

Foreign Intelligence Surveillance Act

QUESTION 20:

The Department of Justice currently has significant oversight responsibilities with respect to intelligence activities by certain elements of the Intelligence Community. In addition, the recently enacted FISA Amendments Act of 2008 imposed additional, specific oversight requirements on the Attorney General.

a. Please describe NSD's role in performing oversight under the FISA Amendments Act of 2008.

Answer: With the recent enactment of the FISA Amendments Act of 2008, the NSD's Oversight Section is now charged with additional oversight responsibilities regarding the use of the new FISA provisions. The FISA Amendments Act provides for oversight both within the Executive Branch, including by Department of Justice and Intelligence Community Inspectors General, and by Congress and the Foreign Intelligence Surveillance Court (FISC).

Specifically, the new law provides for targeting non-U.S. persons overseas to acquire foreign intelligence information, subject to specific targeting and minimization procedures that are reviewed by the FISC. The law requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with those procedures every six months and to submit an assessment to the FISC and to Congress. We anticipate that these assessments will be based on findings from regular visits by the NSD and the DNI to the agencies implementing authorities granted in accordance with the new FISA statute. The NSD's Oversight Section will be responsible for preparing these compliance assessments.

The Oversight Section will also have responsibility for satisfying the Department's new Congressional reporting requirements under the FISA Amendments Act. Those requirements include reporting every six months concerning the implementation of the FISA amendments as well as other FISA-authorized activities and significant judicial decisions regarding FISA.

b. Please provide a comprehensive description of the actions being taken or planned to be taken by the NSD over the next six months to implement the Foreign FISA Amendments Act of 2008, including but not limited to the NSD's role in formulating guidelines and in assessing compliance with those guidelines and with targeting and minimization procedures.

Answer: Committee staff have recently been provided with a detailed briefing on this topic and will be given access to relevant documents. In addition, just as under the Protect America Act, the Committee will receive regular reports concerning our compliance assessments.

c. What steps have you taken, or will you take if confirmed, to ensure that the NSD has the resources to perform its added oversight responsibilities as determined by the Attorney General?

Answer: The National Security Division currently has the necessary resources but I will monitor these resources and will discuss requesting more resources with the Deputy Attorney General if necessary. I am committed to ensuring that the NSD has adequate resources to conduct these important oversight activities, and the NSD is in the process of reviewing the additional funding and positions it may need to conduct its additional oversight responsibilities stemming from the recently enacted FISA amendments. As is the practice in requesting other program enhancements in the Department, the NSD participates in the data calls and justifications for new resources that are a regular part of the Department's budget formulation and are submitted for consideration by the Department's leadership in the yearly budget process.

QUESTION 21:

The FISA Amendments Act also included important provisions to streamline FISA applications and orders and reduce the administrative burdens on the Department of Justice, FBI, and the FISA Court.

What steps has the NSD taken to implement these streamlining provisions?

Answer: Immediately upon enactment of the FISA Amendments Act, the NSD computer

systems were compliant with the streamlining provisions of the Act. The Department has also drafted an Executive Order that would authorize the Deputy Director of the FBI to certify FISA applications, as provided in the FISA Amendments Act.

Professional Experience

QUESTION 22:

For each of the following, describe specifically how your experiences will enable you to serve effectively as the AAG for the NSD. Include within each response a description of issues for the NSD that you can identify based on those experiences:

a. As the Acting AAG of the NSD

b. As the NSD's Principal Deputy Assistant Attorney General

c. As an Associate Deputy Attorney General

d. As a Special Counsel for the Office of General Counsel of the FBI

e. As an Assistant United States Attorney for the District of Columbia

Answer: As the Acting Assistant Attorney General for National Security, I have had the opportunity to manage the entire National Security Division (NSD). For the first time, I have the responsibility of supervising the NSD's practice before the Foreign Intelligence Surveillance Court (FISC), including our implementation of the Protect America Act and the FISA Amendments Act, and our oversight of the FBI's national security investigations. The FISA Amendments Act represents critical national security legislation and our implementation of the Act will be an extremely important issue for the NSD in the months to come. As part of our implementation, we will be expected to conduct effective and efficient oversight of intelligence operations under the legislation.

During my time as Principal Deputy Assistant Attorney General, I supervised national security investigations and prosecutions relating to international terrorism and to espionage. In the course of this work, I regularly confronted circumstances in which I balanced intelligence and law enforcement equities. In some instances, the balancing involved determining when intelligence collection should cease and a prosecution should be initiated and in other instances, the balancing related to presenting compelling evidence in a prosecution while protecting classified intelligence information. Such balancing will continue to be a significant challenge for

the NSD and one of our core responsibilities.

When I served as an Associate Deputy Attorney General, I was very involved in planning the stand-up of the NSD. As a result of this experience, I have a clear understanding of the overall mission of the NSD, as well as the reasoning behind the details of its structure and functions. This understanding will be very useful as we continue to ensure that we are taking full advantage of the opportunities created by the new division.

During my time in the Office of General Counsel of the FBI, I worked with FBI personnel on FISA issues. This work afforded me the opportunity to see the FISA process from the perspective of the FBI and to understand the importance of FISA as a collection tool for the FBI. The perspective I gained has been extremely valuable to me in the NSD, particularly in appreciating that we must ensure that we always work with urgency and precision in preparing applications for the FISC.

I served as an Assistant United States Attorney in the District of Columbia for about ten years. I draw upon my extensive experience every day in assessing national security prosecutions. The NSD is responsible for overseeing our national security prosecutions, and we must continue to scrutinize proposed prosecutions with great care.

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. **NAME:** John Patrick Rowan
2. **DATE AND PLACE OF BIRTH:** September 24, 1964, Bethesda, MD
3. **MARITAL STATUS:** Married
4. **SPOUSE'S NAME:** Patricia Ann Heffernan
5. **SPOUSE'S MAIDEN NAME IF APPLICABLE:** Not applicable
6. **NAMES AND AGES OF CHILDREN:**

NAME [REDACTED] **AGE**

7. **EDUCATION SINCE HIGH SCHOOL:**

INSTITUTION OF DEGREE	DATES ATTENDED	DEGREE RECEIVED	DATE
University of Virginia School of Law	9/86-5/89	J.D.	5/21/89
Dartmouth College	9/82-6/86	B.A.	6/8/86

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT.)

EMPLOYER	POSITION/TITLE	LOCATION	DATES
U.S. Department of Justice	Acting Assistant Attorney General National Security Division	Washington, D.C	3/31/08-present
U.S. Department of Justice	Principal Deputy Assistant Attorney General National Security Division	Washington, D.C	10/2/06-3/31/08
U.S. Department of Justice	Associate Deputy Attorney General Office of the Deputy Attorney General	Washington, D.C	11/05-10/06
U.S. Department of Justice	Senior Counsel to the Assistant Attorney General Criminal Division	Washington, D.C	10/03-11/05
Federal Bureau of Investigation	Special Counsel and Acting Deputy General Counsel Office of General Counsel	Washington, D.C.	12/02-10/03
U.S. Department of Justice	Special Counsel to the Director Executive Office for United States Attorneys	Washington, D.C	11/01-06/02
U.S. Department of Justice	Senior Litigation Counsel and Assistant United States Attorney United States Attorney's Office for District of Columbia	Washington, D.C	01/01-12/02
U.S. Department of Justice	Assistant United States Attorney United States Attorney's Office for District of Columbia	Washington, D.C	01/91-11/01
Covington & Burling	Associate	Washington, D.C.	09/89-01/91
Hughes, Hubbard	Summer Associate	New York, NY	06/88-08/88

Stein, Mitchell & Mezines	Summer Associate	Washington, D.C.	06/87-08/87
WilmerHale	Paralegal	Washington, D.C.	06/86-08/86

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8):

All of my government experience is listed in my response to Question 8.

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

From November, 2001 to June, 2002, I served (on detail) in the Executive Office for United States Attorneys (EOUSA). In that position, I managed national anti-terrorism initiatives that were designed, implemented and/or coordinated through EOUSA for the Department of Justice. The work included identifying and providing guidance on legal issues that would likely arise in the implementation of the initiatives, which were implemented in the field through the United States Attorney's Offices and the Federal Bureau of Investigation (FBI).

Starting in December, 2002, I worked on national security issues in the FBI's Office of General Counsel. I provided analysis and guidance to FBI personnel on the Foreign Intelligence Surveillance Act (FISA) and other investigative authorities, including Section 215 of the USA PATRIOT Act. During this time, I participated in meetings with the Department's Office of Intelligence Policy and Review concerning specific FISA applications, as well as the FISA process then in use. I also worked with FBI and Department personnel on specific issues arising in national security investigations, briefed senior officials of the FBI and the Department on national security matters, and testified on one occasion before the House Permanent Select Committee on Intelligence. Through this work, I gained an understanding of the FBI's national security program generally, including the importance of FISA as a collection tool.

In October, 2003, I joined the Criminal Division as a Senior Counsel to the Assistant Attorney General (AAG). My focus was counterterrorism matters. I assisted the AAG and a Deputy Assistant Attorney General in supervising investigations and prosecutions relating to international terrorism, but I did not have direct responsibility for any cases. I worked regularly with prosecutors from the Counterterrorism Section and Assistant United States Attorneys in the field on issues relating to their cases. I reviewed proposed charges, and plea agreements in terrorism prosecutions and made recommendations to the AAG as to whether the charges and agreements should be approved. From time to time, I briefed senior officials on pending investigations and prosecutions. I also reviewed proposed legislation concerning terrorism matters. My work also involved regular liaison with the Department of Defense, Department of

State and other government agencies on a range of issues concerning law enforcement investigations, intelligence collection, and enemy combatants. My position in the Criminal Division offered me the opportunity to gain a thorough understanding of a range of counterterrorism issues, including the balancing of intelligence and prosecution equities and the criminal statutes employed in terrorism prosecutions.

From November, 2005 to October, 2006, I served as an Associate Deputy Attorney General. In that position, I assisted the Deputy Attorney General in the management of the national security functions of the Department, including all espionage, counterterrorism, and counterintelligence investigations. On behalf of the Deputy Attorney General, I supervised the Office of Intelligence Policy and Review, the FBI's National Security Branch, and the stand-up of the new National Security Division (NSD). This work gave me a full understanding of the purposes of the new NSD and the range of challenges that the NSD would confront. I also served as a Department liaison to the intelligence community. In that capacity, I had a number of opportunities to work with personnel of the CIA and NSA on matters of concern to their agencies. I also worked on discovery issues arising from the Terrorist Surveillance Program.

Since October, 2006, I have served as a Deputy Assistant Attorney General in the NSD, and, in that capacity, I manage the Department's national security investigations and prosecutions. I supervise prosecutions relating to international terrorism (through the Division's Counterterrorism Section) and to espionage (through the Division's Counterespionage Section). I review all charges and plea agreements proposed by Department components in national security prosecutions. I supervise the NSD's Export Enforcement Initiative and the NSD's support to the Office of Military Commissions. I have continued to work on discovery issues arising from the Terrorist Surveillance Program.

In April, 2008, I became Acting Assistant Attorney General for National Security. I continue to supervise prosecutions, and I am now responsible for formally approving charging decisions on behalf of the Department. I now also supervise the NSD's practice before the Foreign Intelligence Surveillance Court, including our implementation of the Protect America Act and the FISA Amendments Act and our oversight of the FBI's national security investigations. I also manage the Department's participation in the inter-agency Committee for Foreign Investment in the United States (CFIUS).

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT):

Director's Award for Superior Performance as an Assistant United States Attorney by the Executive Office for United States Attorneys (2005)

Numerous Department of Justice Special Achievement Awards

Order of the Coif, University of Virginia School of Law (1989)

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS):

ORGANIZATION	OFFICE HELD	DATES
District of Columbia Bar Association	none (member)	1990 to present
Wildwood Manor Pool Bethesda, MD	none (summer family membership)	Summer, 2008
Bannockburn Pool Bethesda, MD	none (summer family membership)	Summer, 2004

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT OR TRANSCRIPT. TO THE EXTENT POSSIBLE, PLEASE PROVIDE A COPY OF EACH SUCH PUBLICATION, TEXT, OR TRANSCRIPT):

Participant in panel discussion on National Security Law Challenges for the New Administration, Georgetown Center on National Security and the Law, Georgetown University Law Center (April 10, 2008). I did not speak from prepared text, and I cannot locate my notes, but the panel was videotaped. Enclosed please find a dvd of the discussion.

Testimony regarding enforcement of federal espionage laws, before the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, U.S. House of Representatives (January 29, 2008) – copies of written testimony attached.

Testimony regarding the role of the Department of Justice in the FBI's confidential human source operations, before the Subcommittee on Terrorism, Human Intelligence, Analysis and Counterintelligence, Permanent Select Committee on Intelligence, U.S. House of Representatives (July 20, 2006) – copies of written testimony attached.

During 2004-2005, I participated in several panel discussions that were primarily focused on the U.S.A. PATRIOT Act, including ABA panels in Minneapolis and Washington, D.C. and a panel hosted by the Montgomery County (Maryland) Bar Association. I do not recall the dates of these discussions and I do not have notes of my remarks during those discussions. To the best of my recollection, they were generally focused on Sections 206, 213 and 215.

Participant in panel discussion on the U.S.A. PATRIOT Act & E-Surveillance sponsored by the

Advisory Committee to the Congressional Internet Caucus, June 30, 2005, U.S. Capitol Building (Room HC-5). I cannot locate any notes of my remarks, but I believe that I discussed PATRIOT Act provisions including Sections 206, 213 and 215.

Testimony regarding the FBI's use of the Foreign Intelligence Surveillance Act, before the Permanent Select Committee on Intelligence, U.S. House of Representatives (July 23, 2003) – copies of written testimony attached.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE IN THE POSITION FOR WHICH YOU HAVE BEEN NOMINATED):

The first priority of the Department of Justice is to combat terrorism and other threats to the national security. In order to advance this mission, the National Security Division (NSD) was created; it was produced through a merger of our intelligence attorneys in the Office of Intelligence Policy and Review and our prosecutors in the Criminal Division's Counterterrorism and Counterespionage Sections. In managing the coordination of our intelligence and prosecutorial assets in pursuit of our mission, I will be able to call on many years of experience as a federal prosecutor, and extensive experience in the national security realm, including intelligence matters. I am well acquainted with the statutes employed in international terrorism and espionage prosecutions, from several years of supervising prosecutions in these areas. In addition, through this work, I have a clear understanding of the unique aspects of national security prosecutions, including the challenges of protecting intelligence equities while marshaling evidence in support of a conviction. I have worked closely with United States Attorneys in pursuing these cases.

During my time at the FBI and at the Department, I have worked with, and on behalf of, the Intelligence Community on a range of issues. I am very familiar with the use of FISA and other intelligence authorities, and I am very aware of the importance of a robust intelligence collection program in combating the terrorist threat we face. I am very aware of the need to pursue intelligence while developing prosecutions, so that all our tools for neutralizing threats are available. I have first-hand experience in balancing intelligence and prosecution options in our investigations.

I was involved in planning the start-up of the NSD and I was a member of the senior leadership team when the NSD began its work. Since the NSD commenced operations, I have been directly managing two of the Division's sections and working closely with the other elements of the Division. Accordingly, I am well acquainted personally with the attorneys, their supervisors and the staff of the NSD. I have gained a great deal of understanding of the issues that our attorneys face and the most effective ways to support and manage them in resolving those issues.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS):

My father, William J. Rowan, III, is a Circuit Court Judge in Montgomery County, Maryland. In Maryland, Circuit Court Judges are appointed by the Governor, but then must stand for election in contested, non-partisan elections. In 2002, my father and a number of other sitting judges ran in such an election, and I assisted by distributing informational fliers near polling places on the day of the primary and the general election. I had no title or formal responsibilities in the campaign, which was non-partisan.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE):

None

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

No.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

When I was employed by Covington & Burling as an associate in 1989-1991, I believe that others in the law firm likely represented foreign governments or entities controlled by a foreign government, but I do not have any knowledge of the details of those representations.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

My spouse and I adopted our daughters, REDACTED As part of that process, which was conducted through an American adoption agency, we paid fees or mandatory donations to entities of the REDACTED government, including the REDACTED and the social welfare institute in which my daughters had lived.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

None.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

I am not aware of any circumstances that could create, or appear to create, a conflict of interest.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Since I am nominated for a position at the Department of Justice and I am currently a Department of Justice employee, I will continue to be a Department of Justice employee.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

Since I am nominated for a position at the Department of Justice and I am currently a Department of Justice employee, I will continue to be a Department of Justice employee.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

I have no plans, agreements or understandings, written or unwritten, concerning employment after serving in the position for which I am seeking confirmation.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

No.

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

My spouse is employed as an Assistant United States Attorney in the U.S. Attorney's Office for the District of Columbia, a position she has held for about eleven years. She currently serves in the Appellate Division, so she could be assigned to litigation involving a terrorism or espionage prosecution.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE

None.

27. LIST ALL GIFTS EXCEEDING $100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

None.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION
Personal Residence Chevy Chase, MD	$ 1,125,000	Estimate of fair market value
Thrift Savings Plan	$ 680,697	Market value as of July, 2008

See attached Schedule A to OGE Form 278 (signed by me as an incumbent filer on May 9, 2008), attached and incorporated by reference.

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF $10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT

None.

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

"No" to all questions.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA,

AND OTHER ITEMS EXCEEDING $200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

	200_	200_	200_	200_	200_
SALARIES					
FEES		[REDACTED]			
ROYALTIES					
DIVIDENDS					
INTEREST					
GIFTS					
RENTS					
OTHER					
TOTAL					

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

We file a federal tax return and a State of Maryland tax return.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

Not to my knowledge.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL,

PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN $200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I have been employed by the federal government for the past five years, and my only "client or customer" has been the United States.

I am licensed to practice law in the District of Columbia and in Maryland. (In Maryland, I am currently on inactive status. I voluntarily entered that status on July 1, 2000, because I was not practicing in Maryland and I was relying on my membership in the District of Columbia Bar in my practice as a Department of Justice lawyer.)

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

My spouse and I do not intend to place our financial holdings in a blind trust. I will resolve any potential conflict of interest relating to our financial holdings by consulting with a Department of Justice ethics officer.

36. IF APPLICABLE, ATTACH THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE FORMS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT.

I have attached an OGE Form 278, signed by me as an incumbent filer on May 9, 2008), which constitutes my most recent filing. I have also attached an OGE Form 278, which I signed on March 15, 2007 and which was treated as a combined new entrant/annual filer report. These were the only disclosure forms I was required to file in connection with my current position in the last three year period.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PROVIDE DETAILS.

No, not to my knowledge.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY

FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PROVIDE DETAILS.

No, not to my knowledge.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

I was a member of the class of plaintiffs in a class action lawsuit brought against the Department of Justice by Department of Justice attorneys concerning overtime pay. The suit was filed in the United States Court of Federal Claims, No. 98-896C. I was not a named plaintiff and I had no role in the proceedings. The lawsuit was ultimately dismissed.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PROVIDE DETAILS.

I have been asked to provide information relating to my job responsibilities in a number of different investigations. Over the years, I have been interviewed in connection with Inspector General and GAO investigations and commission investigations. I have been interviewed in the course of investigations relating to disclosures of classified information, because I was among those who knew the information that was leaked. I was also interviewed in connection with the CIA tape destruction matter.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

PART F - SECURITY INFORMATION

44. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

45. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

I was required to take a polygraph examination before starting employment at the FBI Office of General Counsel in December, 2002.

46. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

AFFIRMATION

I, John Patrick Rowan, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

(Date) 9-12-08 **(Name)**

(Notary)

Rhodora N. Woolner
Notary Public for the District of Columbia
My commission Expires: April 30, 2010

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be Assistant Attorney General for National Security, Department of Justice, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

Signature

Date: 9-12-08

TAB 6

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 26, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John Patrick Rowan, who has been nominated by President Bush for the position of Assistant Attorney General, National Security Division, Department of Justice.

We have reviewed the report and have also obtained advice from the Department of Justice concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated June 23, 2008, from the agency's ethics official, outlining the steps Mr. Rowan will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Rowan is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Don W. Fox
General Counsel

Enclosures

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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: Rowan			First Name and Middle Initial: John P	
Position for Which Filing	Title of Position: Assistant Attorney General for National Security			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: U.S. Department of Justice, 950 Pennsylvania Ave, N W, Washington, DC			Telephone No. *(Include Area Code)*: 202-514-1172	
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 Assistant Attorney General, National Security Division (8-19-07 to present) Deputy Assistant AG, NSD (10/06 to 8/07)				
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: John Potter Rowan			Date *(Month, Day, Year)*: June 2, 2008	
Other Review (If desired by agency)	Signature of Other Reviewer: Jane M. Rodgers			Date *(Month, Day, Year)*: June 20, 2008	
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)*: June 23, 2008	
Office of Government Ethics Use Only	Signature: [illegible]			Date *(Month, Day, Year)*: 6/26/08	

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

JUN 24 2008

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Reporting Individual's Name: Rowan, John P

SCHEDULE A

Page Number: 2 of 7

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

	Asset	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	Blind Investment Trust	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
Example	Central Airlines Common				x												x						x										
Example	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
Example	Keystone Equity Fund					x																		x									
Example	IRA: Heartland 500 Index Fund																								x								
1	Vanguard Prime Money Market Fund				X									X			X						X										
2	Justice Federal Credit Union			X															X		X												
3	Fidelity Disciplined Equity Fund			X										X			X					X											
4	AIM Real Estate Class A Fund			X										X			X					X											
5	American AmCap Fund Class F AMCFX		X											X			X					X											
6	BBH Real Return Fund CL N BBHX		X											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: Rowan, John P

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	American Europacific Growth Class F AEGFX			X										X			X					X											
2	Columbia Value and Restructuring Cl Z (formerly Excelsior Value and Restructuring)		X											X			X				X												
3	Fairholme Fund (FAIRX)	X												X							X												
4	Fidelity Advisor Diversified Intl T FADIX			X										X			X			X		X											
5	Heartland Value HRTVX			X										X						X		X											
6	Mainstay High Yield Corp Class A MHCAX		X											X			X					X											
7	Meridian Growth Fund MEDXX			X										X						X		X											
8	Weitz Short Intermed Income Fund WEFIX		X											X			X			X		X											
9	Fidelity Municipal Money Market		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: Rowan, John P

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	AFIS Growth Fund (Class 2)		X											X							X												
2	AFIS Growth-Income (Class 2)		X											X							X												
3	Delaware VIP Real Estate Income Trust (REIT)		X											X							X												
4	DWS Sml Cp Indx VIP Fd CA		X											X							X												
5	Lincoln National Fixed Account		X											X							X												
6	AFIS International Fund (Class 2)		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.

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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: Rowan, John P

SCHEDULE B

Page Number 5 of 7

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	$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: Rowan, John P

SCHEDULE C

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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	$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 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			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Rowan, John P		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					
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 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		
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4		
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6		

U.S. Department of Justice

Justice Management Division

Departmental Ethics Office

Washington, D.C. 20530

JUN 23 2008

Mr. Robert Cusick
Director
Office of Government Ethics
1201 New York Avenue, NW
Suite 500
Washington, DC 20005-3919

Dear Mr. Cusick:

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 John Patrick Rowan, who has been nominated by the President to serve as Assistant Attorney General for the National Security 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 Mr. Rowan recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute, has a financial interest. Mr. Rowan 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 his financial interests.

We have advised Mr. Rowan that because of the standard of conduct on impartiality at 5 CFR 2635.502, he should seek advice before participating in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interest of a member of his household, or in which he knows that a person with whom he 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
Policy, Management, and Planning and
Alternate Designated Agency Ethics Official

Enclosure

NOMINEE STATEMENT

I have read the attached letter of June 23, 2008 of Michael H. Allen, Deputy Assistant Attorney General for Policy, Management, and Planning and Alternate Designated Agency Ethics Official, and agree to the steps set forth in the letter.

John Patrick Rowan

6-23-08
Date

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Congressional Testimony

Testimony of Patrick Rowan, Acting Deputy General Counsel, FBI Before the House Permanent Select Committee on Intelligence July 23, 2003

Mr. Chairman, Ranking Member Harman, and members of the Committee, thank you for inviting me to appear today to testify on behalf of the Federal Bureau of Investigation concerning the Foreign Intelligence Surveillance Act of 1978 (FISA). Significant changes in FISA law arising from the passage of the USA PATRIOT Act, Pub. L. 107-56 (2001), and the Intelligence Authorization Act for Fiscal Year 2002, Pub. L. 107-108 (2001), as well as the November, 2002 decision of the Foreign Intelligence Court of Review, have broadened the opportunities to employ FISA and FISA-generated intelligence information. I would like to focus my remarks on some of the steps we have taken to ensure that the FBI is fully and properly utilizing the FISA statute. I will also briefly address the utility of S. 113, a bill that seeks to extend the coverage of FISA to non-United States persons who engage in international terrorism or activities in preparation for international terrorism, without a showing that they are doing so on behalf of an international terrorist group.

In order to ensure that all FBI personnel have a clear idea of the scope and application of FISA, with the assistance of the Office of Intelligence Policy and Review (OIPR) and other components of the Department of Justice, we have been engaged in a great deal of training.

On December 24, 2002, the Deputy Attorney General issued a directive instructing OIPR, the Criminal Division, and the FBI, in consultation with the CIA, to establish and implement a comprehensive training curriculum on FISA and related matters for all Department lawyers and FBI agents who work on foreign intelligence and counterintelligence investigations. In response, a comprehensive training curriculum was established that is being presented over the course of a four day National Security Conference. The first conference was held beginning on May 6, 2003. Five additional sessions have been held since and there are two more scheduled. The curriculum includes instruction on the mission and organization of the Intelligence Community, an overview of FISA, information sharing, coordination between law enforcement and intelligence components, the use of FISA information in support of criminal litigation, and practical and tactical decision-making.

The training conferences, which are attended by FBI Division Counsels from each field office as well as Special Agents and Assistant United States Attorneys, are to be followed by training in each field office around the country. The FBI's Office of Training and Development has created a distance learning program on FISA and information sharing for all agents and analysts working on counterterrorism or counterintelligence investigations. This on-line training will be followed up by face-to-face training. Instructional teams composed of senior agents and prosecutors who have already attended the National Security Conference will present two days of instruction based on the curriculum taught at the Conference.

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These training sessions are expected to be completed by November 2003.

Attorneys in the FBI's National Security Law Branch within the Office of the General Counsel (OGC) have also been engaged in less formal training to the field on FISA. Since September 11, Branch attorneys have conducted approximately 70 training sessions (to groups ranging from 20 to several hundred) on FISA issues at Quantico, at Headquarters, and in the field. In addition, to improve advice?giving in the field, in early 2003, OGC sponsored a four?day conference on counterterrorism for all Chief Division Counsels that included lengthy sessions on FISA and information sharing.

This training should produce a greater understanding of and facility with FISA among agents and prosecutors, which will undoubtedly translate into increased use of this investigative tool. In the meantime, we have taken steps to improve the process by which FISA orders are secured and distributed.

Until recently, the request for a FISA was sent from the field to Headquarters in the form of an e-mailed Letter Head Memorandum (LHM). There was no uniform format for the FISA LHMs, and they ranged from single paragraphs lacking in facts to comprehensive documents that could be easily converted into finished declarations. Starting March 1, 2003, field offices are now required to follow a standard format, distributed as an eight-page FISA request form. The form, which was originally designed by OIPR, elicits information about the target's status, the facts and circumstances that establish probable cause to believe the target is an agent of a foreign power, and particulars about the facilities and places to be targeted and the minimization procedures to be employed. The form also requires confirmation that field offices have verified the accuracy of facts alleged in the form. The request form is filled out by the case agent in the field office, reviewed and approved by the field office's Chief Division Counsel and the Special Agent-in-Charge, and then sent via e-mail to an operational unit within the appropriate Headquarters Division.

We expect that the use of this standard form will aid agents in the field by making clear what information is expected from them in order to begin the FISA initiation process. It should result in a more organized and complete request from the field.

Field agents use the same form to request a renewal of FISA authority, which in most cases must be secured within 90 days after initiation of FISA surveillance. Starting March 1, 2003, however, field agents have been instructed to send their renewal requests directly to OIPR, with a copy to FBI Headquarters, to expedite their time-sensitive processing.

In order to ensure that each FISA initiation request that is passed from FBI Headquarters to OIPR is viable and complete, we are implementing a new process in which the FBI's National Security Law Branch attorneys will receive a copy of each counterterrorism initiation request when it arrives in from the field. The attorneys will work closely with Supervisory Special Agents and analysts in counterterrorism to finalize each request and submit it to OIPR in a timely fashion. The goal of this change is to increase the level of legal review given to FISA initiations at the front end, identifying at an early stage any deficiencies in the factual basis for the applications and thereby decreasing the amount of time and effort that OIPR attorneys must invest in order to prepare a court-ready package. In

order to accomplish this task, the National Security Law Branch has been re-organized and attorneys from other branches of the General Counsel's Office have been re-assigned to National Security Law. The end result will be a doubling of the number of attorneys working on counterterrorism FISA initiation requests.

In an additional effort to improve the efficiency of the process, the FBI established a FISA Unit within the National Security Law Branch in November, 2002. The FISA Unit, which is currently staffed with a Unit Chief and six staff members, performs administrative support functions for the FISA process. The FISA Unit is currently working with contractors to design, install, and test a new FISA management system. The FISA management system is an automated tracking system that will electronically connect field offices, Headquarters, the National Security Law Branch, and OIPR to one another. It will transmit FISA documents between the participants in the FISA process and allow them to track the progress of FISA packages during each stage of the process.

The management system should speed up the process in several ways. First, the FISA request form will be loaded onto the system so that field agents can quickly insert their case-specific information into a standardized form. In addition, by tracking the progress of each package, the system will identify delays in the process. If an agent is not making progress on an initiation request, the system will show that delay and a monitoring analyst in the FISA Unit can e-mail a reminder to that person and others that the request is awaiting completion. Also, it will allow OIPR to request additional information from the field via the system, so that questions can be resolved in a timely fashion. The FISA management system is expected to be ready for testing in several field offices by end of summer, and operational nationwide by October, 2003.

In addition to managing the development and operation of the management system and ensuring that those involved in the FISA process adhere to reasonable time-frames, the FISA Unit is responsible for distributing the FISC's orders and warrants to the appropriate field offices for their use and for service upon communications carriers and other persons specified in the orders and warrants. The FISA Unit, OIPR, and the Foreign Intelligence Surveillance Court have all taken steps to improve the distribution of orders and warrants after the court approves them.

Since September 11, 2001, the use of FISA has dramatically increased. We expect this trend to continue, and we will continue our efforts to improve the process so that we may gain the full benefit of the statute.

There is a bill pending that would bring about an additional change in FISA. S. 113 would amend FISA's definition of "foreign power" to include "any person, other than a United States person, or group that is engaged in international terrorism or activities in preparation therefor."

As you are aware, since the time that FISA was first enacted, the face of terrorism has changed. Where we once saw terrorism formed solely around organized, almost para-military groups, we now have learned of individuals willing to commit indiscriminate acts of terror. Some of these individuals will turn out to be affiliated with groups we have not yet been able to identify, but it may also be that they are so-called "lone wolf" international terrorists, non-U.S. persons who seek to change governmental policies for their own reasons or to bring about destruction in what they view as retaliation for aspects of U.S. foreign policy with which they do not agree.

Usama bin Laden's organization, al Qaeda, is but one of a number of terrorist organizations that are loosely networked together that purport to be acting in the furtherance of their own radical view of Islam. On occasion, these organizations and their leaders issue public fatwas or religious rulings calling for their followers to attack Americans and American interests. Of course, one need not be a member of these organizations to be moved to act upon such a call to violence.

There are radical militants around the globe who share common ideas and goals, but are not linked by organizational structure. Under these circumstances, it is not at all surprising that our investigations would occasionally identify individuals who appear to be engaged in terrorist activities but for which we have not identified a connection to terrorist groups, or who have tenuous ties to multiple organizations. Some may well be acting on behalf of groups but exercising operational discipline that makes the connections exceedingly difficult to uncover. The amendment proposed in S. 113 would aid our investigation of such individuals.

On behalf of the FBI, I want to again express my appreciation for the opportunity to appear before you here today. I would be pleased to answer any questions that you might have.

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Testimony of
Patrick Rowan
Associate Deputy Attorney General
Department of Justice
before the
Subcommittee on Terrorism, Human Intelligence, Analysis and Counterintelligence
Permanent Select Committee on Intelligence
U.S. House of Representatives
July 20, 2006

Chairman Tiahrt, Ranking Member Boswell, and Members of the Subcommittee, I am pleased to be here today to talk with you about the role of the Department of Justice in the FBI's confidential human source operations. While I am not in a position to give details about the deliberations currently underway within the Department to revise the Attorney General Guidelines governing the FBI's use of human sources, it may be helpful to outline our historic role in providing both guidance and oversight regarding human source operations.

The support and guidance provided by the Department for the FBI's human source operations fall into three broad categories. First, the Attorney General has issued guidelines that provide the essential framework for the FBI's internal rules governing their use of both confidential informants and national security assets. Second, the Department exercises oversight over many sensitive aspects of the FBI's human source operations, from approving the use of various categories of sensitive confidential informants to authorizing the participation of FBI human sources in otherwise illegal activity. Finally, Department attorneys at Main Justice and in U.S. Attorney's Offices offer guidance and support every day to FBI agents working with human sources, both to ensure the effectiveness and integrity of FBI human source operations and to ensure that information and evidence gathered by FBI human sources is collected and maintained in a manner that will allow their use in court.

Since the September 11, 2001 terrorist attacks, the Department has worked very closely with the FBI in support of the FBI's ability to collect human intelligence vital to protecting the nation against national security as well as criminal threats. I am pleased to report that we have made substantial progress on this crucial endeavor. We have eliminated the wall that previously limited communication between agents and prosecutors working on national security and criminal investigations. Our attorneys now work with FBI agents at every stage of national security and criminal investigations, and have access to the full range of national security and criminal legal and investigative tools to gain crucial information and evidence in a terrorism investigation.

Guidelines issued by the Attorney General currently set basic rules and procedures for many aspects of the FBI's operations. Following the September 11, 2001, terrorist attack, the Attorney General directed a general review and revision of the guidelines relating to national security or criminal matters.

The first product of the post-9/11 guidelines revision was the reissuance with modifications of four guidelines sets on May 30, 2002. These are the guidelines sets which provide the basic operating rules and procedures for: (i) criminal investigations and criminal intelligence investigations by the FBI generally, (ii) FBI undercover operations, (iii) the use of confidential informants by Department of Justice law enforcement agencies, and (iv) consensual monitoring of oral communications by all federal agencies.[1]

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[1] By title, these guidelines are: (i) "The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations." (ii) "The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." (iii) "The Attorney General's Guidelines Regarding the Use of Confidential Informants." (iv) "Procedures for Lawful, Warrantless Monitoring of Verbal Communications."

The next product was the issuance on October 31, 2003, of revised guidelines for the FBI's investigation of threats to the national security – principally defined to include international terrorism and espionage – and collection of foreign intelligence. These are the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG). There are also separate Attorney General guidelines, issued in 1988, regarding the reporting of violations of law in national security investigations, and the authorization of otherwise illegal activities by FBI agents and assets in such investigations.[2] These guidelines in part fulfill specific requirements under Executive Order 12333 §§ 1.7(a), 2.3 for Attorney General-approved procedures relating to the collection and use of U.S. person information in the intelligence context, and for reporting of illegal activities, as well as serving broader operational purposes as discussed below.

Finally, there are Attorney General guidelines for extraterritorial criminal investigations and extraterritorial use of criminal informants by the FBI, which were issued in 1993.[3] These guidelines have not been revised post-9/11, but they are subject to continuing review.

I would emphasize that the existence of these guidelines does not reflect any arbitrary desire to restrict the FBI's activities, or exaggerated concerns that the FBI will engage in abuses if not closely watched by other Department of Justice components and officials. Rather, they serve critical positive purposes in carrying out the Department's core mission – protecting the

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[2] "Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations."

[3] "Attorney General Guidelines for Extraterritorial FBI Operations and Criminal Investigations" and "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions."

national security of the United States, and protecting the United States and its people from crime. For example, the Attorney General guidelines governing national security investigations include requirements that other components and officials in the Department – including the Criminal Division, the Office of Intelligence Policy and Review (to be incorporated in the new National Security Division), and relevant United States Attorneys' offices – be notified, consulted, and provided information concerning such investigations. These requirements promote effective coordination of Department-wide activities to protect the national security, including coordination of investigative and prosecutive strategies.

The standards that have been developed for these purposes in the post-9/11 period have been carefully worked out with the FBI to eliminate or minimize any potential delay or interference with investigative activities, and to ensure rather that they contribute to the realization of investigative goals. Positive investigative and prosecutive objectives tend to converge with oversight objectives in this context. For example, if the use of assets or informants in an investigation oversteps the bounds of legality or prudence, that may jeopardize our subsequent ability to prosecute successfully the terrorists or spies who are the subject of the investigation. Hence, the same cooperative planning which helps to ensure that legal norms are observed also helps to ensure that the investigative activities achieve their ultimate goals.

The current focus of the Department's guidelines revision activities is the general reconfiguration of human source operations that is being carried out by the FBI. In both the national security context and in ordinary criminal investigative contexts, a critical tool is the ability to utilize non-employee individuals who are willing to establish an ongoing relationship with the FBI, and to provide important investigative information on a confidential basis. Until

now, individuals of this type have been treated as separate classes, depending on the types of investigative activities in which they are used – "informants" in the context of ordinary criminal investigations, and "assets" on the national security or intelligence side. The current project involves replacing the previously separate categories of informants and assets with a single category of "human sources," and establishing more uniform standards and procedures for the use of all types of human sources.

From a contemporary perspective, the divide between "assets" and "informants" could be seen as a relic of the "wall" between criminal investigation and intelligence collection, which existed to destructive effect pre-9/11. It is not consistent with existing investigative realities, because the same individuals are frequently used to obtain information both concerning national security matters and concerning other types of criminal matters. Moreover, the ability to utilize human sources has been impeded at a practical level, given the difficulty for agents in having to apply quite different sets of rules depending on what label a source bears.

As to the current guidelines' bearing on the use of human sources, the principal set is the Attorney General's Guidelines Regarding the Use of Confidential Informants. These guidelines provide basic standards and procedures on the use of criminal informants by the FBI and other Justice Department law enforcement agencies, including rules for such matters as determining the suitability of an individual for use as an informant, the instructions that should be given to informants, special approval requirements for the use of individuals in certain sensitive categories as informants, payment of informants, authorization of otherwise illegal activity, and reporting of unauthorized illegal activity. However, the Confidential Informants Guidelines currently do not apply to assets – i.e., confidential sources used in national security

investigations or foreign intelligence collection. Corresponding issues in relation to assets are addressed in a more fragmentary way in other Attorney General guidelines, including certain provisions in the NSIG relating to assets and the 1988 Attorney General guidelines governing reporting of illegal activities and authorization of otherwise illegal activities (by agents or assets).

The treatment of parallel issues under the existing guidelines – concerning basic standards, what sensitive matters are subject to special approval requirements and by whom, and so on – can be quite different for "assets" and "informants." But in many areas, there seems to be no reason in policy for having significantly different standards and the differences seem to reflect only the disparate historical origins of the guidelines for national security matters versus those for ordinary criminal investigations.

These differences have been tolerable – though operationally problematic – as long as assets and informants have been treated as distinct categories. However, the merger of assets and informants into a single class of human sources has required us to rethink this issue across the board. Where different standards and procedures have heretofore applied to assets and informants in relation to particular issues – such as determination of suitability, instructions, approving use of sources in sensitive categories, payment, authorization of otherwise illegal activities, etc. – we have had to consider whether the new rules for FBI human sources generally should be more like those that have previously applied on one side or the other, or whether there is a fresh approach which will enable us to carry out the Department's mission more effectively in relation to all types of sources, or whether some differences should be preserved depending on whether a source is being used in a national security investigation or some other type of criminal

investigation.

Our current guidelines revision activities relating to human sources have largely been concerned with resolving such matters. I think it is fair to say that we have made good progress in doing so and that we are nearing the end of the process. The expected product is a new guidelines set, similar in scope to the existing Confidential Informants Guidelines, which will apply to the operation of all types of FBI human sources.

Beyond the matters discussed above, which are directly concerned with human sources, we have had some inquiry from the Committee concerning the guidelines for the collection of foreign intelligence by the FBI. These are generally distinct matters, though obviously there is some substantive overlap, particularly with regard to defining the conditions for use of human sources in the collection of foreign intelligence.

The NSIG provides separate sets of standards for national security investigations – principally, investigations of international terrorism or espionage by the FBI – and for the collection of foreign intelligence by the FBI. The provisions governing national security investigations were intensively reviewed and revised following the 9/11 terrorist attacks, reflecting the concern at the time with addressing the paramount threat of international terrorism. In comparison, the provisions governing foreign intelligence collection – appearing in Part IV of the NSIG – were less of a focus of attention, and were not extensively revised in comparison with the pre-9/11 version of the guidelines. We have been working with the FBI to provide clearer guidance for this purpose. As with the guidelines for FBI human sources, progress has been made, and we will endeavor to conclude this project as quickly as possible.

On behalf of the Department of Justice, I want to thank you again for inviting me to

testify today. We thank you for your support over the years and reaffirm our commitment to work with Congress to improve the quality of the FBI's human intelligence operations. I would be happy to answer any questions you might have.

Department of Justice

STATEMENT
OF
J. PATRICK ROWAN
DEPUTY ASSISTANT ATTORNEY GENERAL
NATIONAL SECURITY DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICARY
HOUSE OF REPRESENTATIVES

CONCERNING

"ENFORCEMENT OF FEDERAL ESPIONAGE LAWS"

PRESENTED

JANUARY 29, 2008

Statement of
J. Patrick Rowan
Deputy Assistant Attorney General
National Security Division
U.S. Department of Justice

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

Concerning
"Enforcement of Federal Espionage Laws"

January 29, 2008

Chairman Scott, Ranking Member Gohmert, and members of the Subcommittee:

It is my pleasure to appear before you today to discuss the National Security Division's enforcement of Federal espionage laws. As you know, the clandestine intelligence collection activities of foreign nations include not only traditional Cold War style efforts to obtain military secrets, but, increasingly, sophisticated operations to obtain trade secrets, intellectual property, and technologies controlled for export for national security reasons. Accordingly, these activities and others implicate a wide array of Federal criminal statutes. But no matter what form of espionage is being used, or which statutes are implicated, there is one common denominator: our national security is always at stake.

Unfortunately, espionage did not end with the end of the Cold War, and in fact, we have investigated espionage activities relating to more countries now than in the past. Recent cases have involved efforts to get information or technology to countries like China, Cuba, the Philippines, and South Korea, for example:

- Noshir Gowadia is a former design engineer from Northrop Corporation who has been charged in an 18-count superseding indictment in the District of Hawaii with espionage and export violations stemming from substantial defense related services he allegedly performed for the Peoples Republic of China. This includes his illegal sale of U.S. military technology secrets to China. Gowadia allegedly agreed to design, and later designed, a "low observable" cruise missile exhaust system nozzle capable of rendering the missile less susceptible to detection and interception. The case is set for trial in the District of Hawaii in October 2008.

- Carlos Alvarez, a psychology professor at Florida International University, admitted in a guilty plea in 2006 that he had worked for nearly 30 years as a

covert intelligence agent on behalf of the Cuban government. He was sentenced to 60 months imprisonment.

- Leandro Aragoncillo, an FBI analyst, pleaded guilty in 2006 to espionage and other charges, admitting that he took and transferred classified information, including national defense documents, to senior political and government officials of the Republic of the Philippines. He was sentenced to 10 years imprisonment.

- Robert C. Kim, a South Korean native who had become an American citizen and had worked as a computer specialist for the U.S. Navy, pleaded guilty in 1996 to conspiracy to commit espionage for South Korea. He admitted to having given secret Pentagon and State Department documents to a South Korean naval attache at the South Korean Embassy in Washington. He was sentenced to 9 years imprisonment.

- Brian Patrick Regan, a former Master Sergeant in the United States Air Force who worked as a signal specialist at the National Reconnaissance Office, was convicted in 2003 of offering to sell U.S. intelligence secrets to China and Iraq. He was sentenced to life imprisonment without parole.

Of great concern recently is the substantial and growing national security threat posed by illegal foreign acquisition of restricted U.S. military technology. On January 22nd the President issued an Export Control Directive to ensure that U.S. defense trade policies and practices better support the National Security Strategy of the United States. One key element of this White House directed effort is the establishment of a multi-agency working group to support the Department's export enforcement investigations. The National Security Division will play a key role in this effort. Strict enforcement of our country's export control laws is a critical tool in stemming this somewhat non-traditional espionage-related threat. The National Security Division launched a new initiative this past October to bolster our enforcement efforts on that front. I'll discuss that initiative in greater detail shortly, but in a general sense, the technology at the heart of the initiative includes U.S. military items, dual-use equipment, and other technical expertise or know-how, some of which have applications in Weapons of Mass Destruction. These materials are generally restricted and may not be exported without a license. China and Iran pose particular U.S. export control concerns, and recent prosecutions have highlighted illegal exports of stealth missile technology, military aircraft components, Naval warship data, night vision equipment, and other restricted technology destined for those countries. In one recent case, a former engineer with a U.S. Navy contractor was convicted by a jury in May 2007 of exporting sensitive defense technology to China. The individual, Chi Mak, had been given lists from co-conspirators in China that requested U.S. Naval research related to nuclear submarines and other information. Mak gathered technical data about the Navy's current and future warship technology and conspired to export this data to China. His four co-defendants all pleaded guilty. Mak is scheduled to be sentenced in March of this year.

In the National Security Division, we have a section aptly named the Counterespionage Section, where lawyers work on espionage and espionage-related enforcement efforts everyday.

The Counterespionage lawyers are in constant communication with the foreign counterintelligence personnel in the FBI and, indeed, the entire intelligence community. They evaluate pending counterintelligence investigations for potential prosecution and are highly experienced in dealing with sensitive sources and methods. Since espionage prosecutions often involve the possibility that classified information may be disclosed publicly, either as part of the defendant's defense or as part of the prosecution's case-in-chief, the lawyers in the Counterespionage Section also work extensively with the Classified Information Procedures Act, known as CIPA, which provides uniform procedures for dealing with classified information in open criminal proceedings.

As mentioned above, the Federal criminal code gives the government a variety of different tools to prosecute different types of espionage. Lawyers in the Counterespionage Section of the National Security Division deal with all of the espionage and espionage-related statutes regularly. The primary statutes concerning espionage include 18 U.S.C. § 793 and § 794. Generally speaking, Section 793 prohibits anyone from willfully communicating information relating to the national defense to any person not entitled to receive it. The term "information relating to the national defense" has been defined by case law to mean information that is closely held by the government, usually through proof that the information was classified. Section 793 also criminalizes the willful retention of national defense information, conspiracies to communicate or retain national defense information, and the negligent removal of national defense information from its proper place of custody. The maximum penalty under Section 793 is ten years imprisonment. Section 794 is more narrow than Section 793 because it criminalizes the communication of national defense information to foreign governments, where the communication of information is made with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation. Violations of Section 794 can result in life imprisonment, or, if certain criteria are met, the death penalty can be imposed.

In addition to Sections 793 and 794, there are other relevant statutes that provide felony offenses for more particularized conduct. For example, 18 U.S.C. § 798 prohibits disclosing classified information concerning communications intelligence; 18 U.S.C. § 1030(a) criminalizes obtaining of classified information by accessing a computer without authorization; 50 U.S.C. § 421 prohibits the disclosure of the identity of a United States covert agent; 50 U.S.C. § 783 makes it unlawful for any government employee to disclose classified information to a foreign government and for any agent of a foreign government to receive classified information from a government employee; and 18 U.S.C. § 951 prohibits anyone from acting in the United States as an agent of a foreign government without first notifying the Attorney General. All of these offenses generally carry a maximum penalty of ten years imprisonment. In addition to these felonies, Title 18 U.S.C. § 1924 provides a misdemeanor offense for retaining classified information.

One point of note with respect to one of the statutes mentioned above,18 U.S.C. § 951, is that it has been used successfully in recent cases to prosecute individuals who had been affiliated with the Iraqi Intelligence Service under Saddam Hussein, and who had been sent to the United States to conduct activities on behalf of Hussein's government. One example of this is Khaled

Abdel-Latif Dumeisi, who was convicted in the Northern District of Illinois of violating § 951 for his activities spying on Iraqi dissidents in the United States for Saddam Hussein. On March 31, 2004, Dumeisi was sentenced to 46 months imprisonment.

The Dumeisi case also provides just one example of how electronic surveillance under the Foreign Intelligence Surveillance Act ("FISA") is a key tool in combating intelligence collection activities by foreign governments here in the United States. Dumeisi had previously been the subject of an FBI intelligence investigation for several years, which had included electronic surveillance under FISA . In 2003, when FBI agents were able to share that information from their investigation with prosecutors, the prosecutors were able to use it to build the case against Dumeisi. Electronic surveillance and physical searches under FISA are indispensable in espionage cases, which by their very nature usually involve clandestine activities that are difficult to detect.

As discussed earlier, export control laws are also critical tools for addressing the national security threat posed by sensitive U.S. technology getting into the wrong hands. These include:

- the Arms Export Control Act, 22 U.S.C. §§ 2751-2799, which prohibits the export of defense articles and services without first obtaining a license from the Department of State, and carries a penalty of up to 10 years imprisonment;

- the Export Administration Act of 1979, 50 U.S.C. App. §§ 2401-2420, which has lapsed and is therefore currently enforced through IEEPA, prohibits the export of certain "dual-use" goods and technology without first obtaining a license from the Department of Commerce, and carries a penalty of up to 5 or 10 years imprisonment depending on the violation;

- the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706, which authorizes restrictions or prohibitions on transactions (including comprehensive trade embargoes) involving particular countries, such as Iran, or specified individuals or entities, such as terrorists, and carries a penalty of up to 20 years imprisonment; and

- the Trading with the Enemy Act of 1917, 50 U.S.C. §§ App. 1-6, 7-39, 41-44, which authorizes prohibitions on nearly all transactions involving Cuba and on participation in transfers of certain strategic goods to North Korea, and carries a penalty of up to 10 years imprisonment.

The National Security Division's export enforcement initiative I described earlier is a major effort to ensure that prosecutors around the country have the training, tools, and support from other agencies that they need to bring cases under these statutes. The Department of Justice and the National Security Division are fully committed to the success of this important initiative. Steven Pelak, an 18-year veteran Federal prosecutor, has been appointed as the National Export Control Coordinator responsible for leading the efforts under the initiative. Mr. Pelak is creating multi-agency counter-proliferation task forces in U.S. Attorney's offices around

the country. These task forces are taking many of the concepts used in combating terrorism – namely, prevention, cooperation and coordination – and applying them to the efforts to prevent the illegal export of sensitive U.S. technology. The FBI, the Departments of State and Commerce, the Department of Homeland Security, the Defense Criminal Investigative Service, and others are all part of this effort. Training for prosecutors is of course an essential aspect of the initiative, since export prosecutions are by their very nature complex: they involve intricate laws, sensitive international issues, agencies with different authorities, and, often, classified information. Earlier this month, Mr. Pelak held a training symposium on export control for over 30 prosecutors from around the country at the National Advocacy Center. From the strides Mr. Pelak has already made in carrying out the National Security Division's export control initiative, we are confident that it will significantly bolster our country's export enforcement efforts.

Before I conclude I would be remiss if I did not point out that our efforts to disrupt clandestine intelligence activities of every form – from traditional spying to illegal exports of technology – have been enhanced by the establishment of the National Security Division within the Department of Justice, which brought the Counterespionage Section, the Counterterrorism Section, and the Office of Intelligence and Policy Review together in one Division. This Division was created by the Congress as part of the reauthorization of the Patriot Act in 2006, and we believe that it has already begun to pay dividends.

Thank you for the opportunity to appear before you and testify on the National Security Division's enforcement of Federal espionage laws. We look forward to working with the Committee to improve our enforcement capabilities in this important area.

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